2019 IL App (3d) 190105-U

Order filed July 24, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re Z.G.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-19-0105
	)	Circuit No. 16-JA-2
v.	)	
	)	
Malarie G.,	)	The Honorable
	)	David A. Brown,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a termination of parental rights case, the appellate court held that the trial court's parental unfitness determination was not against the manifest weight of the evidence. The appellate court, therefore, affirmed the trial court's judgment, terminating the biological mother's parental rights to her minor child.

¶ 2 In the context of a juvenile-neglect proceeding, the State filed a petition to involuntarily terminate the parental rights of respondent mother, Malarie G., to her minor child, Z.G. After

hearings on the matter, the trial court found that respondent was an unfit parent/person and that termination of parental rights was in the minor's best interest and terminated respondent's parental rights to the minor. Respondent appeals, challenging only the determination of parental unfitness. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 Respondent and Brian B. were the biological parents of the minor child, Z.G., who was born in December 2015. In January 2016, shortly after the minor's birth, the Department of Children and Family Services (DCFS) took protective custody of the minor and filed a juvenile petition in the trial court seeking to have the minor found to be a neglected minor and made a ward of the court. The petition alleged that the minor had been subjected to an injurious environment in that: (1) respondent and Brian B. had both been previously found to be unfit parents in June 2014 as to their three prior children and had not been restored to fitness; (2) respondent and Brian B. had not completed the services that would result in a finding of fitness or in the return home of the prior children; (3) respondent obtained an order of protection against Brian B. that was still in effect but was having contact with Brian B.; (4) respondent had a prior criminal history for possession of cannabis and Brian B. had a much more extensive prior criminal history; and (5) the other cases as to the prior children involved domestic violence between respondent and Brian B.[1] Respondent was given a court-appointed attorney to represent her in the juvenile court proceedings.

¶ 5 On April 14, 2016, an adjudicatory hearing was held on the juvenile neglect petition. Respondent admitted nearly all of the allegations in the petition that pertained to her and some of

[1] The petition also alleged that respondent did not know who the minor's father was and that Brian B. had indicated that he might be the minor's father. A later DNA test determined that Brian B. was in fact the minor's father.

the allegations in the petition that pertained to Brian B. As to the remaining allegations in the petition that pertained to Brian B., respondent claimed a lack of sufficient knowledge but did not demand strict proof of those allegations. Based upon respondent's admission, the trial court found that the minor was a neglected minor.

¶ 6 On August 4, 2016, after Brian B. was found to be the biological father of Z.G., a second adjudicatory hearing was held, and Z.G. was again found to be a neglected minor. A dispositional hearing was held immediately thereafter. At the conclusion of the hearing, the trial court entered a dispositional order in which it found that respondent remained an unfit parent.[2] The finding of parental unfitness as to respondent was based upon the finding of unfitness in the prior cases, that she had not yet completed the services outlined in the service plan, and that she had been having contact with Brian B. during the pendency of the prior cases. The trial court made the minor a ward of the court and named DCFS as the minor's guardian. The permanency goal was later set for the minor to be returned home within 12 months.

¶ 7 At the time of disposition, respondent was given certain tasks to complete in order to correct the conditions that led to the adjudication and removal of the minor. Those tasks included, among other things, to: (1) cooperate fully and completely with DCFS; (2) obtain and maintain a legal source of income; (3) obtain and maintain stable and adequate housing; (4) obtain a drug and alcohol assessment and to follow the recommendations contained therein; (5) perform two random drug tests per month; (6) participate in and successfully complete anger, domestic violence, and relationship counseling; (7) provide to her caseworker any change in her address, phone number, or in the members of her household within three days; (8) attend scheduled visits with Z.G. and demonstrate appropriate parenting conduct during those visits;

[2] The trial court also found that Brian B. remained an unfit parent as well.

and (9) take all prescribed medications and comply with the orders made in regard to her psychiatric care.

