2018 IL App (4th) 180494-U

NOS. 4-18-0494, 4-18-0495 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 11, 2018
Carla Bender
4th District Appellate
Court, IL

| | |
|---|---|
| *In re* C.L., a Minor<br><br>(The People of the State of Illinois,<br>Petitioner-Appellee,<br>v. (No. 4-18-0494)<br>Erica M.,<br>Respondent-Appellant). | Appeal from the<br>Circuit Court of<br>McLean County<br>No. 17JA46 |
| *In re* C.L., a Minor<br><br>(The People of the State of Illinois,<br>Petitioner-Appellee,<br>v. (No. 4-18-0495)<br>Charlie L.,<br>Respondent-Appellant). | Honorable<br>Kevin P. Fitzgerald,<br>Judge Presiding. |

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, (1) rejecting the respondent mother's procedurally defaulted claim that the trial court erred by finding her admission of unfitness was knowing and voluntary and (2) finding respondents forfeited their due process claims.

¶ 2 In January 2018, the State filed a petition to terminate the parental rights of respondent mother, Erica M., and respondent father, Charlie L., as to their minor child, C.L. (born May 15, 2017). In March 2018, the circuit court found respondents unfit. Following a June 2018 best-interests hearing, the court terminated respondents' parental rights.

¶ 3 Respondents appealed and we have consolidated their appeals for review. On appeal, Erica asserts (1) her admission of unfitness was not intelligently made and (2) she was denied due process of law. Charlie asserts he was also denied due process of law. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Events Preceding the State's Petition for Termination of Parental Rights

¶ 6 On May 17, 2017, the Illinois Department of Children and Family Services (DCFS) State Central Register received a report concerning Erica's ability to care for her minor child, C.L., who was two days old. Erica tested positive for cocaine and marijuana upon delivery. C.L.'s meconium also tested positive for cocaine and marijuana. The report further contained concerns regarding Erica's cognitive abilities. The next day, C.L. was taken into the protective custody of DCFS.

¶ 7 On May 19, 2017, the State filed a petition for adjudication of wardship, alleging C.L. was a neglected minor 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 2016)) in that her environment was injurious to her welfare as evidenced by: (1) Erica's unresolved issues with mental health; (2) Erica's unresolved issues with alcohol and/or substance abuse; (3) Charlie's unresolved issues with domestic violence and/or anger management; and (4) Charlie's unresolved issues with alcohol and/or substance abuse. At the May 22, 2017, shelter-care hearing, the trial court placed temporary custody and guardianship of C.L. with DCFS.

¶ 8 On July 5, 2017, DCFS filed a family service plan for respondents. The service plan identified the following objectives for Erica: psychological evaluation, parenting education, substance abuse counseling, psychiatric services, domestic violence services, individual counseling, and housing. The service plan included the following objectives for Charlie:

psychological evaluation, parenting education, individual counseling, domestic violence services, housing, and compliance with probation.

¶ 9 At the July 5, 2017, adjudicatory hearing, Erica admitted to unfitness due to her unresolved mental health issues. As a factual basis, the parties stipulated that Erica had previously been diagnosed with bipolar disorder with psychotic features and post-traumatic stress disorder and that she takes several psychotropic medications. The trial court accepted Erica's admission as knowing and voluntary and found the State proved the allegations in count I by a preponderance of the evidence. The court adjudicated C.L. neglected, made her a ward of the court, and dismissed the remaining allegations of neglect. The court ordered temporary custody and guardianship to remain with DCFS.

¶ 10 At the August 2017 dispositional hearing, the trial court acknowledged respondents' intent to directly surrender C.L. to her paternal aunt, Joanne L., who lived in Louisiana. The trial judge specifically stated, "The court is also hopeful that placement can be made with paternal aunt in Louisiana and that that can be done I guess as expeditiously as possible." At the conclusion of the hearing, the trial court found respondents unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline C.L. and the health, safety, and best interest of C.L. would be jeopardized if she were to remain in the custody of respondents. The court ordered temporary custody and guardianship to remain with DCFS. The court further ordered respondents to comply with DCFS and the terms of their service plan and correct the conditions that resulted in C.L. being adjudged a ward of the court.

