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2019 IL App (3d) 190231-U

Order filed September 10, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> T.S., Ta.C., Ti.C., Tae.C. & J.H.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-19-0231, 3-19-0232,
	)	3-19-0233, 3-19-0234,
Petitioner-Appellee,	)	and 3-19-0235
	)	Circuit Nos. 16-JA-202, 16-JA-203,
	)	16-JA-204, 16-JA-205,
v.	)	and 16-JA-206
)	
Toshie S.,	)	Honorable
	)	David A. Brown,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that the mother was unfit on the grounds of lack of reasonable progress toward the minors' return was upheld as not against the manifest weight of the evidence.

¶ 2 The respondent mother, Toshie S., appeals the findings that she is unfit to parent her children, the minors, T.S., Ta.C., Ti.C., Tae.C., and J.H., and the termination of her parental rights. We granted the mother's motion to consolidate the appeals.

¶ 3 **FACTS**

¶ 4 Juvenile petitions were filed on August 22, 2016, alleging that the minors, T.S., Ta.C., Ti.C., Tae.C., and J.H., were neglected due to an environment injurious to their welfare, primarily due to multiple domestic violence incidents. The minors were adjudicated neglected on May 17, 2017. The mother was found dispositionally unfit on July 26, 2017, based on a long history of domestic violence and mental health issues. The Department of Children and Family Services (DCFS) was named guardian for all five minors and the mother was ordered to complete various services. The mother was ordered to: (1) execute all authorizations for release of information requested by DCFS; (2) cooperate fully and completely with DCFS; (3) perform random drug drops two times per month; (4) submit to a psychological examination and follow the recommendations made; (5) participate in and successfully complete counseling to address anger management; (6) participate in and successfully complete a domestic violence course, both perpetrator and victim; (7) obtain and maintain stable housing; (8) visit as scheduled with the minors; (9) provide a change of address to the caseworker within three days; (10) follow recommendations of physicians; and (11) use best efforts to obtain and maintain a legal source of income. The mother was also ordered to complete a parenting class, which was indicated as already completed on the dispositional order.

¶ 5 Petitions for the termination of the parental rights of the mother as to all five minors were filed on August 13, 2018. The petitions alleged that the mother was unfit in that she failed to

make reasonable progress toward the return of the minors during the nine-month period of October 20, 2017, to July 20, 2018.

¶ 6 The adjudication hearing was held over several days. The State requested that the trial court take judicial notice of several documents in the case, including orders entered by the court, the mother's criminal history, and the permanency order dated February 14, 2018. The State also entered into evidence a number of exhibits, including a certified copy of the mother's conviction for retail theft, the mother's drug testing records, the mother's psychological evaluation, the records of the mother's domestic violence counseling, and records of the mother's visits with the minors.

¶ 7 The State called Officer Brian Richards, with the Peoria Police Department, who testified that he was dispatched to a gas station at around 1 a.m. on November 2, 2017. The mother told Richards that she had been held by her boyfriend, Jermaine H., the father of the youngest minor, for several hours and he had beaten her. She asked the clerk at the gas station to call 911 after Jermaine took her to the gas station to buy cigarettes. The mother had a laceration to her scalp, redness and swelling of her left index finger, and redness and swelling in her right ankle.

¶ 8 Officer Christina Chavez, also with the Peoria Police Department, testified that Jermaine had called the police department on November 3, 2017, so Chavez went to talk to him. Jermaine told Chavez that he and the mother had a verbal altercation two days earlier that went into the early morning hours of the next day. Jermaine said that the mother tried to stab him and hit him in the head with a candlestick, so he used his body weight to hold her down to stop her from hitting him. Jermaine took the mother to the gas station for some cigarettes, and left to go to work when he realized she was not coming back out. Chavez asked Jermaine if he had struck the mother or caused her any injury, and he said no. Chavez then testified to a call she responded to

on February 24, 2018. She arrived to find a man named Maurice Tillman being taken into custody, and she noticed a firearm tucked in his waistband. The mother was at the scene, but was not being cooperative. Chavez noticed that the mother was upset and had scratches around her face and neck area and her clothes were wet and muddy. Chavez took the mother home, and then the mother became more cooperative. The mother allowed photographs to be taken. The mother told Chavez that she was not sure what had happened, but that Tillman had struck her and she ended up on the ground.