¶ 8 Over the course of the next few years, several permanency review hearings were held. Of relevance to this appeal, a permanency review hearing was scheduled for October 2017. On the date of the scheduled hearing, however, the case was continued for a month after it was learned from a police report that respondent had been involved in a domestic incident with her current boyfriend, Lamario B., a convicted felon. Up until that point, respondent had been telling her caseworker that she was not involved in a dating relationship with anyone. The police report for the incident indicated that on September 29, 2017, Lamario B. had allegedly choked respondent during an argument. Lamario B. was drunk at the time. Lamario B. was apparently living with respondent and was served with an eviction notice by respondent's mother. Respondent's mother called police the following day to report the incident. The police report indicated that respondent's family's main goal was to protect respondent from her "alleged abusive boyfriend." After receiving the police report, the caseworker confronted respondent about the incident, and respondent admitted that she had been in a relationship with Lamario B. but claimed that she had ended the relationship on September 29, 2017. Respondent denied that Lamario B. had been living with her, that her relationship with Lamario B. was a violent one, or that Lamario B. had been present for any of her unsupervised visits with the minor. Shortly before the continued permanency review hearing, the caseworker learned that respondent was pregnant with Lamario B.'s child. When the caseworker confronted respondent about the matter, respondent acknowledged that she was pregnant and stated that she had found out that she was pregnant in July 2017.

¶ 9 In November 2017, the permanency review hearing that had been continued was held. Respondent was present in court for the hearing and was represented by her attorney. A report and addenda (collectively referred to as the report) had been prepared for the hearing by the caseworker. Although not quite clear from the record, it appears that the report covered the period from May 18, 2017, to November 8, 2017. As for the positive aspects of respondent's performance during the period, the report showed that: (1) respondent had been cooperative with the caseworker and the agency as to some things; (2) respondent had maintained stable employment; (3) respondent had maintained stable and adequate housing; (4) respondent had completed several of the random drug tests requested of her and had tested negative for the presence of drugs (some of the drug tests were missed due to the caseworker's error, a scheduling conflict, and because of lack of transportation); (5) respondent had attended some of her domestic violence counseling; and (6) respondent had attended nearly all of her visits with the minor and had done well during those visits, although she had ended a few of her visits early. As for the negative aspects of respondent's performance, the report showed that: (1) respondent had been dishonest with the caseworker about whether she was involved in a dating relationship with anyone, about who lived in her home, and about whether her relationship with Lamario B. was a violent one; (2) respondent had not told her caseworker that she was pregnant; (3) respondent had apparently failed to internalize what she had learned in counseling and domestic violence classes and had gotten romantically involved with another abusive person; (4) respondent was still unable to understand how her actions affected others and continued to be drawn to people that did not follow social rules and norms; and (5) respondent's visits with the minor had to be changed from unsupervised to supervised and from in-home to at the agency because of the information learned as a result of the September 2017 police report. The

caseworker noted in her report that in the police recording of the September 2017 incident, Lamario B. had stated that he had been involved in a relationship with respondent for over three years. The caseworker commented that it appeared that rather than benefitting from the services that had been provided, respondent had only learned better ways to hide the truth from her caseworker and the agency and what to say to make providers believe that she was applying the information that she had been given. The caseworker felt that respondent was merely "going through the motions" in order to have her case closed. Based upon the most recent incident, the caseworker doubted that respondent had made the progress that she had originally appeared to have made and was at a loss as to what other services could be provided to respondent to ensure that respondent would make positive and safe choices for herself and her children in the future. After considering the caseworker's report, the trial court found that respondent was unfit (respondent had previously been found to be fit/restored to fitness in May 2017). The finding of unfitness was based upon respondent's continued dishonesty and the fact that she had hidden her boyfriend, the domestic violence, and the pregnancy from the caseworker/agency. The trial court changed the permanency goal from return home within 12 months to return home pending status.

¶ 10 Another permanency review hearing was held in April 2018. Respondent was present in court for the hearing and was represented by her attorney. A report and addenda (collectively referred to as the report) had been prepared for the hearing by the caseworker (a new caseworker was assigned to respondent's case in January 2018).[3] Although not quite clear from the record, it appears that the report covered the period from November 9, 2017, to April 25, 2018. As for the positive aspects of respondent's performance during the period, the report showed that: (1)

[3] A DCFS service plan for respondent dated December 2017 was attached to the report. The tasks listed for respondent in the service plan were generally the same or similar to those listed in the two permanency review reports as described to in this order. The description of respondent's progress in the service plan was also generally the same or similar to the description contained in the two permanency review reports.

