2017 IL App (3d) 170397-U

Order filed December 19, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re A.S., N.S., and J.S.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Minors,	)	Will County, Illinois.
	)	
(The People of the State of Illinois,	)	Appeal Nos. 3-17-0397, 3-17-0398,
	)	and 3-17-0399
Petitioner-Appellee,	)	
	)	Circuit Nos. 15-JA-77, 15-JA-78,
v.	)	and 15-JA-79
	)	
Jennifer B.,	)	The Honorable
	)	Paula A. Gomora,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Wright concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held*: In an appeal in a termination of parental rights case, the appellate court held that the trial court's determination of parental unfitness was not against the manifest weight of the evidence. The appellate court, therefore, affirmed the trial court's judgment, terminating the biological mother's parental rights to her minor children.

¶ 2 In the context of a juvenile-neglect proceeding, the State filed a petition to involuntarily terminate the parental rights of respondent mother, Jennifer B., to her minor children, A.S., N.S., and J.S. After hearings on the matter, the trial court found that respondent was an unfit parent/person and that it was in the minors' best interest to terminate respondent's parental rights. Respondent appeals, challenging only the determination of parental unfitness. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 Respondent and Nicholas S. were the biological parents of the minor children, N.S. (born in August 2012), J.S. (born in January 2014), and A.S. (born in March 2015). In April 2015, the family came to the attention of the Department of Children and Family Services (DCFS) after it was reported that two-year-old N.S. had cigarette burns on the back of his neck and had stated that "daddy did it." N.S. was also found to have black and blue marks on his back, which were allegedly from respondent and Nicholas S. hitting him with a wooden spoon. Additional concerns were raised that drugs were being sold out of the home, that there was domestic violence in the home, and that Nicholas S. was using drugs.

¶ 5 The following month, the State filed a juvenile neglect petition as to all three children. The petition alleged that the children were neglected minors because they had been subjected to an injurious environment. Respondent was given a court-appointed attorney to represent her in the juvenile court proceedings.

¶ 6 On October 27, 2015, an adjudicatory hearing was held on the juvenile neglect petition. Respondent stipulated to or admitted the factual basis for the petition—that N.S. had suffered cigarette burns to his neck, that respondent and Nicholas S. were homeless at the time of filing of

the petition, and that respondent and Nicholas S. were involved in domestic violence. The trial court found that the children were neglected minors.

¶ 7 A dispositional hearing was held the following month. At the conclusion of the dispositional hearing, the trial court took the case under advisement. In January 2016, the trial court entered a dispositional order in which it found that respondent was an unfit parent.[1] The finding of unfitness as to respondent was based upon her having not yet completed the services outlined in the service plan. The trial court made the children wards of the court and named DCFS as the guardian of the children. The permanency goal was set at that time for the children to be returned home within 12 months.

¶ 8 At the time of disposition, the court instructed respondent that she was required to comply with the service plan that was implemented to correct the conditions that led to the adjudication and removal of the children. Pursuant to that service plan (the October 2015 service plan), respondent was required to, among other things: (1) complete parenting classes; (2) participate in an integrated assessment and comply with the recommendations contained therein; (3) obtain a psychological examination; (4) obtain a psychiatric evaluation; (5) sign a release so that DCFS could obtain information about respondent's participation in, and compliance with, counseling; (6) participate in individual therapy sessions; (7) participate in domestic violence counseling; (8) complete random drug tests; (9) obtain stable housing; (10) obtain stable employment; and (11) attend all of her visits with the children.

¶ 9 Over the next year, two permanency review hearings were held, one in July 2016 and another in January 2017. Respondent appeared in court for the permanency review hearings and was represented by her attorney. Reports were prepared for the permanency review hearings by

[1] The trial court also found that Nicholas S. was an unfit parent as well.

the caseworker, LaDonna Thomas, and by the Court Appointed Special Advocates (CASA). At each hearing, there were both positive and negative aspects of respondent's performance for the period.[2] However, in the written orders for the two permanency review hearings, the trial court made no specific findings as to whether respondent had made reasonable progress, reasonable efforts, or substantial progress toward achieving the permanency goal. At the conclusion of the second hearing, the trial court, in agreement with the caseworker, changed the permanency goal for the children to substitute care pending a determination on termination of parental rights.

