2018 IL App (4th) 180237-U

NOS. 4-18-0237, 4-18-0238 cons.

FILED
August 21, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re M.C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Macon County
Petitioner-Appellee,	)	Nos. 16JA111
v. (No. 4-18-0237)	)	
Sandra F.,	)	
Respondent-Appellant).	)	
	)	
	)	
In re M.F., a Minor	)	16JA112
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0238)	)	Honorable
Sandra F.,	)	Thomas E. Little,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in finding respondent unfit and concluding it was in the minors' best interests that her parental rights be terminated.

¶ 2 In August 2016, the State filed petitions for adjudication of wardship with respect to M.C. and M.F., the minor children of respondent, Sandra F. In December 2016, the trial court made the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). The State filed motions to terminate respondent's parental rights in October 2017. Following a hearing on the State's motions in January 2018, the

court found respondent unfit. In February 2018, the court determined it was in the minors' best interests that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in finding her unfit and in terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2016, the State filed petitions for adjudication of wardship with respect to respondent's children, M.F., born in October 2012, and M.C., born in October 2015. The father of M.F. is unknown, and the father of M.C. is Sean C. The petition indicated respondent resided at the Macon County jail and Sean resided at Graham Correctional Center. The State alleged the minors were neglected pursuant to section 2-3(1)(a) and (1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a), (1)(b) (West 2016)) because they were not receiving the proper or necessary care as necessary for their well-being, and their environment was injurious to their welfare because police officers were dispatched to a rollover accident, where the car suffered major damage. Officers found no one in the car but did find two nearly empty bottles of liquor, an item of drug paraphernalia, baby clothing, and a baby bottle. An investigation revealed respondent was driving the vehicle and the children were in the car at the time of the crash. Respondent denied being in an accident and did not take the children to the hospital because she did not want to be arrested. Her driver's license was invalid, and a child reported respondent had been beaten up by her boyfriend. Based on the reported accident, the State also alleged the minors were abused pursuant to section 2-3(2)(i) and (ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(i), (ii) (West 2016)) because their parent, immediate family member, or any person responsible for their welfare caused to be inflicted or created a substantial risk of physical injury, by other than accidental means, which would be likely to cause death,

disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function.

¶ 6 The trial court found probable cause for filing the petition based on respondent's issues with substance abuse, mental health, and domestic violence. The court granted temporary custody to DCFS.

¶ 7 In December 2016, the trial court found the minors were abused or neglected because they suffered from a lack of support, education, or remedial care due to respondent's substance-abuse, mental-health, and domestic-violence issues. In its December 2016 dispositional order, the court found respondent was unfit and unable to care for, protect, train, educate, supervise, or discipline the minors and placement with her was contrary to the health, safety, and best interests of the minors because of her substance-abuse, mental-health, and domestic-violence issues. The court adjudicated the minors neglected, made them wards of the court, and placed custody and guardianship with DCFS.

¶ 8 In October 2017, the State filed motions to terminate respondent's parental rights. The State alleged respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her during any nine-month period following the adjudication of neglect and/or abuse (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) make reasonable progress toward the return of the minors to her during any nine-month period following the adjudication of neglect and/or abuse (December 3, 2016, to September 3, 2017, and February 24, 2017, to October 24, 2017) (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 9 In January 2018, the trial court conducted a hearing on the State's motion. Lacey Smith, a child-welfare specialist with DCFS, testified she had been the case leader for the minors' cases since November 2016. The service plan required respondent to address issues involving mental health, parenting, domestic violence, substance abuse, and probation. Smith stated respondent did not complete mental-health services, parenting classes, or domestic-violence counseling. While she obtained a substance-abuse assessment in August 2017, she did not complete any services. Also, respondent initially cooperated with probation, but she was not cooperating at the time of the hearing. Respondent stated it was very hard on her to engage in services, and Smith stated this "makes her struggle in the other areas." Smith stated the substance-abuse assessment recommended residential treatment for respondent. Because a bed was unavailable, respondent was supposed to call daily to find out if a bed was available. The assessment also recommended 15 hours a week of outpatient therapy. Respondent attended "a couple sessions," and "failed 33 groups and canceled 9 of those days." Respondent was eventually taken off the waiting list because she had not been calling. When Smith asked why she did not call, respondent stated it was very hard for her to commit to going to residential treatment because she had a bond with her husband and did not want to leave him, and she felt she could do it on her own. Given the amount of time respondent had to engage in services and from conversations with her, Smith opined "it would take longer than six months for her to engage in these services and get into substance abuse treatment and actually complete a program that would be long enough for her to sustain sobriety."

