2018 IL App (4th) 180281-U

NO. 4-18-0281

FILED
August 30, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re B.G., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 15JA43
v.	)	
Marilyn S.,	)	Honorable
Respondent-Appellant).	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and it was in B.G.'s best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In January 2017, the State filed a motion for the termination of the parental rights of respondent, Marilyn S., as to her minor child, B.G. (born in 2008). After a three-day hearing, the Sangamon County circuit court found respondent unfit. In April 2018, the court concluded it was in B.G.'s best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding (1) her unfit and (2) it was in B.G.'s best interests to terminate her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2015, the State filed a petition for the adjudication of wardship as to B.G. The State's petition alleged B.G. was neglected pursuant to section 2-3(1)(b) of the

Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)), in that her environment was injurious to her welfare when she resided with her father, Steven G., and his paramour, Shantell S., as evidenced by (1) the domestic violence between Steven and Shantell (count I), and (2) Steven's and Shantell's drug use (count II). The petition also alleged B.G. was neglected under section 2-3(1)(a) (705 ILCS 405/2-3(1)(a) (West 2014)), in that she was not receiving the proper care and supervision necessary for her well-being because Steven failed to make a proper care plan for B.G (count III). The State later filed an amended petition, which was a clean copy of the original petition that contained several crossed-out and handwritten additions.

¶ 6 In November 2015, Steven stipulated B.G. was neglected under section 2-3(1)(b) of the Juvenile Court Act as evidenced by the domestic violence between him and Shantell (count I), and the circuit court entered the adjudicatory order finding B.G. neglected. That same month, the court entered a dispositional order (1) finding respondent and Steven were unfit, unable, or unwilling to care for, protect, train, educate, supervise, or discipline B.G.; (2) making B.G. a ward of the court; and (3) placing her custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 7 In July 2017, the State filed a motion to terminate respondent's and Steven's parental rights to B.G. The motion asserted respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to B.G.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions that were the basis for B.G.'s removal from respondent (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) make reasonable progress toward B.G.'s return during any nine-month period after the neglect adjudication, specifically November 4, 2015, to August 4, 2016 (750 ILCS

50/1(D)(m)(ii) (West 2016)). In September 2017, the State filed a supplemental termination petition, adding an additional allegation respondent was unfit for failing to make reasonable progress toward B.G.'s return during any nine-month period after the neglect adjudication, specifically August 4, 2016, to May 4, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)). At a November 15, 2017, hearing, Steven signed a final and irrevocable consent for B.G. to be adopted by her foster parents.

¶ 8 On January 11, 2018, the circuit court commenced respondent's fitness hearing. The State presented the testimony of Trisha Brownlow, who worked for Lutheran Child and Family Services and had been the caseworker for B.G.'s case since May 2015. Respondent testified on her own behalf; presented the testimony of Rita Jeffers, the case aide in B.G.'s case; and called Brownlow as an adverse witness. She also presented two exhibits: a document containing screen shots of text messages between Brownlow and respondent (which are impossible to read in the e-record) and a July 19, 2016, letter from "Gypsy Jen & Co" that stated respondent was working around 20 hours per week. The evidence relevant to the issues on appeal is set forth below.

¶ 9 Brownlow testified B.G.'s case started in February 2015, and at that time, respondent was in the Logan Correctional Center (Logan) for "meth-related charges." She explained a service plan was created in August 2015, which required respondent to complete a parenting class, complete a drug and alcohol treatment program, obtain a mental health evaluation, attend individual counseling, attend domestic-violence classes, and obtain stable housing and employment once released from prison. When the review of the service plan was conducted in February 2016, respondent did not receive a satisfactory rating on any of the tasks in her service plan. According to Brownlow, respondent could have been rated satisfactory on

some of the tasks because some services were offered at Logan. Respondent did complete a two-hour parenting class while incarcerated, but that class alone was insufficient to meet the parenting class requirement because respondent had not really parented B.G. According to Brownlow, respondent was discharged from drug and alcohol treatment at Logan due to lack of participation.

