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2019 IL App (4th) 180808-U

NO. 4-18-0808

FILED
April 30, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re F.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 17JA53
v.	)	
Christina R.,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holder White and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that respondent was unfit and it was in the minor's best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 Respondent, Christina R., appeals from the trial court's judgment terminating her parental rights to her minor child, F.S. Respondent claims the court's associated orders finding her to be an unfit parent and finding termination to be in F.S.'s best interests were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 11, 2017, the State filed a petition, alleging F.S., born July 17, 2016, was a neglected minor because his environment, when living with respondent, was injurious to his welfare in that he was exposed to respondent's substance abuse. See 705 ILCS 405/2-3(1)(b) (West 2016). The allegations stemmed from a hotline call placed on September 7,

2017, reporting that respondent overdosed on heroin on an Amtrak train while traveling to Louisiana with F.S. According to the reporter, the 13-month-old child was found in the restroom playing with syringes while respondent was "passed out" on the toilet. The child was taken into protective custody by the Illinois Department of Children and Family Services (DCFS) and placed in a traditional foster home. The trial court granted DCFS temporary custody.

¶ 5 On November 7, 2017, after an adjudicatory hearing, the trial court found F.S. to be a neglected minor whose environment was injurious to his welfare due to respondent's admission of her struggle with chronic addiction. The court noted respondent had other children removed from her care due to substance abuse.

¶ 6 On December 5, 2017, after a dispositional hearing, the trial court (1) found respondent unfit and unable for reasons other than financial circumstances alone, to care for, protect, train, or discipline F.S. and (2) made F.S. a ward of the court.

¶ 7 On August 21, 2018, the State filed a motion to terminate respondent's parental rights, alleging she was an unfit parent in that she failed to make reasonable progress toward the return of the minor during any nine-month period following adjudication, namely November 17, 2017, to August 17, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 8 On November 1, 2018, the parties convened for a fitness hearing. The State presented the dispositional hearing report filed December 1, 2017, the permanency hearing report filed March 15, 2018, the status report prepared on March 31, 2018, the permanency hearing report filed July 9, 2018, the status report filed July 10, 2018, the status report filed August 17, 2018, and the Urbana police report incident number UU1801136 dated March 10, 2018 (marked as petitioner's Exhibit no. 1) as substantive evidence. Respondent's counsel stipulated "that if called to testify the witnesses would testify in agreement with" the contents of those reports. The

State asked the court to take judicial notice of (1) Champaign County case No. 2017-CM-7878 (respondent's charge and conviction of unlawful possession of hypodermic syringe), and (2) Champaign County case No. 2017-JA-53 (current case file). Without objection, the court agreed to take judicial notice as requested. Respondent presented no evidence.

¶ 9 The referenced reports indicated respondent's parental rights were terminated to her three other children in Michigan due to her failure to engage in substance-abuse services and abstain from substance use. Respondent's history of substance abuse began during her early adolescence. Although her history revealed use of alcohol and pain medication, respondent indicated she currently and regularly uses marijuana and heroin to manage anxiety and physical pain. She has attempted substance-abuse treatment but has been unsuccessful. She participated in twice weekly supervised visits with F.S. without incident.

¶ 10 According to the reports, respondent also suffers from symptoms of a mood disorder and anxiety, though she had not undergone a psychiatric evaluation to obtain an official diagnosis. With regard to her service plan, respondent was to cooperate with DCFS and court orders, participate in random drug screens, participate in treatment, and attend counseling. Each task was rated as unsatisfactory.

¶ 11 The above-referenced Urbana police report, incident number UU1801136, indicated that on March 10, 2018, police responded to the apartment where respondent was residing. The smoke alarm was activated. Police made contact with respondent, who was sleeping and unaware of the alarm. The police entered the apartment to check for other occupants and found drugs and drug paraphernalia, *i.e.*, smoking devices, a syringe, and heroin. Associated criminal charges followed.

¶ 12 After considering the evidence and counsels' closing statements, the trial court found the State had sufficiently proved respondent to be an unfit parent on the ground set forth in the petition.

¶ 13 On November 30, 2018, the trial court conducted the best-interest hearing. The court noted it had a court appointed special advocate (CASA) report and a DCFS report on file. The State presented no further evidence.

¶ 14 Respondent testified as follows. She said she was living in Urbana but she had recently been to Michigan for "rehab services" at Holy Cross. She presented the court with a certificate of completion of a 90-day inpatient program. She testified she was clean for the first five months after F.S. was removed from her care but then relapsed. She has been "clean" again for four and a half months. She attends Narcotics Anonymous (NA) groups on at least a daily basis. She said she realized that leaving Illinois for treatment in Michigan would adversely affect visitation with F.S., but she "felt the best for [her] and for [F.S.] would be for [her] to immediately attend treatment" as opposed to "remain in Illinois on several waiting lists to get into treatment."

