2019 IL App (4th) 190307-U

NO. 4-19-0307

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 13, 2019
Carla Bender
4th District Appellate
Court, IL

In re B.C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 17JA56
v.	)	
Brandon C.,	)	Honorable
Respondent-Appellant).	)	Thomas M. O'Shaughnessy,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and it was in B.C.'s best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In July 2018, the State filed a motion for the termination of the parental rights of respondent, Brandon C., as to his minor child, B.C. (born in June 2017). After a March 2019 hearing, the Vermilion County circuit court found respondent unfit. Two months later, the court held a best-interests hearing and concluded it was in B.C.'s best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by (1) finding him unfit and (2) concluding it was in B.C.'s best interests to terminate his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 B.C.'s mother is Melanie K., who is not a party to this appeal. In August 2017,

the State filed a petition for the adjudication of wardship, alleging B.C. was neglected pursuant to (1) section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2016)) (count I), in that her custodial parent, respondent, failed to provide B.C. with adequate food, clothing, and shelter; and (2) section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)), in that her environment was injurious to her welfare as evidenced by (a) respondent's substance abuse (count II), (b) respondent's homelessness and Melanie's incarceration (count III), and (c) her not receiving medical care recognized under State law as necessary for her well-being (count IV). At a February 2018 hearing, the circuit court found B.C. was neglected as alleged in counts I, II, and IV. After an April 2018 dispositional hearing, the court entered a dispositional order (1) finding respondent and Melanie were unfit, unable, and unwilling to care for, protect, train, educate, supervise, or discipline B.C.; (2) making B.C. a ward of the court; and (3) placing her custody and guardianship with the Department of Children and Family Services (DCFS). In November 2018, Melanie executed a final and irrevocable surrender for purposes of B.C.'s adoption.

¶ 6 In December 2018, the State filed a motion to terminate respondent's parental rights to B.C. The motion asserted respondent was unfit because he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to B.C.'s welfare (750 ILCS 50/1(D)(b) (West 2018)); (2) make reasonable efforts to correct the conditions that were the basis for B.C.'s removal from respondent during any nine-month period after the neglect adjudication, specifically February 14, 2018, to November 14, 2018 (750 ILCS 50/1(D)(m)(i) (West 2018)); and (3) make reasonable progress toward B.C.'s return during any nine-month period after the neglect adjudication, specifically February 14, 2018, to November 14, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2018)).

¶ 7 On March 29, 2019, the circuit court held the fitness hearing. The State presented the testimony of Kristen Larkin, the caseworker for B.C.'s case. Larkin testified respondent, who was not incarcerated at that time, did not show up to his integrated assessment. Larkin explained an integrated assessment is used to determine what services are necessary. Without the integrated assessment, Larkin based defendant's services on facts she did know. Since defendant was on disability for bipolar disorder and had criminal charges pending for drugs, Larkin put in all three service plans defendant needed to obtain a substance-abuse assessment and mental-health treatment. The first service plan was filed in November 2017, the second in March 2018, and the third in November 2018. The circuit court admitted the three service plans into evidence. Larkin testified respondent never obtained a substance-abuse assessment or mental-health treatment throughout the entirety of the case. He also never completed drug drops.

¶ 8 The first service plan also had some objectives for respondent such as household stability and financial support. Larkin was never able to determine how respondent was doing on those objectives because the houses she visited would not allow her inside.

¶ 9 At the time of the fitness hearing, respondent was incarcerated. At the State's request, the circuit court took judicial notice of defendant's conviction and sentence in Vermilion County case No. 16-CF-789. On December 11, 2018, respondent received a prison sentence of 2 1/2 years. The police took respondent into custody in June 2018. Despite her diligent search for respondent, Larkin did not meet with him in person until he was taken into custody. Once in jail, Larkin met with respondent in person about once a month. At the very beginning of the case, she did have contact with respondent over the telephone. She set up several appointments with respondent, but he never showed up for one. Larkin testified she did provide respondent with a telephone number and address for her agency when she called to schedule the integrated

assessment.

¶ 10 Since the case was opened, Larkin offered respondent weekly visits with B.C. Respondent did not attend any of them. Respondent had not had any contact with B.C. since the case was opened. He did not send her cards, gifts, or letters. Respondent did give Larkin letters for B.C.'s foster parent. Respondent did ask about B.C.'s well-being after his incarceration. He did not do so prior to incarceration.

¶ 11 Respondent's only evidence was a proffer indicating his out date from prison was in August 2019.

¶ 12 After hearing the parties' arguments, the circuit court found respondent unfit based on his failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to B.C.'s welfare; (2) make reasonable efforts toward B.C.'s return during any nine-month period after the neglect adjudication, which was February 14, 2018, to November 14, 2018; and (3) make reasonable progress toward B.C.'s return during the nine-month period of February 14, 2018, to November 14, 2018.