¶ 9 Police Officer Drew Flinn testified that he was sent to the scene of a man and woman fighting on February 24, 2018. The woman had a bruise to her left eye and muddy pants. Flinn identified the woman as the mother in this case and the man as Tillman. He stopped Tillman and recovered a handgun in the waistband of Tillman's pants during a pat down search. Flinn testified that the mother was not cooperative. The mother stated that nothing physical happened and that she was muddy because she fell down.

¶ 10 Patti Sloatman, a receptionist in the state's attorneys' office, testified that the mother came in to the state's attorneys' office on March 22, 2018, and requested that the charges against Tillman for the February 24 incident be dropped. In the description in support of dropping the charges, the mother stated that Tillman never put his hands on her and that she told the officer as much when Tillman was arrested.

¶ 11 Peoria Police Officer Keith Burwell testified that he was dispatched to the mother's residence in the morning of November 6, 2017. The mother told Burwell that Jermaine, who still had keys to the home, had come over the evening before and tried to choke her with an extension cord and had acted like he was going to strike her with a hammer. The mother told Burwell that Jermaine wanted her to drop the charges from an earlier incident. Jermaine had also put a bullet

in a gun and pointed it at her head and pulled the trigger. The gun did not go off, so Jermaine added more bullets and tried again. The gun still did not go off, and Jermaine left. Jermaine returned the next morning, still trying to get her to drop the charges. The mother called the police after Jermaine left the second time. Burwell offered to give the mother a ride away from the home, and they saw Jermaine's car in the back. Jermaine took off running, and Burwell chased him but did not catch him. Jermaine was found down the street in his mother's house. A gun was not recovered.

¶ 12 The caseworker assigned to the family, Katie Sadowski, testified that she worked for the Center for Youth and Family Solutions. She was the caseworker from the beginning of the case in August 2016 until July 2018. Sadowski testified that the mother completed a parenting class and a domestic violence perpetrators group prior to the relevant nine-month time frame of October 20, 2017, to July 20, 2018. Sadowski referred the mother to Help at Home for her drug tests, and the mother provided a prescription for a drug that she took for anxiety that explained the presence of benzodiazepine in her results. However, the mother refused to do all but three of the drug tests, and she only completed one during the relevant time frame. The mother believed that she did not have a problem and that she did not need to do the drug drops. As for the domestic violence victims group, the mother began in October 2017, but she was dismissed in December for missing two classes. Sadowski immediately re-referred the mother, and the next classes would have started in February, but the mother failed to call for the intake appointment. The mother then had to wait until the next classes started in August 2018, after the relevant time period. Sadowski was told by Jermaine that he was paying for the home that the mother initially lived in, but the mother moved in with her grandfather after the domestic violence incidents with Jermaine in November 2017, where she continued to live for the rest of the time period.

Sadowski did not have any concerns about that house. The mother reported that she had a job cleaning at night in late 2017 and early 2018, and then informed Sadowski that she was working at Popeyes in the summer of 2018, but never provided proof of employment. However, Sadowski was satisfied that the mother gained employment on her own.

¶ 13 Sadowski testified that, due to late cancellations of visits, starting in December 2017 or January 2018, the mother had to confirm her visits on the morning of the visit and arrive an hour early. The visits were held at the Bloomington Center for Youth and Family Solutions because a majority of the children lived in the area, and the therapist who was treating T.S., Tae.C., and Ti.C. was present for the visits. In March 2018, the visit schedule was decreased from once a week to twice a month. According to Sadowski, the mother informed Sadowski in December 2017 or January 2018 that the mother was dating Tillman. The mother was referred to a Parenting Skills Training class in June 2018 that was focused on trauma-enforced parenting skills. The mother was initially resistant, but then started the class and was still participating at the end of July 2018.

