2018 IL App (2d) 170487-U
Nos. 2-17-0487 & 2-17-0488 cons.
Order filed March 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re B.T. and M.T., Minors,	)	Appeal from the Circuit Court
	)	of De Kalb County.
	)	
	)	Nos. 14-JA-35
	)	14-JA-36
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Adam T.,	)	Ronald Matekaitis
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision to terminate the father's parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent, Adam T., appeals from the trial court's order terminating his parental rights to his two minor daughters, M.T. and B.T. The trial court found respondent unfit for failing to make reasonable progress toward the return of the children to him within the initial nine months following the adjudicatory order or "during any [nine] month period after the end of the initial [nine] month period." See 750 ILCS 50/1(D)(m)(ii) (West 2016). Based on an amendment to the termination petition, the court also found respondent unfit based on his incarceration that

prevented him from discharging his parental responsibilities for the children. 750 ILCS 50/1(D)(s) (West 2016). Respondent disputes the three grounds for finding parental unfitness and argues that the court erred in allowing the State to amend the petition.

¶ 3 We affirm the finding of unfitness based on a failure to make reasonable progress. Therefore, we need not address the amendment of the petition or the underlying allegation that respondent's incarceration prevented him from discharging his parental responsibilities. Respondent does not challenge the court's determination that termination of his rights is in the children's best interests. Thus, we affirm the termination of parental rights.

¶ 4 I. BACKGROUND

¶ 5 M.T., who was five months old, and B.T., who was three and half years old, came into care on July 7, 2014, after M.T. suffered two bone fractures to her right arm. Respondent and the children's mother, Christina T., claimed that M.T. was injured while they were putting a "onesie" on her.

¶ 6 On February 6, 2015, the trial court entered an adjudicatory order, finding neglect based on an environment that is injurious to the children's welfare (see 705 ILCS 405/2-3(1)(b) (West 2016)) and physical abuse (see 705 ILCS 405/2-3(2)(i) (West 2016)).

¶ 7 On March 20, 2015, Jodie Burton, the family's caseworker, reported to the court that Christina was serving a four-year prison term after pleading guilty to the aggravated domestic battery of M.T. Respondent's criminal history includes a guilty plea to one count of criminal sexual abuse for which he was placed on four years' probation on December 3, 2013. The report indicated that respondent is a registered sex offender whose probationary terms prohibit him from having contact with any minor, except for supervised visitation with M.T. and B.T. The trial court entered a dispositional order finding that respondent was unable to care for M.T. and

B.T. The court appointed the Department of Children and Family Services (DCFS) as the guardian, with the right to place them in foster care. M.T. and B.T. were placed with their maternal grandparents, and respondent was granted supervised visitation.

¶ 8 On February 14, 2017, the State petitioned to terminate respondent's parental rights. First, the petition alleged that he is unfit because he failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors (see 750 ILCS 50/1D(b) (West 2016)). Second, respondent allegedly failed to make reasonable efforts or reasonable progress toward the return of the minors to him within 9 months after the adjudication of neglect, from February 6, 2015, to November 6, 2015, (see 750 ILCS 50/1D(m)(i), (m)(ii) (West 2016)). Third, he allegedly failed to make reasonable progress toward the return of the minors to him during an unspecified 9-month period after the end of the initial 9-month period following the adjudication of neglect (see 750 ILCS 50/1D(m)(ii) (West 2016)).

¶ 9 On April 21, 2017, the trial court began hearing the petition to terminate parental rights. Carolyn Merle, a caseworker, testified to the parents' participation in four service plans dated June 16, 2016, January 5, 2016, June 23, 2015, and March 1, 2015. The State closed its case, and DCFS did not present any evidence.

¶ 10 CASA attempted to admit a sentencing order and probation order related to respondent's prosecution for the prior criminal sexual abuse. The orders showed that respondent was initially sentenced to incarceration but was later granted probation. Respondent argued that the documents were irrelevant and should be excluded. Citing section 1(D)(s) of the Adoption Act, CASA responded that respondent was unfit because his incarceration at the time the termination petition was filed, and while the minors were in the temporary custody of DCFS, interfered with his ability to discharge his parental duties. CASA requested leave to file a separate termination

petition containing the allegation. Eventually, the trial court granted the State leave to amend its termination petition to include the incarceration allegation as a ground of unfitness under section 1(D)(s), and the court admitted evidence of respondent's conviction, incarceration, and probation. We set forth in our analysis a summary of the evidence presented at the unfitness hearing.

¶ 11 On June 23, 2017, the trial court found that the State had proved, by clear and convincing evidence, that respondent was unfit on three of the five grounds alleged in the second-amended petition to terminate parental rights. The court found respondent unfit for failing to make reasonable progress toward the return of the children to him within the initial nine months following the adjudicatory order or "during any [nine] month period after the end of the initial [nine] month period." See 750 ILCS 50/1(D)(m)(ii) (West 2016). The court also found respondent unfit based on his incarceration that prevented him from discharging his parental responsibilities for the children. 750 ILCS 50/1(D)(s) (West 2016). Following a best interests hearing, the trial court found that it was in the best interest of M.T. and B.T. that respondent's parental rights be terminated. This timely appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Respondent appeals from the termination of his parental rights. He disputes the three grounds for finding parental unfitness and argues that the court erred in allowing the State to amend the petition. We need not address his argument regarding the amendments to the termination petition because the evidence supports the court's finding that he failed to make reasonable progress toward the return of the minors to him.