¶ 10 On cross-examination, Smith testified respondent had increased her communication with her and DCFS over time, which Smith agreed was an improvement. She obtained a mental-health assessment and signed a release for DCFS to have contact with her

probation officer. While she was rated satisfactory with her probation, respondent tested positive for illegal substances. Smith stated respondent "tested positive on multiple occasions," failed to appear at random urine screens, and informed Smith she would test positive for prescription pills. Smith also stated respondent completed a parenting assessment. In January 2017, Smith had to put into place a confirmation agreement with respondent because she "missed so many visits frequently that it was required of her to confirm." During visits, respondent appeared to be bonded with her children, "has a very strong desire to be" with them, and loves them. Smith stated respondent and the children express affection toward each other and the children respond well to her.

¶ 11 Christina Walters, a DCFS Medicaid therapist, testified she received a mental-health referral for respondent in August 2017. Respondent attended the initial assessment on September 7, 2017. Out of the four other appointments scheduled for September, respondent missed three. Respondent also missed the next appointment scheduled for October 2017. Walters then closed respondent's file.

¶ 12 Christine Foster, a parenting educator with the Youth Advocate Program (Youth Advocate), testified she received a referral for parenting services in 2016. Foster scheduled a meeting for October 20, 2016, but respondent had to reschedule because she arrived with her husband, who had to attend court. Respondent failed to call or attend the next meeting a week later. Respondent showed up on November 3, 2016, and she completed her parenting assessment. Respondent attended two more meetings, but she failed to show up on November 28, 2016, December 5, 2016, January 9, 2017, February 1, 2017, and February 8, 2017. Thereafter, respondent failed to reschedule appointments. Foster stated respondent "was not successful in meeting any parenting class or anything."

¶ 13 Vicki Brown, a visitation specialist with Youth Advocate, testified visits between respondent and the children "go well." In August 2016, respondent received two visits per week and then one visit per week starting in March 2017. She attended 53 out of 89 visits, and she failed to call on 17 occasions. In January 2017, respondent was required to call and confirm she would attend visits on the day they were to take place, and Brown stated respondent failed to confirm on nine occasions. Brown stated M.F. has dental problems, and respondent would bring candy after being told not to. Brown stated respondent's overall performance was "hard to rate" because the visits went well "when she was there." On cross-examination, Brown testified respondent became more consistent with visitations over time and was able to stay focused on the children.

¶ 14 Respondent testified she lived in Decatur at the time of the hearing and received transportation to Bloomington for visitations. She last visited with the children on January 8, 2018. She had another visitation on January 25, 2018, the date of the hearing, but she was in jail and "wasn't going to be able to get out." During visits, respondent would play games and blow bubbles with the children. Respondent stated she was "supposed to be restarting" her outpatient services but had been unable to do so because she was in jail. When asked on cross-examination what she was doing between October 2017 and January 2018 as to engaging in services, respondent stated she would "get on my feet, and then I fall back off."

¶ 15 Following arguments by counsel, the trial court found respondent unfit on all three grounds alleged by the State. Finding the evidence "overwhelming," the court noted respondent had not engaged in mental-health services, parenting classes, or domestic-violence classes. While she completed a substance-abuse assessment, she failed to complete services. The court found Smith's testimony "very credible" with respect to her belief respondent would

not be able to safely parent the children within six months. The court found respondent's testimony "unbelievable" and noted she had not taken advantage of the opportunities presented to her. While acknowledging addiction is a "serious problem," the court found attending visits and loving the children "is simply not enough."

¶ 16 In February 2018, the trial court conducted the best-interests hearing. Prior to the start of the hearing, respondent indicated her intention to surrender her parental rights. However, after a meeting in chambers, respondent became emotional, and the court stated it would be unable to say a surrender on her part would be voluntary. Thus, the court continued on with the best-interests hearing, but respondent did not appear.

¶ 17 Lacey Smith testified the minors have been living together in a traditional foster home since August 2016. They "are doing very well" and thriving in that foster home. M.F. is doing "very well" in school and "is educationally on track." Smith stated M.C.'s foster parents have "been her primary caretakers throughout her life," and they attend church and community activities. The minors have a "very strong bond with them," and the foster parents take care of the children's daily needs. Smith stated the minors' foster parents "have gone above and beyond" for them and have provided them with stability throughout the case.

¶ 18 On cross-examination, Smith testified respondent and the children have a bond with each other, and they get excited when they see each other. When she attends visits, respondent is appropriate with the children and appears to be loving toward them. Smith opined respondent would be unable to parent both children in the near future if her parental rights were kept intact.

