2017 IL App (3d) 170356-U

Order filed October 31, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re D.W.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0356
	)	Circuit No. 12-JA-142
v.	)	
	)	
Kyisha W.,	)	Honorable
	)	Katherine Gorman Hubler,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's finding that respondent was unfit for failing to make reasonable progress toward the return of her child during the relevant nine-month period was not against the manifest weight of the evidence.

¶ 2 Respondent, Kyisha W., appeals from the judgment of the circuit court finding her to be an unfit parent and terminating her parental rights. On appeal, respondent argues that the trial

court's finding that she failed to make reasonable progress is against the manifest weight of the evidence. She does not challenge the trial court's best-interest finding. We affirm.

¶ 3 FACTS

¶ 4 On July 2, 2012, the State filed a petition for adjudication of wardship, alleging that D.W., born January 21, 2006, was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2012)). The petition alleged that between March 2006 and April 27, 2012, respondent had been involved in several incidents of domestic violence involving the minor's father and other paramours. It also alleged that respondent had been hospitalized on March 18, 2012, for the possible overdose of aspirin, allergy medication and anti-depressants, and that she still had a substance abuse problem. The petition further alleged that respondent had been convicted of possession of a controlled substance in 2008 and that the minor's father had a criminal history that included possession of cannabis and drug paraphernalia and criminal damage to property. On August 13, 2012, respondent was arraigned and an order of protection was entered stating that the minor remain with respondent and requiring respondent to perform two random drug drops every month.

¶ 5 On September 26, 2012, the trial court entered an order for temporary shelter care and placed the minor in the temporary custody of the Department of Children and Family Services (DCFS). The basis for removing D.W. from respondent's care was respondent's admissions that she allowed D.W. to have contact with the father in violation of an order of protection and that she had recently used marijuana. DCFS placed D.W. in foster care, and Family Core, a social services agency, was assigned to supervise respondent's case.

¶ 6 On October 2, 2012, respondent filed a supplemental answer to the State's petition, stipulating to the allegations and stating that she called the drug drop line and had completed two

drug drops. On November 6, 2012, the trial court found that respondent neglected D.W. as defined by the Act and granted the State's petition.

¶ 7 Following a dispositional hearing, the court found respondent unfit and determined that it was in the best interests of D.W. to make him a ward of the court. The court assigned guardianship to DCFS. The dispositional order instructed respondent, among other things, to (1) execute all authorizations for releases of information requested by DCFS, (2) cooperate fully and completely with DCFS, (3) obtain a drug and alcohol assessment and successfully complete any course of treatment recommended, (4) perform random drug drops two times per month, (5) submit to a psychological examination and follow the recommendations made, (6) participate in and successfully complete domestic violence classes, and (7) obtain and maintain stable housing. These directives corresponded with respondent's service plan, which Family Core prepared. The court also established a permanency goal for D.W. of return home within 12 months.

¶ 8 During the next four years, respondent failed to complete her service plan directives. In November 2016, the State filed a petition to terminate parental rights. The petition alleged that respondent was an unfit parent in that she failed to make reasonable progress toward the return of the minor during the nine-month period from September 1, 2015, to June 1, 2016.

¶ 9 The trial court conducted a fitness hearing on March 7 and March 28, 2017. At the hearing, Family Core caseworker, Austin Haddock, testified that he was assigned to respondent's case from September 1, 2015, until December 9, 2015. On October 8, 2015, respondent failed to report to a scheduled drug drop. Respondent called Haddock after she missed the scheduled appointment and informed him that she was unable to attend the drop because she had to work late. Haddock then rescheduled the drop. He testified that respondent only attended the rescheduled drop because he insisted that she complete the service. During his four-month

involvement with respondent, Haddock testified that respondent only completed one drop, on October 16, 2015, and the results of that drop came back positive for cannabis.

¶ 10 Haddock further testified that in October of 2015, he conducted a house visit and discovered that respondent was living with two other people whom Haddock did not know. After calling respondent that morning to remind her about the house visit, Haddock arrived at respondent's home address in the afternoon and smelled cannabis as he stood outside the front door. When the door opened, he was greeted by a male and female who were not listed as residents of the home. They refused to identify themselves and informed Haddock that respondent did not live there. During a later meeting with respondent, Haddock asked respondent who the individuals were, and she told him that he "didn't need the names."

¶ 11 Haddock stated that respondent completed parenting classes and domestic violence classes but failed to complete individual counseling while he was assigned to the case. The counselor who treated respondent left her position in October 2015. Haddock attempted to find a replacement to help respondent complete the task and respondent indicated that she did not wish to continue her counseling service.

