2019 IL App (2d) 190214-U
No. 2-19-0214
Order filed June 25, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re D.H., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-425
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee v. Donald W., Respondent-Appellant).	)	Francis M. Martinez, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that the respondent was unfit was not against the manifest weight of the evidence where the respondent did not complete domestic violence and substance abuse services and declined a home study and increased visitation with the minor; the trial court's finding that it was in the minor's best interest to terminate respondent's parental rights was affirmed where the minor was integrated into the foster family, two of the minor's biological brothers lived in the same home, and the minor was bonded with his foster family and his foster grandmother.

¶ 2 Respondent, Donald W., appeals the trial court's orders finding him to be an unfit parent and terminating his parental rights. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 D.H. was born on November 29, 2016. On December 5, 2016, the State filed a neglect

petition alleging that the minor's environment was injurious to his welfare. The petition alleged that D.H.'s mother, Miranda E., had a history of engaging in domestic violence, thereby placing D.H. at risk of harm. Respondent, who was identified as Miranda's abuser, was subject to a no-contact order with Miranda. In violation of that order, respondent and Miranda conceived D.H. Despite Miranda's denials that she and respondent had been together, DNA analysis confirmed that respondent was D.H.'s father. The record shows that Miranda had three other children, one with respondent, who were previously removed from her home due to her abusive relationship with respondent. Although both Miranda and respondent denied that they were living together, witnesses saw them together, and men's clothing was discovered hanging in Miranda's closet.

¶ 5 On March 6, 2017, respondent failed to appear at the adjudicatory hearing, and the court found that he waived his right to be present. At that hearing, the court also adjudicated paternity and adjudicated D.H. a neglected minor. On May 1, 2017, the court granted the Illinois Department of Children and Family Services (DCFS) guardianship and custody of D.H. DCFS placed D.H. in a traditional foster home. Two of D.H.'s siblings were also in that foster home.

¶ 6 A permanency hearing was held on November 8, 2017. Respondent had notice, but he failed to attend the hearing. However, his counsel was present. According to respondent's case-worker, respondent had attended eight visits with the minor and had missed one visit. Respondent was appropriate during those visits. He brought D.H. toys and food. Respondent had completed an integrated assessment and was employed, but he had not completed domestic violence services. The caseworker did not yet have a service plan for respondent. The court found that respondent had not made reasonable efforts or reasonable progress toward reunification, but observed that "it sounds like [respondent] might be reinvesting himself in this." The court set a goal of return home within 12 months.

¶ 7 The next permanency hearing was held on February 28, 2018. Respondent was present in person and with counsel. Respondent's attorney reported that respondent had completed a mental health assessment, a domestic violence assessment, and was participating in counseling. Additionally, respondent remained employed. Without explaining its findings, the court found that respondent had made reasonable efforts, but not reasonable progress, toward reunification.

¶ 8 The court held the next permanency hearing on August 10, 2018. At that hearing, the State sought a goal change to substitute care pending termination of parental rights. However, because of the court's schedule, the hearing was continued to September 5, 2018. Respondent failed to appear on September 5. Cathy Costanza, a Youth Service Bureau caseworker assigned to D.H., testified that respondent was employed and had completed counseling. Costanza also testified that respondent did not complete a domestic violence assessment, thus contradicting the information that was previously provided to the court. Costanza testified that respondent attended visits with D.H. but that he declined the offer of longer visits. According to Costanza, respondent failed "multiple random drug screens" and would not allow Costanza to see his residence. Costanza further testified that she had information that respondent and Miranda remained together despite a no-contact order. The court found that respondent had not made either reasonable efforts or reasonable progress toward reunification. The court changed the goal to substitute care pending termination of parental rights.

¶ 9 On September 7, 2018, the State filed a motion for termination of parental rights and power to consent to adoption. With respect to respondent, the motion alleged that he was unfit in the following ways: (count I) he failed to maintain a reasonable degree of interest, concern or responsibility as to D.H.'s welfare; (count II) he failed to make reasonable efforts to correct the conditions that caused the removal of D.H. during any nine-month period following the

adjudication of neglect; and (count III) he failed to make reasonable progress toward the return of D.H. within nine months following the adjudication of neglect. The motion further alleged that it was in the best interest of D.H. that respondent's parental rights be terminated.