respondent had signed all requested releases of information, had attended a team meeting with her caseworker, and was appropriate and cooperative during the team meeting; (2) respondent had maintained stable employment; (3) respondent had maintained stable and adequate housing; (4) respondent had completed four of the eight random drug tests requested of her (some of the drug tests may have been missed due to a mistake on the part of respondent's prior caseworker); (5) respondent had attended and participated in most of her domestic violence counseling sessions; and (6) respondent had attended 6 of her 16 scheduled visits with the minor and had done well in those visits (some visits were allegedly missed because respondent was on bed rest, but respondent had not provided proof to her caseworker showing that she was on bed rest). As for the negative aspects of respondent's performance, the report showed that: (1) respondent had repeatedly deceived and misled her caseworker about her relationship status, her most recent pregnancy, and the existence of verbal abuse and domestic violence in her relationship with Lamario B. (respondent had admitted at a team meeting that in an effort to protect herself, she had lied to the caseworker and had hid the truth about her pregnancy, about her relationship with Lamario B., and about domestic violence and verbal abuse in the relationship); (2) respondent had tested positive for the presence of Alprazolam in three of the four random drug tests to which she had submitted; (3) although respondent claimed that she had a prescription for Alprazolam, she had not provided proof of that prescription to the caseworker; (4) respondent had failed to show up for or to cancel a few of her domestic violence counseling sessions; (5) despite having participated in several years of services directly related to domestic violence, respondent had been involved in a relationship with Lamario B., who according to respondent, was an alcoholic and verbally abusive; (6) respondent had put the minor at risk by allowing Lamario B. to be present during respondent's unsupervised visits with the minor; and (7)

although respondent claimed that she was no longer in a relationship with Lamario B., she told the caseworker that she had maintained contact with Lamario B. so that she could provide him with legal advice. In the caseworker's opinion, respondent still seemed to be going through the motions of what she was told rather than making the behavior changes necessary to ensure her safety and the safety of the minor. The caseworker felt that respondent's admission that her domestically violent, emotionally abusive and alcoholic partner was hidden in her home during unsupervised visits with the minor illustrated the respondent's lack of judgment and inability to maintain a safe and stable home for the minor. The caseworker also believed that respondent was no closer to being able to ensure the minor's safety than she was when the minor was placed in foster care. The caseworker recommended in her report that the permanency goal be changed to substitute care pending a court determination on termination of parental rights. After considering the caseworker's report, the trial court apparently elected not to change the permanency goal for the minor and, instead, kept the permanency goal as return home pending status.

¶ 11 In April 2018, the State filed a petition to terminate respondent's parental rights to the minor child.[4] The petition to terminate alleged that respondent was an unfit parent/person as defined in the Adoption Act because she had failed to make reasonable progress toward the return home of the minor during any nine-month period following the adjudication of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2016)). The nine-month period specified in the petition was from July 15, 2017, to April 15, 2018.

¶ 12 In October and December 2018, an evidentiary hearing was held on the parental fitness portion (the parental fitness hearing) of the termination proceeding. Respondent was present in

[4] The State also sought in the petition to terminate the parental rights of Brian B.

court for the hearing and was represented by her attorney. Several witnesses were called to testify during the hearing, including the two caseworkers that had been assigned to respondent's case during the relevant time period and respondent herself. In addition, the trial court took judicial notice of the court file and the various pleadings and orders contained therein and admitted numerous exhibits that were presented by the State, including transcripts of respondent's testimony in prior proceedings and certified copies of Lamario B.'s prior felony convictions. By and large, the evidence was consistent with and confirmed much of what was contained in the reports that were presented for the two permanency review hearings noted above and will not be repeated here. Regarding her relationship with Lamario B., respondent admitted in her testimony that during the relevant nine-month period, she had not told her caseworker about the relationship but claimed that she had told certain visitation workers (the visitation workers denied that respondent had done so in their testimony). Respondent also admitted that she did not tell her caseworker about her pregnancy initially. Respondent acknowledged that she knew Lamario B. had prior "burglaries," but denied that Lamario B. had ever been physically abusive toward her, which was arguably contrary to respondent's testimony in the prior proceedings where respondent stated that Lamario B. had tried to choke her and that she had told her mother that he had done so. Respondent stated that she did not tell her caseworker about her pregnancy because she knew it would cause more problems and she did not want to have her most recent child taken away from her at the hospital. Respondent stated further that she had provided the caseworker with her prescription information and with information that she was on bed rest, but the information that respondent provided was not good enough for the caseworker. Respondent stated that she ended her relationship with Lamario B. in October 2017 and had not been in a dating relationship with him since that time (respondent's second caseworker provided

the same information in her testimony as to the status of respondent's relationship with Lamario B., at least for the period from January 4, 2018, to the end of the relevant nine-month period). Medical records that were admitted as one of the State's exhibits showed that respondent had been given various prescriptions, including one for Alprazolam. When respondent was asked what skills she had learned in counseling that she had applied to her life during the relevant time period, respondent stated that she learned to live in the moment, to try to "play the tape forward" when she was down, and to spot "red flags" with people. Respondent stated further that during the relevant time period, she submitted to drug tests and had unsupervised visits with the minor without any issues. Respondent also stated that Lamario B. was never in the house during any of her unsupervised visits.

