2019 IL App (4th) 190024-U

NO. 4-19-0024

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re A.A., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 17JA5
v.	)	
Recco A.,	)	Honorable
Respondent-Appellant).	)	Brett N. Olmstead,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's unfitness finding was not against the manifest weight of the evidence.

¶ 2 On December 4, 2018, the trial court terminated the parental rights of respondent, Recco A., as to his child, A.A. (born December 9, 2016). Respondent mother is not a party to this appeal. On appeal, respondent argues the trial court's unfitness finding was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Proceedings

¶ 5 In January 2017, the State filed a petition for adjudication of wardship, alleging in relevant part, that A.A. was neglected, pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(c) (West 2016)), because at birth A.A.'s blood, urine, or

meconium contained any amount of a controlled substance or a metabolite of a controlled substance, the presence of which was not the result of medical treatment administered to the mother or the infant. Respondent stipulated to "probable cause and immediate and urgent necessity[,]" and the trial court granted the Department of Children and Family Services (DCFS) temporary custody of A.A.

¶ 6 In March 2017, the trial court entered an adjudicatory order finding A.A. neglected after respondent admitted to the allegations of neglect in the petition for adjudication. In an April 2017 dispositional order, the trial court (1) found respondent unfit, (2) made A.A. a ward of the court, and (3) granted DCFS guardianship and custody.

¶ 7 B. Termination Proceedings

¶ 8 In June 2018, the State filed a motion seeking termination of parental rights alleging respondent to be unfit where he failed to make reasonable progress toward the return of A.A. to his care during any nine-month period following the adjudication of neglect—specifically, September 8, 2017, to June 8, 2018.

¶ 9 1. *Fitness Hearing*

¶ 10 In the fall of 2018, the trial court conducted a bifurcated hearing on the motion for termination of parental rights, first considering respondent's fitness. The parties presented the following relevant testimony over three nonconsecutive days.

¶ 11 a. April Borgsmiller

¶ 12 April Borgsmiller, a child welfare assistant with Lutheran Social Services of Illinois (LSSI), testified she supervised respondent's visits with A.A. beginning in October 2017. Respondent's visitation schedule consisted of a one-hour visit once per week that he inconsistently attended.

¶ 13 Borgsmiller testified that during respondent's visits with A.A., she repeatedly redirected respondent to focus on A.A. because respondent focused more on agency policy than A.A. Borgsmiller testified respondent failed to pay sufficient attention to A.A. or bring snacks or diapers to the visits as required. Initially, A.A. reacted poorly when handed off to respondent, but after about four months, A.A. warmed up to respondent. Borgsmiller testified respondent behaved erratically throughout his visits, including during a visit in October 2017, where respondent walked the perimeter of the office "as if he was walking a jail cell, saying that—telling his daughter that we had them caged like animals, and then began videotaping it." A.A. became upset and respondent ignored Borgsmiller's attempts to redirect him towards A.A.

¶ 14 Respondent also reacted poorly to LSSI limiting his mother's visitation to one visit per month. When respondent's mother tried to attend a second visit with A.A., Borgsmiller informed respondent of the policy. Respondent demanded to speak to his caseworker, and when that caseworker was unavailable, respondent picked A.A. up and wanted to take her out into the lobby area. Borgsmiller informed respondent he could not take A.A. into the lobby area since it was LSSI's policy to keep the minor away from the general public. Respondent also demanded to see the written policy. Borgsmiller continually redirected respondent to focus on A.A. Over time, respondent brought A.A. toys and fast food. Borgsmiller testified that respondent's visits in May, June, and July 2018 improved but that respondent's sporadic attendance resulted in A.A. reverting back to her clingy behavior.

¶ 15 Respondent's visits with A.A. eventually moved out into the community to make A.A. more comfortable, not as a response to respondent's progress. Respondent's visitation never amounted to unsupervised visitation with A.A.