¶ 12 On cross-examination, Haddock agreed that respondent also completed a drug and alcohol assessment and some drug treatment. Haddock stated that respondent satisfied other service plan directives by completing a psychological evaluation and a psychiatric evaluation.

¶ 13 Kristine Smith, respondent's caseworker from December 9, 2015, to June 23, 2016, testified that she had discussions with respondent about her drug usage. According to Smith, respondent missed drops while the drops were administered by Fortes Lab, but she did transition successfully to the drops with Help at Home, a new lab the agency started using in March of 2016. Respondent informed Smith that she did not attend White Oaks for drug and alcohol

treatment because "she wanted to be able to get clean on her own to prove that she could do it on her own."

¶ 14 Smith further testified that respondent failed to complete counseling, even though she had engaged in counseling before Smith was assigned to the case. Respondent also violated the orders of protection she obtained against D.W.'s father by calling him on several occasions and asking to speak with her other children. Moreover, when respondent attended visitation with D.W., she became upset about her other two children and frequently left the visit with D.W. to talk to the caseworker about visitation with her other two children.

¶ 15 Respondent testified that she completed anger management classes, a psychological evaluation, and a psychiatric evaluation prior to the relevant time period. She also stated that she was attending counseling services when her counselor moved to Chicago. Respondent claimed she was unable to complete counseling due to the goal change to "removal" and the agency's refusal to pay for counseling. Respondent testified that she is currently receiving counseling services from Heartland Community Center.

¶ 16 Respondent also stated that she attended all of her scheduled visits and that she brought snacks and gifts for D.W. During her visits, she tried to tell D.W. that she was fighting for him, but the social worker encouraged her not to talk about the case.

¶ 17 The trial court considered the testimony of the witnesses as well as the permanency review reports. A report authored by psychiatrist Andrew Heritch from Heartland Behavior Health Psychiatric and Counseling Services was attached to the May 16, 2016, permanency review report. In his report, Heritch opined that respondent used cannabis "to help her emotional symptoms and headaches more so than to get high."

¶ 18 The trial court found that the State had proven, by clear and convincing evidence, that respondent was an unfit parent as to D.W. in that she failed to make reasonable progress toward reunification during the relevant nine-month period. Following a best-interest hearing, the court entered an order terminating respondent's parental rights.

¶ 19 ANALYSIS

¶ 20 On appeal, respondent argues that the trial court erred in finding her unfit. She claims that the trial court's finding that she failed to make reasonable progress toward the return of D.W. between September 1, 2015, and June 1, 2016, is against the manifest weight of the evidence.

¶ 21 Under section 1(D) of the Adoption Act, a parent may be found unfit due to a failure to make reasonable progress toward the return of the child during any nine-month period following the neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2016). Reasonable progress is an objective standard that focuses on the steps a parent has taken toward the goal of reunification and is measure by the parent's compliance with the court's directives and service plans. *In re Gwynne P.*, 346 Ill. App. 3d 584, 594 (2004). At a minimum, reasonable progress requires that a parent make measurable and demonstrable movement toward the return of the child. *Id.* at 595-96. Continued use of illegal drugs or repeated illegal activity is evidence of "the opposite of reasonable progress" and constitutes conditions which would prevent the court from returning custody of the child to the parent. *In re S.E.*, 296 Ill. App. 3d 412, 415-16 (1998) (reversing trial court and finding unfitness where father continued to using illegal drugs and participating in gang activities rather than undergoing a psychological evaluation and seeking treatment).

¶ 22 Reviewing courts will not overturn a trial court's finding of unfitness in a termination of parental rights proceeding unless it is against the manifest weight of the evidence. *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28. A finding is against the manifest weight of the evidence only if

the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill.2d 476, 498 (2002).

¶ 23 Here, the record shows that respondent failed to make measurable and demonstrable movement toward reunification with D.W. during the relevant nine-month period. Despite completing other service plan directives, respondent failed to complete counseling and continued to use illegal drugs. She did not continue counseling services after her counselor moved to Chicago in October of 2015 and had not completed the required task as of June 1, 2016, a task that was listed in the November 2012 dispositional order. Further, respondent missed more than half of her drug drops during the relevant ninth-month period. In February 2016, she missed the entire month. And the drops she did complete between September 2015 and June 2015 all came back positive for cannabis. This evidence does not clearly demonstrate that respondent substantially complied with the service plan or made reasonable progress toward bringing her child home. Thus, the trial court's finding that respondent failed to make reasonable progress toward reunification during the relevant nine-month period was not contrary to the manifest weight of the evidence.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Peoria County is affirmed.

¶ 26 Affirmed.