¶ 11 B. Termination of Respondents' Parental Rights

¶ 12 On January 25, 2018, the State filed a petition to terminate respondents' parental rights pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). The

petition alleged respondents were unfit parents in that they failed to maintain a reasonable degree of interest, concern, or responsibility as to C.L.'s welfare under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)).

¶ 13 On January 24, 2018, DCFS filed a permanency review report. The report indicated that Erica failed to participate in psychological services, parenting education, a substance abuse assessment, domestic violence services, or individual counseling. She had not obtained suitable housing and could not verify her employment. She participated in some psychiatric services and submitted to a random drug screen, which tested negative for commonly abused substances and alcohol. She regularly attended weekly two-hour visits with C.L. The report further indicated that Charlie failed to participate in psychological services, parenting education, individual counseling, or substance abuse treatment. Charlie successfully completed domestic violence treatment and complied with his probation but had not obtained suitable housing and could not verify his employment. Charlie regularly attended weekly two-hour visits with C.L.

¶ 14 On January 31, 2018, the parties appeared for the permanency hearing. Joy Hershberger testified she worked as a child welfare specialist with DCFS. Hershberger had been C.L.'s caseworker since the beginning of the proceedings. She testified she first learned of respondents' intent that C.L. be adopted by Joanne sometime in June or July of 2017. Hershberger indicated that in order for C.L. to be placed out of state, DCFS was required to forward all integrated assessments and court orders to the Illinois Interstate Compact on the Placement of Children office (ICPC). From there, ICPC would work with its Louisiana counterpart to pursue the placement. Hershberger stated that she did not forward the assessments and court orders to ICPC until September 2017 following the dispositional hearing. She testified

that once she referred the case to ICPC, she did not have any control over the progress of the out-of-state placement and that for confidentiality reasons, she was prohibited from contacting the ICPC counterpart in Louisiana. Hershberger stated that in October 2017, she spoke with Joanne to express her concern that Joanne had never met C.L., and emphasized it was important for Joanne to establish a relationship with the child. As of January 31, 2018, Joanne had never met C.L.

¶ 15 Charlie also testified. He stated that he expressed his desire for C.L. to live with Joanne since the beginning of the proceedings. When asked why Joanne had not yet met C.L., he explained that Joanne did not know she was permitted to do so. He testified that "if [Joanne] would have known she was able to come and visit [C.L.] she would have done so already[.]" He stated that Joanne was well aware of C.L.'s physical and developmental delays and that she was nonetheless willing and wanting to adopt her. He testified that he now planned to reach out to Joanne to tell her she needed to establish a relationship with C.L.

¶ 16 Upon conclusion of the hearing, the court found respondents had not made reasonable and substantial progress toward returning C.L. home. Specifically, the court concluded:

¶ 17 "Mother has refused to participate in any services since case opening, though she does visit. Father has refused to participate in any services since case opening. The minor is medically complex with clear developmental delays. She will continue to need developmental and physical therapy. She requires a high level of care, support, and nurture. She is a very high needs child. *** Both parents have visited but have not maintained appropriate contact [with DCFS] ***."

The court found respondents remained unfit and ordered a new permanency goal of substitute care pending the court's determination of the State's petition to terminate respondents' parental rights.

¶ 18 On March 22, 2018, the parties appeared for the termination hearing. Respondents admitted to unfitness as alleged in the petition. The State presented a factual basis for the admission, stating, since case opening, respondents had failed to participate in parenting classes, substance abuse assessments, domestic violence assessments, psychological evaluations, and individual counseling. Respondents refused to allow the caseworker into their home, remained unemployed, and did not attend C.L.'s medical appointments. Respondents stipulated that if the case were to proceed to a fitness hearing, the State would be able to present evidence and witnesses to support its factual basis. The court accepted respondents' admissions as free, voluntary, and knowing. Accordingly, the court found the State proved by clear and convincing evidence that respondents were unfit pursuant to section 2-29 of the Juvenile Court Act and section 1(D)(b) of the Adoption Act (705 ILCS 450/2-29 (West 2016); 750 ILCS 50/1(D)(b) (West 2016)) because they failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of C.L.

¶ 19 Respondents then requested to continue the best-interests portion of the hearing. Respondents argued a continuance would not jeopardize C.L.'s permanency and was appropriate given the pending efforts to place C.L. with Joanne in Louisiana. The trial court granted the motion to continue in anticipation of a decision from ICPC regarding the potential placement with Joanne.

