2017 IL App (3d) 170367-U

Order filed October 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re J.C.,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
a Minor	)	Kankakee County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0367
	)	Circuit No. 15-JA-31
v.	)	
	)	
A.T.,	)	
	)	Honorable Kenneth A. Leshen,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 Respondent, A.T., appeals the trial court's termination of the parental rights to her child, J.C. (born August 4, 2015). Respondent challenges both the court's fitness and best-interest

determinations. The parental rights of the minor's father, E.C., were also terminated; however, he is not a party to this appeal. We affirm.

¶ 3 FACTS

¶ 4 On November 23, 2015, the State filed a petition alleging the minor was neglected. Specifically, the petition alleged that (1) respondent failed to provide the minor with proper medical care for a broken rib or follow-up care for a hole in her heart that she was born with (count I), (2) the minor's environment was injurious to her welfare because respondent left her in the care of someone whose last name she did not know without food or diapers on November 19, 2015, and that the minor was admitted to the hospital on November 20, 2015, with a broken rib, fever, and congestion (count II), and (3) respondent left the minor in the care of someone whose last name she did not know on November 19, 2015, without formula or diapers, and did not return for the minor until the next day. Following a shelter-care hearing later that day, the minor was placed in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 5 The trial court conducted an adjudicatory hearing on March 1, 2016, at which time it orally found the minor to be neglected and made her a ward of the State. The court found that the State proved beyond a reasonable doubt counts I and II of its petition and that "the minor is adjudicated neglected and made a ward of the State." On March 21, 2016, the court entered a written adjudicatory order, finding the minor neglected in that her environment was injurious to her welfare and that she had been left unsupervised for an unreasonable period of time.

¶ 6 Adline Lane, a child-welfare caseworker for Lutheran Child and Family Services of Illinois, submitted a report to the trial court in anticipation of the March 30, 2016, dispositional hearing. Lane indicated that respondent continued to struggle with the reasons for why the minor

came into care and denied any wrongdoing on her part. Lane also reported that respondent was "not in any services at this time" and "has failed to keep her appointments with the worker." Lane noted that respondent had not made any substantial progress since the case commenced and expressed concerns regarding respondent's substance abuse.

¶ 7 Lane submitted a second report to the trial court on June 16, 2016, stating that respondent continued to struggle with the reasons the minor came into care and continued to deny any wrongdoing. The report further indicated that respondent "has failed to meet with treatment providers as scheduled," "has failed to engage in services," "has failed to keep her appointments with the worker," and had a warrant issued for her arrest for failing to appear in court on another case. The attached service plan rated respondent's progress as unsatisfactory because she had not made herself available for services. Following a June 22, 2016, hearing, the trial court found respondent had not made substantial progress or reasonable efforts toward the return of the minor child. The permanency goal was set as return home pending status. The court also suspended respondent's visitation until further order, finding she (1) was still using illegal substances and abusing alcohol, (2) had a warrant out for her arrest, (3) had not shown up for her last two scheduled visits, and (4) was not engaged in services.

¶ 8 In anticipation of a December 2016 permanency review hearing, Amanda Fenton, a child-welfare specialist with Lutheran Child and Family Services of Illinois, filed a report with the court. The report indicated that respondent had moved and her phone had been disconnected. Fenton's last contact with respondent had been in October 2016. Fenton opined that respondent had not made substantial progress since the case began as she continued to refuse services, despite substance abuse concerns, and she continued to insist she did nothing wrong that caused the minor to be in care. The attached service plan rated respondent's progress as unsatisfactory.

Fenton noted that respondent had not participated in the requested substance abuse assessment and that Fenton could not send her for any other services until respondent completed the substance abuse services. Fenton recommended the permanency goal be changed to substitute care pending legal screening. Following a December 14, 2016, hearing, the trial court found respondent had not made substantial progress or reasonable efforts toward the return of the child. The permanency goal remained return home pending status.

¶ 9 On February 1, 2017, the State filed a motion to terminate the parental rights of respondent and the minor's father, E.C. Regarding respondent, the State alleged that she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions which were the basis for the removal of the child within nine months following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) make reasonable progress toward the return of the child within nine months following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)). The relevant nine-month period listed on the State's motion was March 1, 2016, through December 1, 2016.

¶ 10 On March 15, 2017, respondent filed a response to the State's motion to terminate her parental rights, asserting (1) the State could not demonstrate by clear and convincing evidence that respondent "was properly instructed by child welfare agents in the need for her to demonstrate a greater involvement with her child" and (2) respondent suffered from mental impairment and "extreme financial limitations," both of which frustrated her efforts to get involved with the process of returning the minor to her care.