¶ 10 In January 2017, the State filed a motion to terminate respondent's parental rights to the children.[3] The termination petition alleged that respondent was an unfit parent/person as defined in the Adoption Act because: (1) she had failed to maintain a reasonable degree of interest, concern, and responsibility as to the children's welfare (see 750 ILCS 50/1(D)(b) (West 2012)); (2) she had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children (see 750 ILCS 50/1(D)(m)(i) (West 2012)); (3) she had failed to make reasonable progress toward the return home of the children during the initial nine-month period after the adjudication of neglect from October 27, 2015, to July 27, 2016 (see 750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) she had failed to make reasonable progress toward the return home of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect from July 28, 2016, to the present date (see 750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 11 In May 2017, an evidentiary hearing was held on the parental unfitness portion of the termination petition (the parental fitness hearing). Respondent was present in court for the

[2] Because that information is set forth in detail later in this order in our summary of the evidence presented at the parental fitness hearing, we will not set it forth in detail here.

[3] The State also sought to terminate the parental rights of Nicholas S. to the children.

hearing and was represented by her attorney. At the hearing, the State admitted four exhibits into evidence without objection: an integrated assessment dated September 18, 2015; a service plan dated October 13, 2015, which covered the period from May 2015 through October 2015; a service plan dated May 25, 2016, which covered the period from October 2015 through May 2016; and a service plan dated December 7, 2016, which presumably covered the period from May 2016 through December 2016. As for the positive aspects of respondent's performance during the initial nine-month period following adjudication, and, at times, prior thereto, the four exhibits established that respondent: (1) had participated in an integrated assessment (in July 2015) and in some of the services recommended therein; (2) had successfully completed parenting classes (in July 2015); (3) had signed a medical release (in the beginning of October 2015) so that DCFS could obtain information about her progress in counseling; (4) had obtained a psychological examination; (5) had worked with a parenting coach; (6) was able to demonstrate in her visits with the children the parenting skills she had learned; (7) had completed all random drug tests with negative results; (8) had moved into a domestic violence shelter in June 2016 after her abuser, Nicholas S., had planned to go into drug treatment; (9) had consistently attended individual therapy sessions while she was living in the domestic violence shelter; and (10) had consistently attended domestic violence counseling while she was living in the domestic violence shelter. The four exhibits also showed the positive steps that respondent had taken (or continued to take) after the initial nine-month period was over.

¶ 12 As for the negative aspects of respondent's progress during the initial nine-month period following adjudication, the four exhibits established that respondent: (1) had failed to obtain stable housing; (2) had failed to obtain stable employment; (3) had attended individual therapy sessions only on a sporadic and inconsistent basis, except when she lived in the domestic

violence shelter, and had made only minimal progress in that area; (4) had not consistently attended domestic violence counseling sessions, except when she lived in the domestic violence shelter, and had not made progress in that area; (5) had at times continued to pursue a domestically violent relationship with her abuser, Nicholas S.; (6) had at one point taken up residence in a hotel with her abuser, Nicholas S. (prior to when respondent moved into the domestic violence shelter); and (7) had at times declined the offer to live in a domestic violence shelter and had instead chosen to go from place to place with Nicholas S. The four exhibits also showed the negative steps that respondent had taken (or continued to take) after the initial nine-month period was over.

¶ 13 In addition to admitting the four exhibits at the parental fitness hearing, the State also presented the testimony of the caseworker, LaDonna Thomas. Most of Thomas's testimony on direct examination pertained to respondent's performance after the initial nine-month period had ended. In addition to that testimony, Thomas stated that at various times, she had evaluated respondent's progress toward accomplishment of the service plan goal. In the May 2016 service plan, Thomas had rated respondent's progress toward accomplishment of the goal as unsatisfactory. In the December 2016 service plan, Thomas had also rated respondent's progress as unsatisfactory as well.

¶ 14 On cross-examination by respondent's attorney, Thomas acknowledged that in the October 2015 service plan, she had rated respondent's progress toward accomplishment of the goal as satisfactory (although the testimony on that point is not quite clear from the record). Thomas acknowledged further that during the period of May 2015 through October 2015 (as shown in the October 2015 service plan), respondent was participating in individual therapy sessions; had signed a release to allow the agency to speak with her counselors; was involved in

domestic violence counseling in October 2015; had completed a psychological evaluation; had participated in an integrated assessment; had participated in random drug tests, all with negative results; had completed a parenting class (in July 2015); and was consistent in her visits with the children, for the most part. Thomas also acknowledged that for the period of October 2015 through May 2016 (as shown in the May 2016 service plan), respondent was able to implement the skills she had learned in parenting class; had worked with, and followed the directions of, a parenting coach; had improved her parenting skills; and was consistently visiting with the children at the time of the May 2016 service plan. Thomas agreed that in June 2016, respondent had moved into a domestic violence shelter and had consistently attended individual therapy sessions while living at the shelter.