¶ 20 At the June 6, 2018, best-interests hearing, the trial court considered the best-interest report filed by DCFS. The best-interest report indicated that C.L. had been residing with

her foster family since May 17, 2017, and it was the only home C.L. had known. C.L. enjoyed a loving relationship and was strongly bonded with her foster parents and their two biological children. The report further indicated that C.L.'s foster family ensured all of her medical needs were met and that she appeared comfortable and secure in their home. C.L.'s foster parents were committed to providing care and permanency for C.L.. Based on C.L.'s length of time in care—her entire life—and the desire to achieve permanency, DCFS believed it was in C.L.'s best interests that respondents' parental rights be terminated.

¶ 21 The State presented testimony from Kelley H., C.L.'s foster mother. Kelley testified that C.L. had been in her care since C.L. was three days old. She explained that C.L. had various physical and developmental delays, which required weekly physical therapy appointments. C.L.'s physical therapist believed the delays were caused by her exposure to psychotropic drugs in utero and that C.L. would require additional appointments as she got older due to her special needs. Kelley further testified that C.L. attended day care, where she had several friends, and that she enjoyed playing with her foster brother and sister. Kelley believed Joanne had not spent enough time with C.L. to establish a bond and that it was in C.L.'s best interests that she and her husband adopt C.L. Kelley stated she intended to keep C.L.'s biological family involved in her life should Kelley adopt C.L.

¶ 22 Ronald H., C.L.'s foster father, also testified. Ronald agreed with Kelley's testimony, and believed that he and Kelley were very much bonded with C.L. He believed that C.L. was a part of their family and that it was in C.L.'s best interests that he and Kelley adopt her.

¶ 23 Hershberger also testified. She testified that, in her opinion, it was in C.L.'s best interests to remain in the care of her current foster parents. She explained it was the only home

C.L. had ever known and the foster parents were her only caregivers. Hershberger observed C.L. with her foster parents on several occasions and believed C.L. was very attached to them. Given the length of time C.L. had been in her foster parents' care, the fact that her biological parents had not participated in any services, and her need to achieve permanency, Hershberger believed it was in C.L.'s best interests that the court terminate respondents' parental rights.

¶ 24 After the State rested, the proceedings were continued until June 18, 2018. At that hearing, Erica testified. Erica stated that she did not believe her parental rights should be terminated because she wanted Joanne to have the opportunity to adopt C.L. However, Erica acknowledged that her rights must be terminated in order for C.L. to be adopted. Erica stated she found out earlier that day that DCFS had decided not to place C.L. with Joanne. Erica believed it was in C.L.'s best interests to be placed with her biological family and that Joanne was more than capable of caring for C.L., even with her special needs. Erica admitted that she had not attended any of C.L.'s medical appointments and that she had not participated in any services because of her work schedule. She testified that she had her substance abuse issues under control, that she was taking her medication properly, and that she was employed full-time at Motel 6 in Normal.

¶ 25 Charlie also testified. He agreed with Erica's testimony and believed it was in C.L.'s best interests that she be placed with his sister Joanne. He testified that his parental rights should not be terminated because of his desire for Joanne to adopt C.L. but also acknowledged that his rights must be terminated in order for C.L. to be adopted. He testified that he was capable of caring for C.L. but admitted that he had not completed a psychological evaluation, parenting classes, a mental health assessment, individual counseling, or a substance abuse assessment and that he did not have stable housing. He explained that he did not participate in

any services due to his work schedule. If it was possible for Joanne to adopt C.L., he planned to surrender his rights to her.

¶ 26 At the conclusion of this evidence, the trial court terminated respondents' parental rights. The trial judge noted,

¶ 27 "[T]his case doesn't have *** parents who are arguing that they are fit or close to fitness and therefore they should be given additional time or additional chance to attempt to have the child or children brought back home. Really from the beginning of this case the parents never engaged in any services and it really wasn't about how they were doing, whether or not they were making progress toward fitness."

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, Erica argues her admission of unfitness was not knowingly and voluntarily made. Both respondents further argue they were denied due process of law. We disagree and affirm.

