2018 IL App (2d) 180339-U
No. 2-18-0339
Order filed September 4, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re M.M., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-206
	)	
(People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Marlin M.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that respondent was unfit and that severing his parental ties was in the minor's best interests were not against the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, Marlin M., appeals from an order of the trial court finding him unfit as a parent as defined in sections (D)(i), (D)(m)(i), (D)(m)(ii), and (D)(b) of the Adoption Act (750 ILCS 50/1(D)(i), (D)(m)(i), (D)(m)(ii), (D)(b) (West 2018)) and terminating his parental rights to his minor child, M.M. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 M.M. was born on September 25, 2014. Respondent is her natural father. On September 16, 2016, the State filed an abuse and neglect petition, alleging, *inter alia*, that M.M. was a neglected minor and her environment was injurious to her welfare because her five month old sibling had sustained fatal non-accidental injuries, thereby placing M.M. at risk of harm, pursuant to 705 ILCS 405/1-3(1)(b). On October 17, 2016, after respondent and M.M.'s mother stipulated to these allegations, M.M. was adjudicated neglected. Respondent was incarcerated at the time of the events leading to the adjudication. On November 18, 2016, M.M. was made a ward of the court, and the Department of Children and Family Services (DCFS) was made her guardian with discretion to place her in traditional foster care or with a responsible relative.

¶ 5 Following a permanency review hearing on July 17, 2017, the court found that M.M.'s home placement was necessary and appropriate, respondent had made reasonable efforts since being released from incarceration two months before, and the goal would remain return home within twelve months. At a second permanency review, on December 4, 2017, the attorney for CASA reported that respondent had not remained in contact with the caseworker following the July court date, had not been compliant with visitation, was in danger of being discharged from the Partner Abuse Intervention Program due to absences, and had completed one of ten required urine screens, which was positive for the presence of marijuana. The court found that respondent had not taken advantage of his opportunity after release from incarceration to make reasonable efforts and progress and changed the goal to substitute care pending the court's determination on termination of parental rights.

¶ 6 The State then filed a petition asking the court to terminate respondent's parental rights. On April 4, 2018, an unfitness hearing was held. The family caseworker from Children's Home and Aid testified, *inter alia*, that respondent's service plans required him to participate in

individual therapy, domestic violence services, and substance abuse services, none of which respondent completed during the nine-month period from April 26, 2017, through January 26, 2018. The caseworker further testified that respondent's visitation with M.M. was inconsistent and always supervised. On May 4, 2018, the trial court determined that the State had proven by clear and convincing evidence that respondent was unfit to be M.M.'s parent pursuant to sections (D)(i), (D)(m)(i), (D)(m)(ii), and (D)(b) of the Adoption Act (750 ILCS 50/1(D)(i), (D)(m)(i), (D)(m)(ii), (D)(b) (West 2018)).

¶ 7 Also, on May 4, 2018, a best interests hearing was held. The caseworker testified that M.M. was currently in a traditional foster home, where she lives with three other children who treat her as a sister. M.M. also maintains contact with her paternal aunt and half siblings. The foster parents and M.M. love each other very much; the foster parents include M.M. in the family's activities and trips, have been meeting all of M.M.'s schooling, medical and other needs, and are willing to adopt her. After considering the evidence presented and arguments of counsel, as well as the statutory best interest facts, the trial court determined that the State had proven by "at least a preponderance of the evidence" that it would be in M.M.'s best interest to terminate respondent parental rights and to change the goal to adoption.

¶ 8 II. ANALYSIS

¶ 9 To support a judgment of termination of a mother's or father's parental rights, there must first be a showing of parental unfitness based upon clear and convincing evidence, and a subsequent showing that the best interests of the child are served by severing parental rights based upon a preponderance of the evidence. *In re C. W.*, 199 Ill. 2d 198, 210 (2002); *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45.

¶ 10 A. Unfitness

¶ 11 Although section 1(D) of the Adoption Act sets forth numerous, discrete grounds under which a parent may be deemed "unfit," "any one ground, properly proven, is sufficient to enter a finding of unfitness and support a subsequent termination of parental rights." (Internal quotation marks omitted.) *In re C.W.*, 199 Ill. 2d 198, 210, 217 (2002); see 750 ILCS 50/1(D) (West 1998) (providing that the "grounds of unfitness are *any one or more* of the following" enumerated grounds (emphasis added)). "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings and we will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. For this reason, the trial court's finding of unfitness is entitled to great deference, and we will not disturb its finding unless it is against the manifest weight of the evidence. *In re D.F.*, 332 Ill. App. 3d 112, 124 (2002). The trial court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001).