¶ 16 b. Taylor Waller

¶ 17 Taylor Waller, a child welfare specialist with LSSI, testified she worked on A.A.'s case from October 2017 until January 2018. Waller testified to having trouble contacting respondent on the phone number he provided.

¶ 18 c. Mallory Fiedler

¶ 19 Mallory Fiedler, a child welfare supervisor with LSSI, testified she worked on A.A.'s case from January 2018 to July 2018. Respondent's service plan included psychological evaluation, drug screens, counseling, and parenting services as well as visitation with A.A.

¶ 20 Fiedler scheduled respondent's psychological evaluation in March 2018 but respondent missed the appointment. Respondent completed the psychological evaluation in April 2018.

¶ 21 Although respondent denied having a substance-abuse problem, Fiedler ordered several drug drops. Respondent completed only one drug drop, and that drop came back negative. In light of respondent's failure to submit to more than one drug drop, Fiedler indicated she lacked sufficient information to determine if respondent needed substance-abuse treatment.

¶ 22 In the summer of 2017, LSSI referred respondent for parenting classes but respondent attended only twice. LSSI removed respondent from classes due to a lack of attendance. Eventually, in March 2018, respondent completed a six-week parenting program through Family Advocacy Center (FAC). In April 2018, respondent failed to attend any domestic violence and counseling sessions through Cognition Works.

¶ 23 Fiedler testified respondent sporadically attended visits with A.A. and that he frequently asked staff to change locations of the visits 30 minutes prior to the visits. Fiedler never personally observed respondent's visits with A.A.

¶ 24 d. Jaimee Roy

¶ 25 Jaimee Roy, a caseworker with LSSI, testified she provided casework services for A.A.'s case from March 2018 through May 2018. As part of respondent's service plan, Roy stated respondent "was supposed to do a domestic violence education program, as well as parenting and substance abuse [classes,]" and visit with A.A. Roy failed to recall if respondent completed any of his services. Roy never engaged in personal contact with respondent because respondent maintained contact with LSSI through Fiedler.

¶ 26 e. Hattie Lenore Price

¶ 27 Hattie Lenore Price, a family advocate at FAC, testified that in September 2017, she handled a referral for respondent to participate in parenting classes and general counseling. In December 2017, respondent filled out the necessary paperwork for the parenting class and general counseling. In March 2018, respondent completed a six-week parenting program. Respondent attended four or five general counseling sessions with Price but stopped attending in April 2018 when he learned the referring agency wanted him to receive therapeutic counseling.

¶ 28 Price testified that during counseling sessions respondent cooperated and expressed sincere concern for A.A. Price testified to significant issues contacting respondent to schedule appointments because of a lack of responsiveness, and respondent lacked an email address and his voicemail was not set up.

¶ 29 f. Grace Mitchell

¶ 30 Grace Mitchell, executive director of FAC, testified that in March 2018, she attended a team meeting with Price and Fiedler concerning respondent's visitation time, where ultimately they increased his visitation time with A.A. Mitchell testified respondent gave FAC "a couple of phone numbers, which was one of the areas that we had difficulty keeping up with

[respondent] because most of the numbers we had to contact him [were] through his mother because of his job. So yeah, it was difficult at times to get in touch with him because of that."

¶ 31 g. Debbie Nelson

¶ 32 Debbie Nelson, owner and director of services at Cognition Works, testified Fiedler referred respondent to Nelson for "counseling and domestic violence assessment, and possible services."

¶ 33 Respondent scheduled an appointment for counseling intake with Cognition Works on April 20, 2018. On April 18, respondent called and left a message with Cognition Works asking the date of his appointment. A caseworker returned respondent's call the following day, but respondent did not answer and his voicemail was not setup. Respondent failed to appear on April 20 but rescheduled his appointment for May 11. Respondent appeared at Cognition Works on May 11 to reschedule his appointment for May 25 and left right away. On May 25, respondent called and informed a caseworker at Cognition Works that he lacked transportation to get to the appointment and rescheduled his appointment for June 1. On June 1, respondent failed to appear for his appointment, and Cognition Works never heard from him again.