¶ 15 At the conclusion of the parental fitness hearing, the trial court took the case under advisement. The following month, the trial court issued its decision. As to respondent, the trial court found that two of the four grounds of parental unfitness alleged in the termination petition had been proven by the State by clear and convincing evidence—the failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare and the failure to make reasonable progress toward the return home of the children during the initial nine-month period following adjudication. The trial court concluded, therefore, that respondent was an unfit parent/person.[4] In reaching that conclusion, the trial court pointed out that during the initial nine-month period, respondent's progress had been rated unsatisfactory toward the goal of returning the children home, that respondent had not completed a psychiatric evaluation, that respondent had not completed individual therapy sessions and had made only minimal

[4] The trial court also found that Nicholas S. was an unfit parent/person.

progress in that area, that respondent had not completed domestic violence counseling, and that respondent had failed to obtain or maintain housing or employment.

¶ 16 A best interest hearing was held immediately thereafter. At the conclusion of the hearing, the trial court found that it was in the best interest of the children to terminate respondent's parental rights. The trial court terminated respondent's parental rights, set the children's permanency goal to adoption, and named DCFS as the guardian of the children with the right to consent to adoption.[5] Respondent appealed.

¶ 17 ANALYSIS

¶ 18 On appeal, respondent challenges only the trial court's determination of parental unfitness. Respondent asserts that the trial court's underlying finding—that respondent was an unfit parent/person because she had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare and had failed to make reasonable progress toward the return home of the children during the initial nine-month period following adjudication—was against the manifest weight of the evidence. In support of that assertion, respondent claims that: (1) she completed many of the service plan tasks that were assigned to her over the life of this case; (2) she made measurable steps, from an objective standpoint, toward the goal of reunification; (3) the record is replete with evidence demonstrating her interest, concern, or responsibility as to the children's welfare, including consistency with visitation and cooperation with her service providers and with the service plan; and (4) the trial court's finding that respondent had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare was inconsistent with the trial court's failure to find for the State on its

[5] The trial court also terminated Nicholas S.'s parental rights to the children.

allegation that respondent had failed to make reasonable efforts. For all of the reasons stated, respondent asks that we reverse the trial court's determination of parental unfitness.

¶ 19 The State argues that the trial court's determination of parental unfitness was proper and that it, and the trial court's termination order, should be upheld. The State asserts that the evidence in support of the trial court's underlying finding was overwhelming. In support of that assertion, the State contends that the testimony and exhibits presented at the parental fitness hearing established that during the relevant periods, respondent received an unsatisfactory rating on: (1) her overall progress toward the return home of the children; (2) locating and maintaining stable housing; (3) maintaining stable employment or a legal source of income; (4) participating in domestic violence counseling; (5) participating in individual therapy sessions; and (6) following the suggestions of, and implementing the parenting techniques provided by, a parenting coach. According to the State, the only task that respondent completed during that period was obtaining a psychological evaluation. Furthermore, the State maintains, although respondent was compliant with her service plan on occasions, the evidence presented, as a whole, overwhelmingly established that respondent failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of the children or to make reasonable progress toward the return home of the children during the initial nine-month period. For all of the reasons set forth, the State asks that we affirm the trial court's finding of parental unfitness and the trial court's termination order.

¶ 20 The children's attorney on appeal agrees with the State's argument—that the trial court's determination of parental unfitness was well supported by the evidence—and asks that we affirm the trial court's judgment as well.

¶ 21 The involuntary termination of parental rights is governed by the provisions of both the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq*. (West 2014)) and the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2014)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the first stage of termination proceedings in the trial court, the State has the burden to prove the alleged ground of parental unfitness by clear and convincing evidence. See 705 ILCS 405/2-29(2) (West 2014); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The proof of any single statutory ground will suffice. 750 ILCS 50/1(D) (West 2014); *C.W.*, 199 Ill. 2d at 210. A trial court's finding of parental unfitness is given great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion. *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005).

¶ 22 In this particular case, although respondent presents arguments as to both reasonable interest and reasonable progress, we will address only the ground of reasonable progress because it is dispositive of the issue before us. See 750 ILCS 50/1(D) (West 2014); *C.W.*, 199 Ill. 2d at 210. Pursuant to section 1(D)(m)(ii) of the Adoption Act as was in effect at the time the termination petition in the instant case was filed, a parent may be found to be an unfit parent/person if he or she fails to make reasonable progress toward the return of the child to the parent during any nine-month period following the adjudication of neglect.[6] See 750 ILCS 50/1(D)(m)(ii) (West 2014). To determine if reasonable progress has been made, a court will apply an objective standard and will generally consider the parent's compliance with the service plan and the court's directives, in light of the condition that gave rise to the removal of the child and in light of any other conditions that later became known which would prevent the court from