¶ 13 At the conclusion of the parental fitness hearing, after listening to the arguments of the parties' attorneys and of the guardian *ad litem*, the trial court found that the State had proven by clear and convincing evidence that respondent had failed to make reasonable progress toward the return home of the minor during the nine-month period alleged and that respondent was an unfit parent/person.[5] In making that finding, the trial court stated, among other things, the following:

> "I think the reality of the situation is that Mom didn't cooperate with the caseworker for an extended period of time, continued in a—despite a prior—at least one prior domestically violent and abusive relationship, engaged in another and that continued on for some period of time during the relevant time period.
>
> She had a child with an abusive person that she acknowledges now is abusive, and she continued with the relationship in some form or fashion.

[5] The trial court also found that Brian B. was an unfit parent/person.

Whether it was intimate or not, she continued in a relationship with that individual and continued to not be open and straightforward with the caseworkers.

Were we any closer to returning [Z.G.] to Mom on—I guess it was April 15th than we were the prior July 15th? The answer is clearly no; clearly no. We wanted closure to the return of the child to Mom. And so there was no demonstrative movement toward the goal of reunification.

Mom making efforts. Yeah. She's doing some of the services. And I think the drug drops were adequately explained, except for a couple of one or more of the positive codeine positives [*sic*].

But otherwise, we weren't close to—or closer to returning the child home to Mom at the end of the relevant time period, so there was no demonstrative movement; there was no reasonable progress. And the court will find that the State has met it's [*sic*] burden by clear and convincing evidence with regard to Count [I][.]"

¶ 14 A best interest hearing was later held, after which, the trial court found that it was in the best interest of the minor to terminate respondent's parental rights. The trial court terminated respondent's parental rights, set the minor's permanency goal to adoption, and named DCFS as the guardian of the minor with the right to consent to adoption.[6] Respondent appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, respondent challenges only the trial court's determination of parental unfitness. Respondent asserts that the trial court's underlying finding—that the State had clearly and convincingly proven that respondent had failed to make reasonable progress toward the

[6] The trial court also terminated Brian B.'s parental rights to the minor.

return home of the minor during the relevant nine-month period—was against the manifest weight of the evidence. In support of that assertion, respondent contends that the evidence presented at the parental fitness hearing showed that during the relevant nine-month period, respondent: (1) was willing to participate in parenting and counseling programs; (2) was learning from her services such skills as avoiding domestically violent relationships, learning to live in the moment, and learning to spot red flags with people; and (3) had ended a verbally abusive relationship with Lamario B. and had done so before her caseworker had confronted her about the relationship. Respondent contends further that contrary to the comments made by the trial court in making its ruling, there was no evidence presented at the hearing to suggest that Lamario B. had tried to grab respondent by the neck, that respondent had maintained a relationship with Lamario B. after the September 30 incident, that respondent had ended her relationship with Lamario B. for appearance's sake, or that respondent had continued to have contact with Lamario B. throughout the entire nine-month period. For all of the reasons stated, respondent asks that we reverse the trial court's finding of parental unfitness and the trial court's order terminating respondent's parental rights.

¶ 17 The State argues that the trial court's determination of parental unfitness was proper and that it, and the trial court's termination order, should be upheld. According to the State, the evidence presented at the parental fitness hearing showed that during the relevant nine-month period, respondent had been repeatedly dishonest with her caseworker, had learned nothing from her prior domestic violence counseling, and had received an unsatisfactory rating on several of the requirements of her service plan. The State contends, therefore, that the evidence presented established that respondent had failed to make reasonable progress toward the return home of the minor during the relevant nine-month period and fully supported the trial court's finding of

parental unfitness. For all of the reasons set forth, the State asks that we affirm the trial court's finding of parental unfitness and the trial court's order terminating respondent's parental rights.