¶ 34 h. Trial Court's Findings

¶ 35 Following the fitness hearing, the trial court found respondent unfit by clear and convincing evidence where he "failed to make reasonable progress toward the return of [A.A.] to his care during the nine[-]month period following adjudication of neglect or abuse, namely from September 8, 2017[,] until June 8, 2018."

¶ 36 2. *Best-Interest Hearing*

¶ 37 In November 2018, the trial court held a separate best-interest hearing. The court considered the record and best-interest reports from LSSI and Court Appointed Special Advocates (CASA). After hearing recommendations from counsel, the trial court found by clear and convincing evidence that it was in the best interest of A.A. to terminate respondent's parental rights.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 On appeal, respondent argues the trial court's unfitness finding was against the manifest weight of the evidence. We disagree and affirm.

¶ 41 A. Standard of Review

¶ 42 The involuntary termination of parental rights involves a two-step process. 705 ILCS 405/2-29(2) (West 2016). First, the State must prove by clear and convincing evidence the parent is "unfit" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the trial court makes a finding of unfitness, the State must then prove by a preponderance of the evidence it is in the child's best interest for parental rights to be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 43 Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). We will not disturb a trial court's unfitness finding unless it is against the manifest weight of the evidence. *Id.* at 354. A finding is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 44 B. Fitness Finding

¶ 45 A parent is an "unfit person" under the Adoption Act if the parent fails to make "reasonable progress" toward the return of the child to the parent during any nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2016). A trial court may find that a respondent has made "reasonable progress" if the court can "objectively conclude that the parent's progress is sufficiently demonstrable and is of such quality that the child can be returned to the parent within the near future." *In re E.M.*, 295 Ill. App. 3d 220, 226, 692 N.E.2d 431, 435 (1998). The benchmark for measuring a parent's progress toward reunification "encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

¶ 46 In a March 2017 adjudicatory order, the trial court adjudicated A.A. neglected after respondent admitted to the allegations of neglect in the petition for adjudication. During the nine-month period following the adjudication of neglect—specifically, from September 8, 2017, to June 8, 2018—respondent failed to make reasonable progress toward the return of A.A. to his care. During that time, respondent (1) failed to comply with his service plan, (2) failed to regularly attend visitation with A.A., and (3) exhibited hostile behavior during visits with A.A.

¶ 47 Respondent disagrees and argues he made reasonable progress where (1) his behavior at visits improved, (2) A.A.'s reactions to him during visits slightly improved, (3) he completed parenting classes and went to a few general counseling sessions, and (4) despite his failure to comply with domestic violence counseling, his progress in other areas remained apparent.

¶ 48 Contrary to respondent's claim that "his progress in other areas remained apparent[,]" we find he failed to make reasonable progress toward the return of A.A. in the relevant nine-month period. Respondent never completed domestic violence or counseling as required by his service plan. While respondent eventually completed parenting classes and a psychological evaluation, he did so only after missing multiple appointments. Respondent completed only one drug drop. Respondent's failure to complete several drug drops prevented LSSI from evaluating whether respondent needed substance-abuse treatment. This is particularly problematic where A.A. came into care due to being born exposed to a controlled substance. Also, respondent inconsistently attended visits with A.A. and therefore never advanced to unsupervised visits.

¶ 49 Reasonable progress toward unification "encompasses the parents compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child[.]" *Id.* Based on the evidence presented, we find the State proved by clear and convincing evidence respondent failed to make reasonable progress. Accordingly, we conclude the trial court's finding of unfitness due to respondent's failure to make reasonable progress toward the return of A.A. was not against the manifest weight of the evidence. Therefore, we affirm the trial court's judgment.

¶ 50 III. CONCLUSION

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

¶ 52 Affirmed.