¶ 10 According to Brownlow, respondent was released from Logan in May 2016 and did not initially engage in services. A month after her release, respondent began drug treatment, engaged in counseling, and attended a domestic-violence program. At some point, she successfully completed the domestic-violence program. Respondent also moved in with her mother and stepfather and got a job at Subway. Respondent's visits with B.G. went exceptionally well. However, respondent did not attend another parenting class. Also, respondent had not completed the individual counseling task because she had only attended counseling for two months. Moreover, respondent quit her job at Subway after 45 days and did not show Brownlow proof of employment from another employer. When the service plan was evaluated in August 2016, respondent did not receive any satisfactory ratings. Additionally, while they were working up to it, Brownlow testified she was not close to returning B.G. to respondent's care. However, on cross-examination, Brownlow acknowledged respondent was close to having B.G. returned to her in November 2016. Lastly, respondent had been talking to a man since January 2016, and they got together after her release from prison. Respondent did not inform Brownlow of the boyfriend, and Brownlow only found out about him when an investigation into possible sexual abuse of B.G. began in November 2016.

¶ 11 Respondent testified she was released from prison in June 2016 and had her whole service plan completed four months after her release. At that time, she was having

weekend visitation with B.G. The weekend visitation began in September 2016. After her release from prison, respondent was working three jobs and gave Brownlow proof of employment for those jobs. Respondent testified she completed drug treatment in October 2016. Respondent believed she was close to having B.G. returned to her in February 2017, when she was denied contact with B.G. due to the investigation. Respondent later testified the allegations arose in November 2016 and she was close to having B.G. returned in October 2016. On cross-examination, respondent admitted she did not successfully complete drug treatment during her incarceration. Respondent explained she was moved to a different housing unit because another inmate hit her and that housing unit did not have a treatment program.

¶ 12 Jeffers testified her job as a case aide was to supervise visitation and she began supervising B.G. and respondent's visits after respondent's release from prison. She did not communicate with respondent about her service plan but did pass paperwork between Brownlow and respondent. Jeffers also assisted with the drug drops for respondent, the last one of which was in October 2016. All of the drops that Jeffers did on respondent were clean.

¶ 13 During the supervised visits in Springfield, Jeffers observed respondent and B.G. interacted well and appeared bonded. B.G. viewed respondent as an authority figure, and respondent did not have any trouble disciplining or controlling B.G. B.G. was excited for visits and sad when the visits ended. Jeffers had no concerns about respondent's visits with B.G. and felt B.G was safe with respondent. Jeffers could not recall when, but the visits were changed to unsupervised weekend visitation in Herrin, Illinois. Additionally, Jeffers testified that, in November 2016, it got to the point where respondent was less than a week away from B.G. being returned to her.

¶ 14 As an adverse witness, Brownlow testified that, by August 2016, respondent had

made significant progress in her services. Brownlow said a date was never set for B.G.'s return to respondent. It was contemplated B.G. would be returned to respondent by the end of November 2016. In November 2016, respondent sill needed to complete counseling, maintain stable housing, and provide employment verification. Brownlow also testified B.G.'s case passed legal screening in June 2016 and Brownlow could have asked for the goal to be changed to termination of parental rights. Brownlow did not do so then because she wanted to give respondent a chance to complete required services.

¶ 15 At the conclusion of the hearing, the circuit court found respondent unfit based on her failure to (1) maintain a reasonable degree of responsibility as to B.G.'s welfare; (2) make reasonable progress toward B.G.'s return during the nine-month period of November 4, 2015, to August 4, 2016; and (3) make reasonable progress toward B.G.'s return during the nine-month period of August 4, 2016, to May 4, 2017.

¶ 16 On April 13, 2018, the circuit court held the best-interests hearing. Respondent did not attend the best-interests hearing due to her lack of transportation. Brownlow testified she now worked for DCFS but had been B.G.'s caseworker. B.G. was then nine years old and had lived with her foster parents, who are her paternal aunt and her same-sex spouse, since February 2015 when the case was opened. When the case started, B.G. had suicidal ideations and was acting out at home and at school. Her paternal aunt took special training to address B.G.'s needs and became a specialized foster care provider. B.G. attended intensive counseling services, which helped her. Her foster parents ensured B.G. got the counseling and services she needed. According to Brownlow, B.G. had spent half of her life living with her paternal aunt and had known the aunt's spouse for five years. Before DCFS's involvement, the paternal aunt had guardianship of B.G. for a year. B.G.'s younger half-sister, who was in the adoption process,

also resided in the foster home. B.G. is close to her younger sister. B.G. had friends where she lived and liked being in the foster home. The foster parents provided for B.G.'s educational, religious, social, and medical needs. B.G. had an attachment to both of her foster parents and felt safe in their home. The foster parents desired to adopt B.G. B.G. saw her future in her foster home but still saw respondent in her future too.