¶ 12 Here, the trial court determined the State had proven respondent's unfitness by clear and convincing evidence on multiple statutory grounds. Paragraph 9.A. of the State's termination petition alleged that respondent was unfit for failing to make reasonable progress toward the return of M.M. See 750 ILCS 50/1(D)(m)(ii) (West 2018). We agree with the trial court that this ground was proven by clear and convincing evidence.

¶ 13 Section 1(D)(m)(ii) of the Adoption Act provides that a parent is unfit for failing "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication [of neglect]." 750 ILCS 50-1(D)(m)(ii) (West 2016). "Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. At a minimum,

reasonable progress requires "'measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child.'" *A.S.*, 2014 IL App (3d) 140060, ¶ 17 (quoting *In re M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991)). "'[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent.'" *A.S.*, 2014 IL App (3d) 140060, ¶ 17 (quoting *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001)). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 14 Respondent argues that he made reasonable progress because he was engaged in domestic abuse counseling "a number of times." Respondent fails to mention that he was discharged for excessive absences from this counseling twice during the relevant nine-month period (April 26, 2017, through January 26, 2018) and did not begin the program again until well after the relevant time period had run and, then, only pursuant to a parole requirement. Respondent further claims that his failure to do individual counseling was partly due to his having been placed on a waiting list; the evidence showed, however, that respondent failed to respond to a letter he was sent about an opening. Although respondent correctly states he visited with his daughter, he omits any reference to the inconsistency of his visitation or the fact that it did not progress to unsupervised visitation. Similarly, respondent's assertion that he did not need to complete drug treatment because he was never observed to be under the influence during his visitations ignores the fact

that he completed only one of the ten required urine screens, and that one was positive for marijuana.

¶ 15 Finally, respondent notes that the neglect allegations regarding M.M. did not relate to him. This point does not help respondent. See *In re Arthur H.*, 212 Ill.2d 441, 467 (2004) ("the only question to be resolved at an adjudicatory hearing is whether or not a child is neglected, and not whether every parent is neglectful"); *In re A.M.*, 358 Ill. App. 3d 247, 251-52 (2005) (a finding that a respondent neglected a minor is "not a prerequisite to the trial court finding the respondent unfit").

¶ 16 We conclude that the trial court did not err in determining that respondent was unfit under section 1(D)(m)(ii).

¶ 17 B. Best Interests

¶ 18 The focus shifts to the child after a finding of parental unfitness. *In re D.T.,* 212 Ill. 2d 347, 364 (2004). The issue is no longer whether parental rights can be terminated; the issue is whether, in light of the child's needs, parental rights should be terminated. *Id.*

¶ 1 In making a best interests determination, section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1–3(4.05) (West 2016)) requires a trial court to consider certain factors within "the context of the child's age and developmental needs"; these include: (1) the physical safety and welfare of the child, including food, shelter, health and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including where the child actually feels love, attachment, and a sense of being valued ***; the child's sense of security and familiarity; continuity of affection for the child; and the least disruptive placement alternative for the child; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and

friends; (7) the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. *In re D.T.,* 212 Ill. 2d 347, 354 (2004) (proceeding for termination of parental rights).

¶ 19 The trial court's finding with respect to best interests lies within its sound discretion, especially when it considers the credibility of testimony presented at the best interests hearing, and its determination will not be disturbed on appeal unless it is against the manifest weight of the evidence or the court has abused its discretion. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.* (citing *In re Arthur H.*, 212 Ill.2d 441, 464 (2004)). A court abuses its discretion where its findings are arbitrary or fanciful (*Blum v. Koster,* 235 Ill. 2d 21, 36 (2009)), or where no reasonable person would agree with its position (*In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)).

¶ 20 Respondent's only argument that terminating his parental rights is not in M.M.'s best interest is that the caseworker testified that "it would be harmful to M.M. to have her bond with her father severed." On cross-examination, the caseworker testified that she believed "as well" that considering M.M.'s bond with her foster parents, it would be detrimental to her to move out of their home and "lose [them] and her family." Additionally, the caseworker opined that respondent's parental rights to M.M. should be terminated, and she felt that the foster family was the perfect family for M.M.

¶ 21 It is apparent from the overwhelming weight of the evidence that M.M. loves her foster parents, wants to live with them, and is thriving with other children she regards as her siblings in

the place she calls "home." Respondent's "interest in maintaining the parent-child relationship must yield to [M.M.'s] interest in a stable, loving home life." *In re D.*, 212 Ill. 2d 347, 364 (2004).

¶ 22 The court's determination that it was in M.M.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.