¶ 13 On May 16, 2019, the circuit court held the best-interests hearing. The two court appointed special advocates (CASA) in this case filed a report for the hearing. The report indicated B.C. was taken into care in August 2017, when she was two months old. The report also noted B.C. was well cared for by her foster family and had a wonderful relationship with her foster mother. The CASA report recommended B.C. be permanently placed with her foster mother.

¶ 14 The State presented the testimony of Shaina Allen, the caseworker for this case since March 2019. Allen testified B.C. was currently two years old. B.C. was in a "relative" foster home and had been in that home since the case was opened. Allen clarified B.C.'s foster

mother had a relationship with B.C. prior to the case opening. Allen had no concerns about the placement. B.C. felt loved and cared for in the home and was current on all medical immunizations. B.C. currently did not need services, and B.C.'s foster mother was supportive of B.C. obtaining services if needed. B.C. was bonded with her foster family, which included teenage children. B.C. referred to her foster mother as "mom." In Allen's opinion, it was in B.C.'s best interests to remain in her foster placement.

¶ 15 Respondent testified on his own behalf. He was 33 years old and received social security benefits. Respondent did side work when available to provide extra support. Respondent's plan was to recover custody of B.C. once he was released from prison on August 21, 2019. He asked the court to give him an opportunity to regain custody. He loved B.C. and needed her back.

¶ 16 At the conclusion of the hearing, the circuit court found it was in B.C.'s best interests to terminate respondent's parental rights. On June 14, 2019, the court entered a written order terminating respondent's parental rights to B.C.

¶ 17 On May 20, 2019, respondent filed a notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). The circuit court filed its written order terminating respondent's parental rights on June 14, 2019. "A notice of appeal filed after the court announces a decision, but before the entry of the judgment or order, is treated as filed on the date of and after the entry of the judgment or order." Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 307(a)(6) (eff. Nov. 1, 2017).

¶ 18 II. ANALYSIS

¶ 19 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2018)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor child's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 20 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding and best-interests determination unless they are contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010) (best-interests determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 21 A. Respondent's Fitness

¶ 22 Respondent contends the circuit court erred by finding him unfit because he did not have access to services while incarcerated. The State asserts it proved respondent was an

unfit parent.

¶ 23 One basis for the circuit court's unfitness finding was section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2018)), which provides a parent may be declared unfit if he or she fails "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act." Illinois courts have defined "reasonable progress" as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[T]he benchmark for measuring a parent's "progress toward the return of the child" under section 1(D)(m) of the Adoption Act 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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to

the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). We have also emphasized " 'reasonable progress' is an 'objective standard.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387).

¶ 24 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the petition alleged the relevant nine-month period was February 14, 2018, to November 14, 2018. Additionally, "time spent in prison does not toll the nine-month period." *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968.

¶ 25 The police did not take respondent into custody until June 26, 2018. Thus, defendant had more than four months during the relevant nine-month period before his incarceration to engage in services, maintain contact with the caseworker, and visit with B.C. However, he did nothing. Thus, we disagree with respondent his incarceration during the last five months of the relevant period was the reason for his failure to engage in services. The evidence in this case clearly shows respondent made no progress toward B.C. returning to him during the relevant nine-month period.

¶ 26 Accordingly, we conclude the circuit court's finding respondent unfit based on section 1(D)(m)(ii) of the Adoption Act was not against the manifest weight of the evidence.

¶ 27 Since we have upheld the circuit court's determination respondent met the

statutory definition of an "unfit person" on the basis of failure to make reasonable progress (750 ILCS 50/1(D)(m)(ii) (West 2018)), we do not address the other bases for respondent's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 28 B. B.C.'s Best Interests

¶ 29 Respondent also challenges the circuit court's finding it was in B.C.'s best interests to terminate his parental rights because he could not visit B.C. or participate in services while incarcerated. Respondent contends he had a plan on how to care for B.C. when he was released from incarceration and should have been given more time to complete services. The State disagrees and contends the court's finding was proper.

¶ 30 During the best-interests hearing, the circuit court focuses on "the child's welfare and whether termination would improve the child's future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2018)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (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, security, and familiarity, 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, 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. 705 ILCS 405/1-3(4.05) (West 2018).

¶ 31 We note a parent's unfitness to have custody of his or her child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interests. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 32 Here, B.C. was removed from respondent's care when she was only two months old, and respondent had not had any contact with her since her removal. On the other hand, B.C. had lived in the same foster home since her removal and was doing well in that placement. B.C. was bonded with her foster family and referred to her foster mother as "mom." Respondent had made no effort to maintain contact with B.C. before his incarceration. His plans after release are too late and would jeopardize B.C.'s stability and permanency. In this case, all of the applicable best-interests factors weigh in favor of terminating respondent's rights.

¶ 33 Accordingly, we find the circuit court's conclusion it was in B.C.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 36 Affirmed.