¶ 14 The mother testified that she completed the services that she was asked to complete during the relevant time period. That included a psychological examination, a parenting class, a domestic violence program, stable housing at her grandfather's home, and attending the visits with the minors. The mother testified that she completed the domestic violence perpetrator's class and was in the victim's class when she was arrested for driving on a revoked license in November 2017. She was in custody for 72 hours. The mother testified that she was discharged from counseling and the domestic violence class for not showing up while she was in custody, since she already had other missed appointments and classes. She was supposed to restart both in February 2018, but she misunderstood the letter and missed her appointment. She started

counseling and the victim's class again near the end of June 2018. The mother told her caseworker that she did not feel that drug drops were relevant to her case.

¶ 15 Generally, all five minors were present at the two-hour visit every week. The mother thought the visits went well. The mother denied ever refusing to visit the minors and sitting outside the visiting room.

¶ 16 The mother testified that she obtained an order of protection against Jermaine after the domestic violence incidents of November 1 and 2, 2017. It was in effect at the time of the November 5 and 6, 2017, incidents. Jermaine was charged with domestic violence, and the mother testified at his criminal trials. The mother denied being in a relationship with Tillman prior to the incident on February 24, 2018, stating that at that time he was walking her to safety. She testified that she started a relationship with Tillman in March 2018, and that she was having his baby in November 2018.

¶ 17 The trial court records indicate that the mother only completed one drug drop during the relevant time frame, on October 25, 2017, despite an order to complete two per month. The mother was asked to complete the drug drops because she self-reported a past history of substance abuse during the integrated assessment, which included treatment two months prior to the assessment. The mother was unsuccessfully discharged from counseling on December 14, 2017, due to five unexcused absences. She was reassigned to a therapist on June 11, 2018. She had attended four appointments, and had one unexcused absence, prior to July 20, 2018. The mother was ordered to attend domestic violence classes, both as a perpetrator and as a victim. She was initially declined for the victim's class on the basis that she needed to take the perpetrator class first, which she completed on September 5, 2017. She was then re-referred to the victim's class, which began on October 24, 2017. She was unsuccessfully discharged from

the victim's class on December 12, 2017, due to the two unexcused absences. She was re-referred and failed to call and arrange her intake by the required January 31, 2018, date to start on February 6, 2018. Thus, she was told she had to wait for the next session, which was due to start on August 16, 2018. During the relevant time frame, the mother was charged with retail theft on July 9, 2018, a charge to which she later pled guilty.

¶ 18 The visits with the minors were supervised during the entire relevant time frame. Initially, the family visits were weekly. The January 24, 2018, permanency review hearing report indicates that the visits were supervised due to the mother's finding of unfitness and the mother's inability to properly supervise and parent her children. There was a therapist present at each visit to assist the mother and the minors one-on-one if issues arose. The visits were described as "extremely chaotic" and the mother often said inappropriate things in front of the minors. The report states that the mother struggled with her emotions and managing time with all the minors. However, the mother did provide dinner for the minors and showed interest in their strengths and schooling. The mother also had some weekly one hour therapeutic visits with Ta.C. The one-on-one visits with Ta.C. were not described as chaotic, but the mother did ask to end one visit early because she was frustrated with Ta.C.

¶ 19 Notes from a number of the family visits are contained in the record. Of note, the family visit on November 8, 2017, occurred shortly after the domestic violence situation with Jermaine. Jermaine had made threats, so the office doors were locked and the visit was moved to a portion of the building without windows. At a visit in early March 2018, Ti.C.'s birthday visit, the mother became upset because the room was too small and there were too many people, so she walked out and refused to visit with the minors. The mother told Ta.C. that the minors were never coming home and that the mother was not going to visit anymore. The minors were all

very upset by the visit. After that visit, the family visits were reduced to twice a month. At the May 16, 2018, visit, the mother told the minors she had a surprise for them, that she was pregnant. T.S. and Ta.C. burst into tears and started yelling. At the June 20, 2018, visit Ta.C. brought up the pregnancy and started calling her mother derogatory names. The mother grabbed Ta.C.'s arm and yelled at her.

¶ 20 The trial court found by clear and convincing evidence that the mother was unfit because she had not made reasonable progress toward the return home of the minors during the relevant nine-month period. The court based its decision on findings that the visits were not beneficial to the minors, the mother continued to engage in domestically violent relationships, her life was still unstable and chaotic, she was discharged from services, and refused to complete the drug drops. After a best interest hearing, the trial court found that it was in the best interest of each of the minors that the mother's parental rights be terminated. The mother appealed.