[6] It appears that in the termination petition that the State filed, the State was referring to a prior version of the statute.

returning custody of the child to the parent. *C.N.*, 196 Ill. 2d at 216-17; *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of the return of the child. *J.A.*, 316 Ill. App. 3d at 565. Reasonable progress exists when based upon the evidence before it, the trial court can conclude that the progress being made by a parent to comply with the directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the near future, will be able to order the child to be returned to the custody of the parent. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). The court will be able to do so because, at that point, the parent will have fully complied with the directives that the parent was previously given to regain custody of the child. *Id.* In determining whether reasonable progress has been made, the trial court may only consider the parent's conduct that occurred during the statutorily prescribed nine-month period and may not consider conduct that occurred outside the nine-month period. *In re J.L.*, 236 Ill. 2d 329, 341 (2010); *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35.

¶ 23 After having reviewed the record in the present case, we find that the trial court's determination—that respondent was an unfit parent/person because she had failed to make reasonable progress toward the return home of the children during the initial nine-month period following adjudication—was well supported by the evidence. The evidence presented at the parental fitness hearing showed that during the initial nine-month period, respondent had not obtained stable housing or employment, that respondent had only sporadic attendance at individual therapy sessions (except when she lived in the domestic violence shelter) and had made only minimal progress in that area, that respondent had not participated consistently in domestic violence counseling (except when she lived in the domestic violence shelter), that respondent was still involved in a domestically violent relationship with Nicholas S., and that

respondent's progress as a whole toward the goal of returning the children home within 12 months was rated as unsatisfactory by the caseworker. While it is true that there were some positive aspects of respondent's performance during the period, we cannot find, based upon all of the evidence presented for that period as a whole, that the trial court's determination of parental unfitness was against the manifest weight of the evidence. See *C.N.*, 196 Ill. 2d at 208; *A.M.*, 358 Ill. App. 3d at 252-53. The trial court, therefore, after making a best-interest determination, properly terminated respondent's parental rights. See 705 ILCS 405/2-29(2) (West 2014); *C.W.*, 199 Ill. 2d at 210.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 26 Affirmed.

¶ 27 JUSTICE McDADE, dissenting.

¶ 28 The respondent-mother's appeal in this case challenges only the trial court's finding of unfitness--a prerequisite to the court's contemporaneous termination of her parental rights. The majority holds the unfitness finding was warranted and affirms the termination. For the following reasons, I respectfully dissent and would urge that this case be remanded to address procedural and factual inconsistencies casting doubt on what the trial court found and the bases for its findings.

¶ 29 I. Discrepancy Between Oral Ruling and Written Order

¶ 30 Initially, I would point out that the trial court's written "Order as to Parental Fitness, Best Interest and Termination of Parental Rights" is significantly different from its oral pronouncement. While I acknowledge the rule generally directing that when there is

inconsistency between the oral and written rulings (*In re Taylor B.*, 359 Ill. App. 3d 647, 651 (2005)), the court's oral ruling prevails, there is potentially meaningful ambiguity in this case.

¶ 31 At the fitness hearing the court stated:

> "The Court finds, based upon State's Exhibits 3, 4, 5, and 6, as well as the testimony of Ms. Ladonna Thomas that both parents have failed to maintain reasonable degree of interest, concern, or responsibility as to the children's welfare *in that each has failed to finish the treatment recommended by the agency, specifically domestic violence treatment.* With respect to father, domestic violence treatment as well as drug treatment. Court would find that the *natural father failed to make reasonable efforts to correct conditions which were the basis for removal of the children from the inception of the case and [in?] that he has failed to participate in domestic violence counseling as well as successfully complete drug treatment*." (Emphasis added.)

¶ 32 The court made no similar oral finding with regard to reasonable efforts by the natural mother even though that appears to be the actual finding in the first sentence.

> "The Court further finds that each of the parents have [*sic*] failed to make reasonable progress toward the return of the minors within the nine-month period following adjudication of the minors being neglected; that time period being October 27th, 2015, through July 27th of 2016. During that time period each of the parents was rated unsatisfactory toward the goal of return home, particularly

> domestic violence counseling for the mother had not been completed. The psychiatric evaluation had not been completed. She had not completed individual counseling and had made minimal progress with respect to that counseling. She had failed to complete a psychiatric evaluation [second reference] as well as maintain or obtain a legal source of income and housing. *With respect to the father, father has failed to complete any services outlined in the service plan as well as maintain visitation with the children. The only services that the father has completed are complying with the integrated assessment and the substance abuse evaluation, but none of the treatment objectives have been met."* (Emphasis added.)