¶ 31 A. Erica's Admission of Unfitness

¶ 32 Erica argues the trial court erred in finding that her admission of unfitness was knowingly made because her integrated assessment indicated concerns regarding her cognitive abilities and because she did not complete a psychological evaluation. The court therefore did not have a sufficient basis for that finding. The State argues that Erica's argument is forfeited because it was not fully briefed or, alternatively, because she failed to raise her objection in the trial court. The State further argues that even if Erica's argument were not forfeited, it would fail on the merits.

¶ 33 1. *Standard of Review*

¶ 34 "A trial court's determination that a parent's unfitness has been established by clear and convincing evidence will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). Such a determination is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.* A parent may admit to unfitness under the Juvenile Court Act so long as the admission is knowing and voluntary. *In re M.H.*, 196 Ill. 2d 356, 366, 751 N.E.2d 1134, 1142 (2001). In juvenile proceedings, the term "knowing" generally means that the party making the admission is "aware of the consequences" of that admission. *In re Johnson*, 102 Ill. App. 3d 1005, 1012, 429 N.E.2d 1364, 1371 (1981). Additionally, the State must present a factual basis to support the admission. *M.H.*, 196 Ill. 2d at 366. The purpose of this requirement is to protect a parent from admitting to neglect or abuse when their conduct does not fall within the State's allegations. *Id.* at 366-67.

¶ 35 2. *Forfeiture*

¶ 36 We agree that Erica forfeited any argument challenging the trial court's determination that her admission was not intelligently made because she failed to raise it in the trial court. See *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 29, 968 N.E.2d 707. However, "forfeiture is a limitation on the parties, not the reviewing court[.]" *Id.* ¶ 30. A reviewing court may address the merits of an argument that was forfeited when it relates to the termination of parental rights as such an action affects a fundamental liberty interest. *Id.* Accordingly, we will ignore Erica's forfeiture of the issue and consider whether the trial court erred in determining that Erica's admission was knowing and voluntary.

¶ 37 3. *Admission Was Knowing and Voluntary*

¶ 38 Here, the evidence supports a finding that Erica's admission was knowing and voluntary. While it is true that Erica's initial integrated assessment indicated she had "borderline intellectual functioning," the same assessment also indicated that Erica graduated from high school with a 2.5 GPA, received only limited special-education instruction in junior high due to dyslexia, and never repeated a grade. Furthermore, Erica appeared in person and with counsel at all of the proceedings and neither she, her counsel, nor the court raised any concerns as to her ability to understand the proceedings or the consequences of her admission at any time. Prior to Erica's admission, the State provided a factual basis that showed that Erica failed to meaningfully participate in any portion of her DCFS service plan. When asked at the March 22, 2018, fitness hearing whether she understood the State's allegation that she was an unfit parent, Erica replied, "Yes, sir." In sum, the record supports the finding that Erica's admission was knowing and voluntary.

¶ 39 B. Respondents' Due Process Rights

¶ 40 Respondents perfunctorily argue that their constitutional rights to due process were violated when they relied on the trial court's statement that it was "hopeful that placement can be made with paternal aunt in Louisiana." In making this argument, respondents do not claim the State failed to comply with any provision of the Juvenile Court Act. Instead, they contend that prior to the court's statement, they made efforts to comply with their family service plan and only stopped participating because they believed the court's expression of hope regarding C.L.'s placement was "legally binding." Respondents argue they only "ceased cooperating" with their service plan in reliance "upon the statements of support from the court[.]" Not only is the respondents' argument belied by their testimony (both respondents testified at the best-interests hearing that they did not comply with their family service plan because of time constraints), it is

bereft of any supporting legal authority in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017). Although respondents cite to *Troxel v. Granville*, 530 U.S. 57, 66 (2000), *Santosky v. Kramer*, 455 U.S. 745, 763 (1982), *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), *Wickham v. Byrne*, 199 Ill. 2d 309, 316, 769 N.E.2d 1, 5-6 (2002), and *In re O.S.*, 364 Ill. App. 3d 628, 637-38, 848 N.E.2d 130, 137-138 (2006), for general principles of due process and fundamental fairness, they do not explain how these authorities support their hybrid estoppel argument or a finding of a due process violation. Accordingly, we additionally find respondents' due process arguments are forfeited. See *In re Tinya W.*, 328 Ill. App. 3d 405, 410, 765 N.E.2d 1214, 1219 (2002).

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we affirm the trial court's judgment.

¶ 43 Affirmed.