¶ 19 In making its best-interests ruling, the trial court stated it considered the statutory factors and found the most applicable were the children's sense of attachment, the least-

disruptive placement alternatives, and the need for permanence. The court found the minors have bonded with their foster parents, have a "very strong attachment" to them, and have thrived in their environment. The foster parents meet the minors' emotional, physical, and medical needs, and they "have expressed a strong desire to adopt the children." The court found it in the minors' best interests that respondent's parental rights be terminated. Respondent appealed, and this court consolidated the cases.

¶ 20 II. ANALYSIS

¶ 21 A. Unfitness Findings

¶ 22 Respondent argues the trial court's findings of unfitness were against the manifest weight of the evidence. We disagree.

¶ 23 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177-78 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.' " *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

¶ 24 In the case *sub judice*, the trial court found respondent unfit for failing to maintain

a reasonable degree of interest, concern, or responsibility as to the minors' welfare. Before finding a parent unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)), the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's financial limitations, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child. [Citation.]" *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185.

¶ 25 "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202. Moreover, "a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern[,] and responsibility must be reasonable." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004).

¶ 26 Here, the evidence indicates respondent missed 36 out of 89 visits with her children, and she failed to call on 17 of those occasions. Respondent's sporadic attendance at visitations necessitated her having to call and confirm on the day of each visit. She failed to call nine times, and there were also times she called to confirm but still did not attend. Respondent's inconsistent visitation fails to evince a reasonable degree of interest, concern, or responsibility as to the minors' welfare. See *In re M.I.*, 2016 IL 120232, ¶ 36, 77 N.E.3d 69 (finding "[e]vidence of J.B.'s sporadic visitation sufficiently warrants the juvenile court's finding of unfitness"). Moreover, even when she did attend, respondent failed to provide appropriate snacks for M.F.,

who had poor dental health and was not supposed to eat candy.

¶ 27 "Completion of service plan objectives can *** be considered evidence of a parent's concern, interest, and responsibility." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1065, 859 N.E.2d 123, 135 (2006). Here, the evidence indicated respondent failed to complete mental-health services, parenting classes, or domestic-violence counseling, claiming to Smith that engaging in services is very hard on her. She failed to call in to inquire about a drug-treatment bed, stating she did not want to leave her husband and felt she could do it on her own. Respondent also tested positive for illegal substances, including opiates, synthetic marijuana, amphetamines/methamphetamines, and cocaine on multiple occasions between June 2017 and October 2017. While respondent attended a mental-health assessment, her file was closed for lack of attendance. Foster testified respondent "was not successful in meeting any parenting class or anything."

¶ 28 Considering respondent's failure to address the issues in her service plan, along with her sporadic visitation with her children and drug use, respondent's interest, concern, or responsibility toward her children cannot be deemed reasonable. Thus, we find the trial court's finding of unfitness under section 1(D)(b) was not against the manifest weight of the evidence. See *Jaron Z.*, 348 Ill. App. 3d at 260, 810 N.E.2d at 125 (noting the failure to comply with a service plan can warrant a finding of unfitness under section 1(D)(b)). Because the grounds of unfitness are independent, we need not address the remaining grounds as to reasonable progress and reasonable efforts. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds.").

¶ 29 B. Best-Interests Finding

¶ 30 Respondent argues the trial court's finding it was in the minors' best interests for her parental rights to be terminated was against the manifest weight of the evidence. We disagree.

¶ 31 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations, including the parent's rights, yield to the best interests of the child." *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80, 966 N.E.2d 1107. When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2016).

¶ 32 A trial court's finding that termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 33 In this case, the best-interests report indicated the minors have resided in a traditional foster home since August 2016. M.C. was placed with her foster parents when she was 10 months old, and she has bonded with them, knows them as her parents, and shows affection toward them. M.F. "appears to be developmentally on target" and "well-adjusted to his current foster home." The minors enjoy spending time with their foster parents' extended family members. The report stated the foster parents "have expressed a strong desire to adopt" the minors. Both minors appear to be thriving in their environment, and their emotional, physical, and medical needs are being met. In recommending respondent's parental rights be terminated, the report concluded the "foster parents have demonstrated their ability to not only meet the children's basic needs, but have also demonstrated their commitment to being safe, stable[,] and nurturing parents since August 2016."

¶ 34 The trial court considered the statutory best-interests factors and found the minors' foster parents provided them with "arguably the most important of the factors to consider—that's stability." They have met the needs of the minors, "maintained for the children a sense of normalcy," and were "committed to providing these children with a safe, stable, and nurturing environment."

¶ 35 The evidence indicated the minors are in a good home, their needs are being met, and they are thriving in their current placement. Their foster parents are willing to adopt them, which will provide them with the permanency they need and deserve. While respondent has a bond with the minors, Smith noted respondent would be unable to parent both children in the near future. Considering the evidence and the best interests of the minors, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment.

¶ 38 Affirmed.