¶ 11 At the April 12, 2017, fitness hearing, Arminda Fenton testified that she been assigned to the minor's case since October 4, 2016. Fenton stated that respondent's service plan required her

to complete parent coaching, a mental health assessment, a drug assessment, a domestic violence assessment and individual psychotherapy. Respondent did not complete any of these services during the relevant time period except for the drug assessment, which was finally completed in December 2016. As a result of respondent's drug assessment, it was determined that she needed additional drug-related services and was to receive weekly drug counseling and attend classes at Duane Dean multiple times per week. Fenton stated that respondent attended her scheduled visits with the minor "[s]poradically," in that "she would sometimes show up, sometimes not." Respondent's visitation was suspended as a result of her failure to consistently attend scheduled visits or participate in services. In Fenton's opinion, the child was "no closer today to going home than she was in the beginning."

¶ 12 Respondent testified on her own behalf. She was 20 years old and dropped out of high school after her junior year. At the time of the hearing, she was unemployed and living with her mother. Respondent admitted that she smoked cannabis during the entire nine-month period at issue and had only stopped smoking it the month before the hearing. She further testified that a physician told her she had "an alcohol fetal syndrome." Respondent agreed that she had met with Fenton on several occasions. During those meetings, Fenton would discuss with her classes and services she needed to participate in to get her daughter back. Fenton gave her a list of things she needed to do and told her if she did not do them, the State might take away her parental rights.

¶ 13 After hearing arguments and considering the evidence, the court orally pronounced it was "finding that the parents have failed to make reasonable progress; haven't remediated the conditions that lead to their—to their child being taken away in the first place."

¶ 14 At the May 10, 2017, best-interest hearing, the foster mother testified that the minor was her cousin and came into her care when she was 3 months old. The minor had remained in her care for the last 20 months. She also stated that her 14 and 18-year-old sons lived with her and treated the minor "like a little sister." The minor child was "growing, super smart, she's walking, talking." The minor suffered from asthma and was in the care of a physician, but was otherwise in good health. She further testified that the minor calls her "mom," and she would like to adopt her.

¶ 15 During arguments, the State asked the trial court to terminate respondent's parental rights. The guardian *ad litem* also asked the court to terminate respondent's parental rights. Specifically, she opined that termination was in the child's best interest considering she had been in foster care for most of her life, her foster mother was the only mom she knew, and she was bonded to her foster mother and integrated into the foster home. Thereafter, the trial court found that the termination of respondent's parental rights was in the best interest of the child.

¶ 16 On May 11, 2017, the court entered a written order of unfitness and a written order terminating parental rights. In its order of unfitness, the court found that respondent was unfit due to her failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare, (2) make reasonable efforts to correct the conditions which were the basis for the removal of the child within nine months following the adjudication of neglect, and (3) make reasonable progress toward the return of the child within nine months following the adjudication of neglect.

¶ 17 This appeal followed.

¶ 18 ANALYSIS

¶ 19 On appeal, petitioner challenges the trial court's (1) finding of unfitness based on her failure to maintain a reasonable degree of interest in the child and (2) termination of her parental rights. Specifically, she frames the issues as follows: "After considering evidence of an indigent mother's mental impairment, can the court still enter an order terminating the parental rights of that mother for failure to maintain a reasonable interest in her child where the State presented no evidence that the mother was ever properly admonished as to what a failure to maintain an interest in her child would mean?"

¶ 20 Before addressing the merits of respondent's appeal, we first consider an error regarding the nine-month period alleged in the State's motion to terminate respondent's parental rights, which the State brought to our attention in its brief. In particular, the State notes the nine-month period alleged in its petition should have been March 21, 2016 (the date the minor was adjudicated neglected), through December 21, 2016, rather than March 1, 2016, through December 1, 2016. The record shows that the trial court orally adjudicated the minor neglected at the conclusion of the adjudicatory hearing on March 1, 2016, which is supported by a corresponding docket entry indicating that the court found counts I and II of the State's petition were proven beyond a reasonable doubt, and that "the minor is adjudicated neglected and made a ward of the State." However, the court did not enter its written order adjudicating the minor neglected until March 21, 2016. See 705 ILCS 405/2-21 (West 2016) ("the court shall *** put in writing the factual basis supporting [its neglect] determination, and specify, to the extent possible, the acts or omissions or both of each parent *** that form the basis for the court's findings. That finding shall appear in the order of the court."). Accordingly, we agree that the nine-month period at issue should have been March 21, 2016, through December 21, 2016. However, respondent did not take issue with the date discrepancy, nor did she respond to the

State's arguments regarding that discrepancy in her reply brief. In any case, based on our review of the record before us, we find any such error—the difference of only 20 days—was harmless.