¶ 10 The unfitness hearing was held on November 16, 2018. Costanza testified that respondent reported that he was living with his mother. Respondent would not allow DCFS to do a home study, despite being told that he could not have D.H. in the home without such a study. Respondent visited with D.H. one hour each week outside his home. According to Costanza, when she offered longer visits, respondent always declined, citing various excuses for why extended visits would be inconvenient for him. The services required of respondent were domestic violence classes, drug drops, and a mental health assessment. Costanza testified that respondent did not do any drug drops. According to Costanza, respondent completed one course of domestic violence classes but refused to engage in a second course that she recommended. Costanza testified that respondent completed mental health counseling. Costanza testified that respondent was continually employed. Costanza testified that she observed injuries on Miranda multiple times, but she admitted that she could not substantiate that respondent caused those injuries. Duane Wilke, who supervised visits between respondent and D.H., testified that the visits "seemed fine to me." Respondent chose not to testify.

¶ 11 The court found by clear and convincing evidence that the State met its burden with respect to all three counts. The court specifically found that respondent did not allow home visits, did not complete a second course of domestic violence classes, and did not do drug drops. The court next proceeded to a best interest hearing. Costanza testified that D.H., three years old, had been in the same foster home with two of his biological siblings, ages four and five, since his birth. According to Costanza, the foster home was "safe and appropriate." She testified that D.H.

had not received any services and had no special needs. She also testified that D.H. treated his foster parents as his own parents and went to them for all of his needs. Costanza testified that D.H. was "very connected" to his siblings. She described them as "typical boys," who had a "great bedroom" and who loved playing together. Costanza also described D.H.'s relationship with his foster mother's extended family as "very good." According to Costanza, D.H.'s foster grandmother provided daycare services for him, and his foster mother's nieces were like his "sisters." Costanza testified that D.H. had contact with both of his biological parents and an older brother that had been adopted before Costanza became involved with the family. Costanza testified that the foster parents wanted to adopt D.H. On cross-examination, Costanza testified that respondent's supervised visits with D.H. "went well."

¶ 12 The court found that it was in D.H.'s best interest to terminate parental rights, given that he was "integrated" into his foster home and would be traumatized if he were to be removed from the family that he viewed as his primary care givers. The court found that permanency was the primary consideration and that it would not be achieved by removing D.H. from his foster family. This timely appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Respondent argues that the State failed to prove by clear and convincing evidence that he was unfit under any of the three counts of the State's motion. Respondent contends that the evidence that his visits with D.H. "went well" proved that he showed a "level of reasonable interest and concern" for D.H. Respondent also argues that he made reasonable efforts in that he underwent mental health and domestic violence assessments, attended counseling, maintained employment, and visited with D.H. Respondent asserts that he made reasonable progress where he maintained employment, attended counseling, underwent assessments for domestic violence

and mental health, and interacted appropriately with D.H. Lastly, respondent argues that the State did not prove by a preponderance of the evidence that terminating his parental rights was in D.H.'s best interest where the evidence showed that respondent engaged with D.H. by bringing him toys.

¶ 15 Before addressing respondent's arguments, we review the principles applicable to termination proceedings. The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2018)) provides a two-step process for the involuntary termination of parental rights. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). First, the State must prove that the parent is unfit by clear and convincing evidence. *Deandre D.*, 405 Ill. App. 3d at 952. Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) lists the grounds under which a parent can be found unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Second, if the court makes a finding of unfitness, the court then considers whether it is in the best interest of the minor to terminate parental rights. *Deandre D.*, 405 Ill. App. 3d at 953. The State has the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *Deandre D.*, 405 Ill. App. 3d at 953. The appellate court will reverse a finding of unfitness only where it is against the manifest weight of the evidence, that is, where the opposite conclusion is clearly evident. *Deandre D.*, 405 Ill. App. 3d at 952. The reviewing court will reverse a best-interest finding only where it is against the manifest weight of the evidence or where the trial court abused its discretion. *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 16 Section 1(D)(m) of the Adoption Act contains separate grounds, any one of which can serve as a basis for a finding of unfitness. 750 ILCS 50/1(D)(m) (West 2018). Subsection (i) deals with a parent's failure to make "reasonable efforts" to correct conditions that were the basis for the minor's removal; and subsection (ii) deals with a parent's failure to make "reasonable

progress" toward the return of the minor during "any nine month period" after the initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(i)-(ii) (West 2018).