¶ 17 According to Brownlow, B.G. is also bonded with respondent and respondent's mother and stepfather. B.G and respondent were affectionate with each other, and B.G. is always happy to see respondent. Their visits went well. In late 2017, B.G. had expressed a desire to be reunited with respondent. Brownlow did not know when respondent and B.G.'s last visitation took place. She did not know if terminating respondent's parental rights would harm B.G. Brownlow noted B.G. was used to respondent coming in and out of her life. B.G.'s interaction with respondent had been through visits. If B.G. wanted to visit with respondent, Brownlow believed the foster parents would allow that in the future. However, she admitted the current relationship between respondent and the foster parents was strained. The foster parents had concerns about visitation with respondent because they believed respondent would continue to disappoint B.G. by not showing up. The issue with the maternal grandparents is they have voiced disapproval of two women raising B.G. to everyone, including B.G.

¶ 18 When allowed to make representations about what respondent's testimony would be, respondent's counsel noted respondent would testify that, before her incarceration, B.G. resided with respondent for the majority of B.G.'s life. She would also testify she and B.G. have a strong relationship. Moreover, respondent had been sober since August 2017 and could meet all of B.G.'s needs. Respondent's counsel also pointed out respondent's quick completion of services and stated she could do it again. Additionally, respondent's counsel believed

respondent would testify her relationship with the foster parents was very damaged, and respondent believed they have attempted to sabotage respondent's relationship with B.G. According to respondent the foster parents will not allow contact between B.G. and respondent or with respondent's family. Respondent had attempted to reach out to the foster parents to make amends, and the foster parents have not given any indication they would be open to a relationship in the future with respondent or her family.

¶ 19 At the conclusion of the hearing, the circuit court entered a written order finding it was in B.G.'s best interests to terminate respondent's parental rights.

¶ 20 On April 16, 2018, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 307(a)(6) (Nov. 1, 2017).

¶ 21 II. ANALYSIS

¶ 22 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2016)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor child's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 23 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding and best-interests determination unless they are contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010) (best-interests determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 24 A. Respondent's Fitness

¶ 25 Respondent first contends the circuit court's unfitness finding was against the manifest weight of the evidence. The State disagrees.

¶ 26 The circuit court found respondent unfit under, *inter alia*, section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)), which provides a parent may be declared unfit if he or she fails "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act." Illinois courts have defined "reasonable progress" as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). We have also emphasized " 'reasonable progress' is an 'objective standard.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387).

¶ 27 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case,

the petition alleged the relevant nine-month period was November 4, 2015, to August 4, 2016. Additionally, "time spent in prison does not toll the nine-month period." *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968.

¶ 28 Here, respondent was in prison for most of the period of November 4, 2015, to August 4, 2016. She had an opportunity to complete drug treatment in prison but was unsuccessfully discharged from the program for failure to attend. After her release from prison in June 2016, she did engage in most of her required services but had not yet obtained any satisfactory ratings in August 2016. Moreover, she had started dating a man in July 2016 and failed to inform both her caseworker and case aide of his existence until sexual abuse allegations were raised against him. Thus, while respondent was making progress during the period at issue, she was not close to having B.G. returned to her in the near future during that time period. The State's evidence showed respondent was not close to B.G.'s return until November 2016.

¶ 29 Accordingly, the circuit court's finding respondent unfit based on section 1(D)(m)(ii) of the Adoption Act was not against the manifest weight of the evidence.

¶ 30 Because we have upheld the circuit court's determination respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West 2016)), we need not review any other bases for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004) (providing when parental rights have been terminated based on clear and convincing evidence of a single unfitness ground, the reviewing court need not consider any additional grounds for unfitness cited by the circuit court).

¶ 31 B. B.G.'s Best Interests

¶ 32 Respondent also challenges the circuit court's finding it was in B.G.'s best interests to terminate her parental rights. The State contends the court's finding was proper.

¶ 33 During the best-interests hearing, the circuit court focuses on "the child's welfare and whether termination would improve the child's future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 34 We note a parent's unfitness to have custody of his or her child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interests. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 35 In this case, B.G. has resided with her paternal aunt half of her life and had been

in her aunt's home for the past three years. B.G.'s younger sister also resided in the home. Her foster parents desired to give her and her sister permanency through adoption. Moreover, B.G.'s ties were to her foster parents' community. B.G. was bonded with her foster parents and her younger sister. While B.G. was also bonded with respondent and had desired to live with her, respondent had struggled with stability due to her drug usage. Respondent had relapsed with her drug usage during the pendency of the wardship petition. Here, the best-interests factors favor the termination of respondent's parental rights.

¶ 36 Accordingly, we find the circuit court's conclusion it was in B.G.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the Sangamon County circuit court's judgment.

¶ 39 Affirmed.