¶ 21 We now turn to respondent's contentions on appeal.

¶ 22 A. Finding of Parental Unfitness

¶ 23 As noted, respondent challenges the trial court's finding of unfitness based on her failure to maintain a reasonable degree of interest in the child.

¶ 24 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re D.D.*, 196 Ill. 2d 405, 417 (2001). "A trial court's finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 15. A reviewing court will not disturb a trial court's unfitness finding unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *Id*.

¶ 25 In this case, the trial court found respondent unfit for multiple reasons, including her failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare, (2) make reasonable efforts to correct the conditions which were the basis for the removal of the child within nine months following the adjudication of neglect, and (3) make reasonable progress toward the return of the child within nine months following the adjudication of neglect. On appeal, however, respondent challenges only the trial court's finding of unfitness,

and its subsequent termination of parental rights, based on her failure to maintain a reasonable degree of interest in her child's welfare. Specifically, respondent's arguments revolve around her supposed status as an indigent, mentally impaired mother and the State's alleged failure to "properly admonish" her that her parental rights would be terminated if she "fail[ed] to maintain an interest in her child."

¶ 26 Remarkably, respondent does not take issue with the trial court's finding of unfitness based on her failure to make (1) reasonable efforts to correct the conditions which were the basis for the minor's removal within nine months following the adjudication of neglect or (2) reasonable progress toward the return of the minor within the same nine-month period. We note that evidence of unfitness based on any ground enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) is enough to support a finding of unfitness, even where the evidence may not be sufficient to support another ground. *In re D.L.*, 326 Ill. App. 3d 262, 268 (2001). Consequently, respondent's omission of these grounds on appeal is akin to a concession that she is unfit on these bases, and thus, it is not necessary to address her specific arguments pertaining to her unfitness. *Id*. (citing *In re D.L.*, 191 Ill. 2d 1, 8 (2000) (the failure to challenge all grounds of unfitness found by the court rendered the appeal moot); *In re M.J.*, 314 Ill. App. 3d 649, 655, 795 (2000) (sufficient evidence of one ground of unfitness obviates the need to consider other grounds)). Accordingly, we decline to address respondent's contention that the trial court erred by finding her unfit for failure to maintain a reasonable degree of interest in the minor's welfare.

¶ 27 B. Termination of Parental Rights

¶ 28 Respondent next asserts that the trial court's order terminating her parental rights was "against the manifest weight of the evidence because the State could not prove by clear and

convincing evidence that the child welfare agency involved properly inculcated [her] with need for maintaining a greater interest in her child." She then limits her argument to the following statement: "After hearing the testimony of a single child welfare agent, inexperienced and minimally trained in dealing with the mental impairment the court accepted the mother as suffering from, there should have been more than enough doubt in the trial court's mind as to whether the State actually met its burden of proving unfitness."

¶ 29 We note that respondent's argument is misplaced. Following a finding of parental unfitness, the focus shifts entirely to the child. *In re Donald A.G.*, 221 Ill. 2d at 244. At the best-interest stage, "all considerations must yield to the best interest of the child" and "the parent's interest in maintaining a parent-child relationship yields to the child's interest in a stable, loving home life. *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). At this point, the State must prove by a preponderance of the evidence that termination of parental rights is in the child's best interest. *Id*.

¶ 30 In considering the child's best-interests, the court takes into account (1) the safety and welfare of the child, (2) the development of the child's identity, (3) the child's background and ties, (4) the child's sense of attachment, including where the child feels loved, has a sense of security and familiarity, continuity of affection, and where the least-disruptive placement alternative would be, (5) the child's wishes and goals, if applicable, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of each family and child, (9) the risks of being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). A trial court's finding regarding a child's best-interests will not be reversed on appeal absent an abuse of discretion. *In re I.B.*, 397 Ill. App. 3d at 340.

¶ 31 Here, our review of the record reflects that, at the time of the hearing, the minor had been in the care of her foster mother, who she calls "Mom," for 20 months. The minor was only three months old when she went into care and has grown up in the foster mom's home. Her foster mom is the only mom she knows; she is bonded to her foster family and integrated into their home. Her foster brothers treat her just "like a little sister." Further, the minor has flourished under the care of her foster mother. She learned to walk and talk, and is described as "super smart." Although the minor suffers from asthma, she is under the care of a physician and is otherwise in good health. Finally, the foster mother expressed a willingness to adopt her and provide her with permanence.

¶ 32 Based on the above evidence, we find that the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County.

¶ 35 Affirmed.