¶ 33 Again, no similar finding was made regarding the respondent-mother, casting doubt on the court's intent to actually conclude that she had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. Indeed, as discussed below, I would find that conclusion to be against the manifest weight of the evidence.

> "For these reasons, the Court finds by clear and convincing evidence that the parents are unfit."

¶ 34 After careful consideration of the court's statement, I would suggest that the written order was intended to provide needed clarity and consistency to the court's oral ruling. Accordingly, the written order found (1) only father, and not mother, "failed to maintain a reasonable degree of interest, concern, or responsibility as [to] the child(s) welfare"; (2) that both parents, not just father, "failed to make reasonable efforts to correct the conditions which were the basis for the

removal of the child from such parent said time period being October 27, 2015 through July 27, 2016"; and (3) that both parents "failed to make reasonable progress toward the return of the child to such parent within 9 months after an adjudication of neglected minor, abused minor or dependent minor under the Juvenile Court Act of the Juvenile Court Act of 1987 or during any 9 month period after the initial 9 months period as specified in the motion to terminate parental rights said time period being October 27, 2015 and ending July 27, 2016".

¶ 35 This difference between the oral and written ruling has particular significance here because both bases cited in the written order for the mother's unfitness are limited to the same nine-month time frame. Neither encompasses the full time span covered by all of the State's exhibits.[7]

¶ 36 I believe the record is ambiguous concerning the extent and propriety of what the trial court considered. The case should be remanded for clarification of precisely what the trial court determined to be the bases for the respondent-mother's unfitness and whether all of the facts supporting the court's finding were limited to the designated nine-month period.

¶ 37 II. Consideration of Merits of Finding of Unfitness

¶ 38 As the majority has stated, *supra* ¶ 22, "[i]n determining whether reasonable progress has been made, the trial court may only consider the parent's conduct that occurred during the statutorily prescribed nine-month period and may not consider conduct that occurred outside the nine-month period. *In re J.L.*, 236 Ill.2d 329, 341 (2010); *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35."

[7] In its motion for termination of parental rights, the State included an additional basis for unfitness that designated a term "from July 28, 2016, to the present" but the trial court did not find, in either version of its ruling, that basis had been proven.

¶ 39 For purposes of analysis, I will focus, as does the majority, on the trial court's finding that respondent-mother was unfit because from October 27, 2015, through July 27, 2016, she failed to make reasonable progress toward the return home of the children.

¶ 40 At the time of adjudication—the beginning of the designated nine-month period—respondent's status was that she had completed her psychological evaluation, had done the integrated assessment, and had provided signed releases allowing the agency to monitor her progress (which was initially inconsistent), and had submitted the requisite random drug drops, testing negative on all of them. She had completed the parenting classes and, during the nine-month period, she continued working with her parenting coach, was consistently visiting with the children and utilizing her improved parenting skills with them.

¶ 41 A persistent criticism by the caseworker was of respondent-mother's continued attachment to the children's father, despite his recurrent physically violent abuse of her. And then in June 2016, near the end of the nine-month period, she took the seemingly huge step of disassociating herself from him and moving into a domestic violence shelter as the caseworker had been constantly urging. She was still there, attending individual therapy and domestic violence counseling sessions, at the end of the designated nine-month period. It is true that she had not *completed* these sessions, but she was actively and consistently participating in them. The trial court did not either acknowledge this change or credit respondent for having made it in either its oral or written ruling.[8]

¶ 42 The only requirements that remained *both* uncompleted and unaddressed at the end of the nine-month period chosen by the State were the psychiatric evaluation (which seems superfluous unless the psychological evaluation that she *did* do disclosed something that warranted medical-

[8] In light of all respondent had accomplished and was accomplishing, the finding of failure to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare defies the manifest weight of the evidence—which may be why the trial court did not make that finding in the written order.

level intervention), obtaining stable housing and securing stable employment. See *supra* ¶ 12. I cannot argue that respondent's failure to address the housing and employment issues are not major obstacles to the children's return home. They clearly are. However, on July 27, 2016, it seems highly possible that, having actually fulfilled so many of her required tasks and having taken the major step of moving into the shelter and away from her abuser, she would be able to tackle the remaining tasks with a reasonable anticipation of success.

¶ 43 The law is clear that the court's fitness determination must be based on the respondent's conduct solely within the nine-month period chosen and designated by the State. Because the record does not clearly demonstrate that the trial court considered all of the relevant conduct occurring within the period or limited its consideration to only conduct occurring within that period, I would reverse the trial court's decision and remand the matter for clarification and further proceedings.