¶ 14 A parent's right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of that right is a drastic measure. *In re Haley D.*, 2011 IL 110886, ¶

90. Accordingly, the Juvenile Court Act of 1987 (Juvenile Court Act) provides a two-stage process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2016). Initially, the petitioner must prove by clear and convincing evidence that the parent is unfit. 705 ILCS 405/2-29(2), (4) (West 2016); 750 ILCS 50/1(D) (West 2016); *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). We will reverse the trial court's finding of unfitness only if it is against the manifest weight of the evidence. A determination of unfitness 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 Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 15 If the court finds the parent unfit, the petitioner must then show that termination of parental rights would serve the child's best interests. 705 ILCS 405/2-29(2) (West 2014); *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. As our supreme court has noted, at the best-interests phase, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). In this case, respondent does not challenge the best-interests determination.

¶ 16 Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, but any one of the grounds, if properly proven, is sufficient to enter a finding of unfitness. *In re Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. The trial court is generally in the best position to assess the credibility of the witnesses and, therefore, we will not reweigh or reassess credibility on appeal. As cases concerning parental unfitness are *sui generis*, unique unto themselves, courts generally do not make factual comparisons to other cases. *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44.

¶ 17 In this case, the trial court found respondent unfit on several grounds, but we need address only respondent's lack of progress toward the return of the children during at least one nine-month period after the adjudications of neglect because it supports the finding of unfitness. See 750 ILCS 50/1(D)(m)(ii) (West 2014); *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. Under an objective standard, reasonable progress requires, at a minimum, the parent make measurable steps toward the goal of reunification through compliance with court directives, service plans or both. *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). The trial court must consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m) in determining whether a parent has made reasonable progress toward the return of the children. *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 18 At the unfitness hearing on April 21, 2017, Carolyn Merle, a foster care case worker employed by Youth Service Bureau at Illinois Valley, testified that M.T. and B.T. were three years old and six years old, respectively. Merle reported that respondent had been arrested in September 2016 for sex crimes against his stepdaughter, who is not involved in these proceedings. The new allegations against respondent cover periods when the alleged victim and B.T. resided together.

¶ 19 Following his arrest, respondent was transferred from the DeKalb County jail to the Boone County jail, where he was awaiting trial on 10 counts of predatory criminal sexual assault of a child under the age of 13. Merle had not been able to visit respondent since his transfer.

¶ 20 From the time DCFS became involved with the family in 2014, until September 2016, respondent was not in custody. Respondent was employed, had appropriate housing, and acted appropriately during visitation. He was cooperative, made his appointments, and called the caseworker when directed to do so.

¶ 21 Respondent's service plans directed him to complete a sexual abuse assessment and counseling based on his criminal history, which also required him to register for life as a sex offender. He was also directed to complete a mental health assessment, parenting education and mentoring, and substance abuse counseling. Merle testified that respondent successfully completed substance abuse counseling and a mental health screening followed by individual sessions. Respondent also completed his sexual abuse assessment but was subsequently charged with the new sex offenses against his stepdaughter.

¶ 22 Merle reported that respondent did not successfully complete the parenting classes because he never started them. Respondent explained that he believed the parenting classes would be more effective if he waited until the children were returned to him. He missed numerous appointments with the parenting coach and was dropped from the program.

¶ 23 None of the four plans entered into evidence was rated satisfactory. After initially testifying that respondent had made reasonable progress for six months preceding January 16, 2016, she opined that respondent had not made reasonable progress during any nine-month period following the adjudication of neglect and abuse.

¶ 24 On cross-examination, Merle testified that the Boone County jail has very limited, if any, services available to respondent. She admitted that the only service he essentially did not complete was parenting education. But she also explained that his noncompliance with the parenting requirement was not the only grounds for the unsatisfactory ratings. Respondent also failed to meet requirements regarding avoidance of police contact and adherence to probationary terms, based on his arrest. He did not provide proof of income as required.

¶ 25 Respondent testified that, at the time he was taken into custody, he had completed all his services except the parenting classes. Respondent claimed that he could not complete the classes because DCFS had not authorized them. None of the classes was scheduled.

¶ 26 Respondent also claimed that the charges that he is facing are based on alleged incidents that occurred before M.T. and B.T. were taken into custody. He denied refusing the parenting classes. Respondent explained that the only reason for his noncompliance was lack of approval from the agency.

¶ 27 At the unfitness hearing, the State summarized evidence that respondent did not comply with the service plans during the relevant permanency review periods. The caseworker testified that respondent was referred to substance abuse, sex abuse, and parenting services. Respondent completed most of the services to which he was referred, but he refused to participate in the parenting classes made available to him in the DeKalb County jail. Respondent denied that he refused the parenting classes, but the trial court found the caseworker to be more credible than respondent. The court commented that respondent could not dictate the curriculum of his parenting classes. Furthermore, the court heard evidence that his visitation with the children was restricted after a hotline caller reported that he was bathing the children unsupervised at the maternal grandmother's home. Respondent was ordered to avoid contact with the police and follow the terms of his probation, but he failed to do so. Already a registered sex offender, he was arrested for allegedly committing sex crimes against his stepdaughter.

¶ 28 Under an objective standard, respondent did not make measurable steps toward the goal of reunification through compliance with the court directives or the service plans. We agree with the State that, despite respondent's compliance with parts of the service plans, the trial court's finding of unfitness for failure to make reasonable progress toward reunification with the

children for at least one relevant nine-month period is not against the manifest weight of the evidence. Respondent never progressed beyond unsupervised visitation with the children and was no closer to their return home at the time of the unfitness hearing than he was when they were adjudicated neglected and abused. We affirm the finding of unfitness based on the failure to make reasonable progress, and respondent does not challenge the court's determination that the termination of his parental rights is in the children's best interests.

¶ 29 III. CONCLUSION

¶ 30 For the preceding reasons, the judgment terminating respondent's parental rights to M.T. and B.T. is affirmed.

¶ 31 Affirmed.