¶ 17 In addition, section 1(D)(b) of the Adoption Act provides that a parent's failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare is a ground for a finding of unfitness. 750 ILCS 50/1(D)(b) (West 2018).

¶ 18 Here, the State alleged in count I of the motion to terminate parental rights that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. Count II alleged that respondent failed to make reasonable efforts to correct the conditions that caused the removal of the child during any nine month period following the adjudication of the minor as neglected or abused. Count III alleged that respondent failed to make reasonable progress toward the return of the child to him within nine months after the adjudication of neglect or abuse. The court found that the State proved the allegations in all three counts by clear and convincing evidence. The court need only find a parent unfit under one of the grounds enumerated in section 1(D) of the Adoption Act to proceed to a best interest hearing. *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 19 The issue that brought D.H. into care was respondent's physical abuse of Miranda. Yet, when Costanza recommended that respondent undergo a second course of domestic violence classes, he refused. Additionally, respondent would not allow DCFS into his home, even after he was made aware that D.H. could not be returned to him without a home assessment. Further, when respondent was offered increased visitation with D.H., he made excuses to avoid finding the extra time in his schedule for those visits.

¶ 20 In evaluating an allegation under section 1(D)(b), the court focuses on the reasonableness of the parent's efforts to show interest, concern, or responsibility and not necessarily the success

of those efforts. *In re M.J.*, 314 Ill. App. 3d 649, 656 (2000). The court must also consider any circumstances that would have made it difficult for the respondent to show interest, concern, or responsibility for the minor's well-being. *M.J.*, 314 Ill. App. 3d at 656. Here, there is no doubt that respondent showed *some* interest, concern, and responsibility, as he participated in supervised weekly one-hour visits with D.H. and brought him toys and food. However, a parent is not fit simply because he or she has demonstrated *some* interest in or affection for the child. *M.J.*, 314 Ill. App. 3d at 657. The interest, concern, or responsibility must be objectively reasonable. *M.J.*, 314 Ill. App. 3d at 657. Consistent attendance at scheduled visits, by itself, does not demonstrate objectively reasonable interest. *M.J.*, 314 Ill. App. 3d at 657.

¶ 21 The failure to comply with service plans is objectively unreasonable interest, concern, or responsibility. *M.J.*, 314 Ill. App. 3d at 657. Costanza testified that there were eight service plans for the family. They were introduced into evidence as State's Exhibits 1 through 8. In the plan dated December 13, 2017, respondent was under a no-contact order regarding Miranda, yet the document noted that he was paying her telephone bill, indicating contact in violation of the order. In that same plan, respondent was required to notify DCFS of his address, but respondent provided an address at which he would not allow home visits. Additionally, the document noted that, while respondent completed an integrated assessment, he did not want to follow its recommendations. Thus, we cannot say that the court's finding of unfitness was against the manifest weight of the evidence.

¶ 22 Next, we consider respondent's argument that the State failed to prove that it was in D.H.'s best interest to terminate his parental rights. After a trial court finds a parent unfit, it must determine whether it is in the child's best interest to terminate parental rights pursuant to the Act (705 ILCS 405/1-3 (West 2018). The trial court must consider the following factors in making a

best-interest determination: (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachments, including where the child feels love, attachment, and security; (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, 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. 705 ILCS 405/1-3(4.05) (West 2018). Additionally, the court can consider the nature and length of the child's relationship with his or her present caretaker and the effect that a change in placement would have on his or her emotional and psychological well-being. *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 78. The trial court need not explicitly reference each of these factors, and this court need not rely on any basis used by the trial court in affirming its decision. *Davon H.*, 2015 IL App (1st) 150926, ¶ 78.

¶ 23 The record supports the trial court's determination that termination of respondent's parental rights was in D.H.'s best interest. D.H. was removed from Miranda at birth and placed in the foster home where he remained for three years. D.H. was with two of his biological siblings, and they were close. The evidence also showed that D.H. had formed a close relationship with his foster parents and their extended family. The court found that permanency was important and that terminating parental rights would achieve that permanency for D.H. Consequently, the trial court's finding that it was in the best interest of D.H. that respondent's parental rights be terminated was not against the manifest weight of the evidence, and we affirm the judgment.

¶ 24 III. CONCLUSION

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

¶ 26 Affirmed.