¶ 15 On cross-examination, respondent testified she had been living in Urbana in her friend's apartment for only three days. She said she contacted the DCFS caseworker to advise she was living in Urbana but she did not give the caseworker the address because she "didn't know the address at the time."

¶ 16 After considering the evidence, the best-interest reports, the recommendations of counsel, and the statutory best-interest factors, the trial court found the State sufficiently proved it was in F.S.'s best interests to terminate respondent's parental rights.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Finding of Unfitness

¶ 20 Respondent challenges the trial court's finding of unfitness on the basis that the State relied on "an impermissible period of unfitness." In its motion to terminate respondent's parental rights, the State alleged respondent had failed to make reasonable progress toward the return of F.S. during the nine-month period between November 17, 2017, and August 17, 2018. In this appeal, she claims that because the dispositional order was not entered until December 5, 2017, the court's consideration of any evidence that occurred before that date was impermissible and serves as grounds for reversal of the court's finding of unfitness. We disagree.

¶ 21 The trial court's authority to terminate parental rights involuntarily is found in the Juvenile Court Act of 1987 (705 ILCS 405/1-1 to 7-1 (West 2016)) and the Adoption Act (750 ILCS 50/0.01 to 24 (West 2016)). *In re E.B.*, 231 Ill. 2d 459, 463 (2008). First, the court must find by clear and convincing evidence that a parent is an unfit person. See 705 ILCS 405/2-29(2), (4) (West 2016). Second, if the court finds the parent unfit, it then considers the best interest of the child to determine whether the parental rights should be terminated. 705 ILCS 405/2-29(2) (West 2016).

¶ 22 The definition of an unfit person is found in Section 1 of the Adoption Act. 750 ILCS 50/1(D) (West 2016). In this case, the State alleged respondent was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act, which provides that a parent is unfit when she fails "to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987." 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 23 Relying on this court's decision in *In re D.S.*, 313 Ill. App. 3d 1020, 1027-29 (2000), respondent argues the nine-month period "following the adjudication" of neglect began on the date the trial court entered the dispositional order (December 5, 2017), not the adjudicatory order (November 7, 2017). However, our supreme court abrogated this court's decision in *D.S.* in *In re D.F.*, 208 Ill. 2d 223, 239-42 (2003). There, the court held the nine-month period begins on the date the trial court found the child neglected (after the adjudicatory hearing), rather than the date the court entered the dispositional order.

¶ 24 Thus, according to our supreme court, the relevant nine-month period from which evidence could be drawn began on November 7, 2017, the date of the adjudicatory order in which the trial court found F.S. to be a neglected minor. The State properly alleged and the court properly considered respondent's reasonable progress during a valid nine-month period. Confronted with no further challenge to the court's unfitness finding, we affirm the court's order finding respondent to be an unfit person.

¶ 25 B. Best-Interest Finding

¶ 26 After a finding of parental unfitness, the focus shifts to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). "Accordingly, at a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.*

¶ 27 When making its determination, the trial court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act of 1987 (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 (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. See 705 ILCS 405/1-3(4.05) (West 2016).

¶ 28 The DCFS report prepared on November 26, 2018, indicated F.S. had been placed in his current foster home since November 3, 2017. His foster mother has provided him "plenty of love, nurturing, and age appropriate re-direction" to alleviate his initial behavioral problems. His foster mother was meeting all of his educational, medical, cultural, and developmental needs and was willing to provide F.S. permanency through adoption. F.S. was doing "exceptionally well" at his daycare and was learning age-appropriate tasks and skills. F.S. appeared happy and comfortable in his foster mother's care. He reportedly has "a very close relationship" with his foster mother and her family. DCFS recommended the termination of respondent's parental rights.

¶ 29 The CASA report dated November 27, 2018, also indicated F.S. was doing well in daycare and his foster home, which the advocate described as "a loving and healthy environment." F.S. was well-loved and referred to his foster mother as "mommy" and his 14-year-old foster brother as "bro bro." F.S. "is happy and smiles all the time." The advocate noted that F.S. has lived with his foster family "longer than he lived with [respondent] and siblings." She said F.S. "doesn't know that [foster mother] and her son aren't his birth family." According

to the report, F.S. "deserves to remain in an environment where he has achieved and developed so much. He's a smart little boy and will continue to grow in his current placement." The advocate recommended the termination of respondent's parental rights, convinced that remaining permanently in his current placement was in F.S.'s best interest.

¶ 30 In its decision, the trial court focused on F.S.'s need for stability and permanence. Agreeing with the facts and conclusions in the CASA report, the court found the statutory best-interest factors weighed in favor of the termination of respondent's parental rights. We agree.

¶ 31 The evidence demonstrated F.S. was happy, safe, and well-bonded with his foster parent, who was willing to provide him permanency and stability through adoption. He was receiving the necessary care in a secure, loving, and stable environment. Thus, based on this evidence, we conclude the trial court's determination that it was in F.S.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment.

¶ 34 Affirmed.