¶ 18 The involuntary termination of parental rights is governed by the provisions of both the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq*. (West 2016)) and the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2016)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the first stage of termination proceedings in the trial court, the State has the burden to prove the alleged ground of parental unfitness by clear and convincing evidence. See 705 ILCS 405/2-29(2) (West 2016); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The proof of any single statutory ground will suffice. 750 ILCS 50/1(D) (West 2016); *C.W.*, 199 Ill. 2d at 210. A trial court's finding of parental unfitness is given great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion or that the conclusion itself is unreasonable, arbitrary, or not based on the evidence presented. *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005); *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004).

¶ 19 Pursuant to section 1(D)(m)(ii) of the Adoption Act as was in effect at the time the termination petition in the instant case was filed, a parent may be found to be an unfit parent/person if he or she fails to make reasonable progress toward the return of the child to the parent during any nine-month period following the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2016). To determine if reasonable progress has been made, a court will apply an objective standard and will generally consider the parent's compliance with the service plan and the court's directives, in light of the condition that gave rise to the removal of the child and in light of any other conditions that later became known which would prevent the court from

returning custody of the child to the parent. *C.N.*, 196 Ill. 2d at 216-17; *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of the return of the child. *J.A.*, 316 Ill. App. 3d at 565. Reasonable progress exists when based upon the evidence before it, the trial court can conclude that the progress being made by a parent to comply with the directives given for the return of the child is sufficiently demonstrable and of such a quality that the court in the near future will be able to order the child to be returned to the custody of the parent. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). The court will be able to do so because at that point, the parent will have fully complied with the directives that the parent was previously given to regain custody of the child. *Id.* In determining whether reasonable progress has been made, the trial court may only consider the parent's conduct that occurred during the statutorily prescribed nine-month period and may not consider conduct that occurred outside the nine-month period. *In re J.L.*, 236 Ill. 2d 329, 341 (2010); *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35.

¶ 20 After having reviewed the record in the present case, we find that the trial court's determination—that respondent was an unfit parent/person because she had failed to make reasonable progress toward the return home of the minor during the relevant nine-month period—was well supported by the evidence. On the surface, the evidence before the trial court at the parental fitness hearing established that respondent had gone from being parentally fit at the start of the relevant nine-month period to being parentally unfit by the time the relevant period had ended. In addition, respondent also had gone from having her visits with the minor unsupervised at her home at or near the start of the relevant nine-month period to having her visits supervised at the agency by the time the relevant time period had ended. More in depth, the evidence presented at the parental fitness hearing showed that despite having participated in

domestic violence services for several years, during the nine-month period in question, respondent was involved in a dating relationship with another abusive person, Lamario B., who respondent knew was a convicted felon. Lamario B. was living with respondent in her home and was present during respondent's unsupervised visits with the minor. By respondent's own admission, Lamario B. was an alcoholic and was verbally abusive, and the other evidence presented indicates that he was physically abusive as well. Not only did respondent enter into that relationship, she hid that relationship from her caseworker and hid that Lamario B. was living with her. Respondent also repeatedly lied about whether she was in a relationship during the time period, and, when the caseworker found out that respondent was involved in a relationship, respondent lied about whether the relationship was of an abusive nature. In addition, respondent hid for several months the fact that she had become pregnant with Lamario B.'s child. Although it is true that respondent made some positive progress during the relevant time period as to certain aspects of her service plan, because of her repeated dishonesty, her failure to internalize what she had learned in domestic violence counseling, and her lack of good judgment, there was no indication that her progress would reach the point in the near future that the trial court would be able to order that the minor be returned to respondent's custody. See *L.L.S.*, 218 Ill. App. 3d at 461. The evidence presented at the parental fitness hearing amply supported the trial court's finding that respondent failed to make reasonable progress toward the return home of the minor during the relevant nine-month period. See *C.N.*, 196 Ill. 2d at 216-17; *J.A.*, 316 Ill. App. 3d at 564-65. We conclude, therefore, that the trial court's determination of parental unfitness was not against the manifest weight of the evidence (see *C.N.*, 196 Ill. 2d at 208; *A.M.*, 358 Ill. App. 3d at 252-53) and that the trial court, after making a best-interest

determination, properly terminated respondent's parental rights (see 705 ILCS 405/2-29(2) (West 2016); *C.W.*, 199 Ill. 2d at 210).

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 23 Affirmed.