¶ 21 ANALYSIS

¶ 22 The mother contends that the trial court's finding of unfitness was against the manifest weight of the evidence. She asserts that reasonable progress was made toward the return of the minors during the relevant nine-month period. The State contends that the evidence was overwhelming that the mother failed to make reasonable progress during the relevant time period, especially on the task of domestic violence.

¶ 23 Section 2-29 of the Juvenile Court Act of 1987 sets forth a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2016). The first step is for the court to find, by clear and convincing evidence, that a parent is an unfit person as defined in section 1 of the Adoption Act. *In re M.I.*, 2016 IL 120232, ¶ 20. Section 1(D) of the Adoption Act defines an unfit person as "any person whom the court shall find to be unfit to have a child."

750 ILCS 50/1(D) (West 2016). The statute defines a number of grounds of unfitness, including the failure by a parent to make reasonable progress toward the return of the child during any nine-month period following the adjudication of neglect (*id.* § 1(D)(m)(ii)). If the parent is found unfit, the second step in the process is to consider the best interest of the child. *M.I.*, 2016 IL 120232, ¶ 20. Since the mother only challenges the finding of unfitness, we will limit our discussion to that finding.

¶ 24 The termination of parental rights is an extraordinary measure; therefore, the State must prove its allegations of unfitness by clear and convincing evidence. *In re Michael M.*, 364 Ill. App. 3d 598, 606 (2006). On appeal, we will only reverse the trial court's finding of unfitness if the finding was against the manifest weight of the evidence. *Id.*

¶ 25 The State alleged that the mother was unfit because she failed to make reasonable progress toward the return home of the minors during the period between October 20, 2017, and July 20, 2018. The mother contends that she made reasonable progress during the relevant time period and that the trial court's finding on this ground was against the manifest weight of the evidence. Reasonable progress is measured by an objective standard based upon the amount of progress from the conditions that existed at the time custody of the child was taken from the parent toward the return of the child to the parent. *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17. Progress is measured by the parent's compliance with the service plans and court's directives in light of the conditions that gave rise to the removal of the child and other conditions which later become known. *Id.*

¶ 26 The mother argues that, although there were further episodes of domestic violence during the relevant nine-month time period, none were perpetrated by the mother. She had more domestic violence classes and counseling to complete, but she was addressing those issues at the

end of the relevant time period. Also, the mother concedes that she only completed one drug drop during the nine-month period, but argues that drugs and alcohol were not big issues in the case. The mother argues that she also visited regularly.

¶ 27 We find that the mother made some progress toward the return home of the minors, but the trial court's finding that the mother had not made reasonable progress was not against the manifest weight of the evidence. The mother completed several tasks: she had a psychological examination, completed a parenting class and was participating in a second parenting class that was recommended in June 2018, completed the domestic violence perpetrator course, had stable housing, and had a job. However, during the relevant time period, the mother was discharged from counseling and domestic violence victim's classes for missing sessions. The mother also simply refused to complete the court-ordered drug drops.

¶ 28 Also, at the beginning of the relevant time period, the mother missed several visits with the minors, resulting in the requirement that she call ahead of time and arrive an hour early to each visit. The visits were often chaotic, and the record indicates that the mother could be immature and struggled to provide all five minors with appropriate attention during her once a week (and later, every-other week) visit with all the minors. Due to on-going issues with the visits, a therapist was present at each visit during the relevant time period. The mother's visits with the minors were reduced to twice a month after she refused to participate in a visit.

¶ 29 As the mother acknowledges, the primary reason for the removal of the minors was due to domestic violence. We find in this case that the mother continued a pattern of relationships that resulted in continuing domestic violence during the relevant time period. Despite taking actions to protect herself from Jermaine, she then entered a relationship with Tillman, and then was not truthful to the court or caseworkers about the status of her relationship with Tillman.

¶ 30 Using an objective standard to consider the amount of progress from the conditions that existed at the time custody of the minors was taken from the mother toward the return of the minors to the mother, we find that the trial court's finding was not against the manifest weight of the evidence.

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Peoria County finding the mother to be unfit and terminating her parental rights to the minors is affirmed.

¶ 33 Affirmed.