2020 IL App (4th) 190738-U

NOS. 4-19-0738, 4-19-0739 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 28, 2020
Carla Bender
4th District Appellate
Court, IL

In re M.M., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	Nos. 17JA7
v. (No. 4-19-0738)	)	17JA8
Sarah M.,	)	
Respondent-Appellant).	)	
	)	
	)	
In re K.S., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-19-0739)	)	Honorable
Sarah M.,	)	Thomas M. O'Shaughnessy,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the judgments of the trial court that terminated respondent's parental rights because the trial court's findings were not against the manifest weight of the evidence.

¶ 2 Respondent, Sarah M., is the mother of M.M. (born December 2010) and K.S. (born November 2013). Regarding M.M., the trial court found respondent was an unfit parent in December 2018, and it found termination of respondent's parental rights would be in M.M.'s best interests in August 2019. Regarding K.S., the court found respondent was an unfit parent

and termination of her parental rights would be in K.S.'s best interests in October 2019. Respondent appeals, arguing that the trial court's (1) fitness determinations and (2) best-interest determinations in each case were against the manifest weight of the evidence. We disagree and affirm the court's judgments.

¶ 3 I. BACKGROUND

¶ 4 A. Procedural History

¶ 5 In January 2017, the State filed separate petitions for adjudication of wardship, alleging, in relevant part, that M.M. and K.S. were neglected minors as defined by the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b)(West 2010)) in that their environment was injurious to their welfare due to respondent's (1) drug use, (2) untreated mental health issues, and (3) leaving them with inadequate caregivers. On the same day the petition was filed, the trial court conducted a shelter care hearing and placed temporary custody and guardianship with the guardianship administrator of the Department of Children and Family Services (DCFS).

¶ 6 In June 2017, the trial court conducted an adjudicatory hearing. The State presented evidence that respondent was using methamphetamine and frequently left the minors at home with her 72-year-old grandfather, who suffered from gout and sometimes was unable to leave his bed. Respondent left the minors for days at a time with her whereabouts unknown. The court found the State proved the allegations in count I and found M.M. and K.S. were neglected minors.

¶ 7 In July 2017, the trial court conducted a dispositional hearing. The court entered a written order in which it found that it was in the best interest of M.M., K.S., and the public that they be made wards of the court and adjudicated neglected minors. The court further found respondent unfit and unable for reasons other than financial circumstances alone to care for,

protect, train, educate, supervise, or discipline the minors, and it would be contrary to the minors' health, safety, and best interest to be in her custody. The court placed guardianship and custody with the guardianship administrator of DCFS. The written order further admonished respondent that she was required to cooperate with DCFS and "comply with the terms of the service plan and correct the conditions that require the minor to be in care or [she] risk[ed] termination of [her] parental rights."

¶ 8 B. The Termination Hearings

¶ 9 In August 2018, the State filed a petition to terminate respondent's parental rights as to M.M. The State alleged respondent was an unfit parent because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to M.M.'s welfare, (2) make reasonable efforts to correct the conditions which were the bases for the removal of M.M. within the nine-month period of November 2017 to August 2018, and (3) make reasonable progress toward the return of M.M. within that same nine-month period. 750 ILCS 50/1(D)(b), (m)(i)(ii) (West 2016). In July 2019, the State filed a petition to terminate respondent's parental rights as to K.S., alleging identical grounds.

¶ 10 1. *Proceedings Regarding M.M.*

¶ 11 a. The Fitness Proceedings

¶ 12 In December 2018, the trial court conducted the fitness portion of the termination hearing to address respondent's parental fitness. The State first presented the testimony of Kristen Larkin, the caseworker on the case for DCFS since it was opened in January 2017. Larkin testified respondent was recommended for the following services: (1) substance abuse treatment, (2) mental health treatment, (3) maintaining housing, (4) employment, and (5) compliance with probation.

¶ 13 Regarding substance abuse, Larkin stated that she referred respondent to three different providers over the life of the case, but respondent never completed any of those services. Respondent was required to submit to weekly, random drug testing but had "missed all the drops, pretty much." Regarding mental health, Larkin stated that she made five referrals for respondent, but respondent again did not complete any of the services. Larkin further testified that respondent had last visited M.M. in May 2018 and agreed that respondent's "visits have been inconsistent throughout the case." Larkin stated she last spoke with respondent in June 2018. Despite repeated efforts to contact respondent by phone, letter, and in-person visits, Larkin had been unable to reach her. Larkin further stated that respondent currently had a warrant in Vermilion County.

¶ 14 On cross-examination, Larkin clarified that no one at DCFS had any contact with respondent since June 2018. Larkin further testified that she performed a "diligence search" in an attempt to locate respondent. Larkin checked the addresses she obtained from the search but was unable to locate respondent. At the time of the hearing, Larkin did not "have any other information about [respondent's] whereabouts or contact information."

¶ 15 Respondent did not present any evidence.

¶ 16 The trial court found that the State had proved all three allegations of unfitness listed in the petition—that is, that respondent failed to (1) maintain a reasonable degree of interest, (2) make reasonable efforts, and (3) make reasonable progress—by clear and convincing evidence. The court noted that respondent "engaged in no services, specifically services related to substance abuse and her mental health issues, which were the reasons for removal." The court further noted that respondent had last contacted the minor in May 2018 and her contact had been "limited" and "inconsistent" throughout the life of the case. Accordingly, the court found

respondent was an unfit parent.

¶ 17 b. The Best-Interests Proceedings

¶ 18 In August 2019, the trial court conducted proceedings regarding whether it was in M.M.'s best interests to terminate respondent's parental rights. Larkin testified that M.M. was currently in a foster home with two biological siblings, including K.S., and three unrelated children, "[s]ome biological, some foster." The home was large, with more than enough room to comfortably accommodate all six children. Larkin stated that the foster parents were willing to provide permanency through adoption.

¶ 19 Larkin testified that respondent had not seen M.M. since May 2018 and only had seven visits throughout the entirety of the case. Larkin explained that M.M. was bonded with respondent, but M.M. had expressed a desire to stay in her current placement and to have visits with her biological father. Larkin stated that M.M. was developing community ties through cheerleading, which she had just recently started, and church. Larkin explained that the foster family had recently moved into a new house and M.M. transferred to a new school district as a result. M.M. liked the new home and was doing well in the new school.

¶ 20 Larkin further stated that M.M. had lived with the same foster family throughout the proceedings and she was very comfortable within the home. Although M.M. expressed a desire to stay in the foster home and visit her father, she did not mention anything about her mother. Respondent had not sent any gifts, cards, or letters to M.M. over the past year.

¶ 21 Respondent did not present any evidence.

¶ 22 The trial court found that it was in M.M.'s best interests to terminate respondent's parental rights. The court listed the statutory factors and stated it had considered all of them. The court noted that it "particularly" considered M.M.'s need for permanence, including the need for

stability and continuity of relationships with parental figures and with her siblings. Respondent had not been involved in M.M.'s life, had not visited the minor since May 2018, and had only visited her seven times throughout the case. The court found that M.M.'s "need for permanence, her need for stability overrides at this point the mother's need for that same relationship." Accordingly, the court found it was in the minor's best interest to terminate respondent's parental rights.

¶ 23 2. *Proceedings Regarding K.S.*

¶ 24 a. The Fitness Proceedings

¶ 25 In October 2019, the trial court conducted the fitness portion of the termination hearing to address respondent's parental fitness as to K.S. Larkin testified similarly to the fitness portion of the termination proceedings regarding M.M. Respondent was referred multiple times for substance abuse and mental health treatment but did not engage in services. Respondent last visited with K.S. in May 2018 and consistently failed to appear for drug tests. Larkin stated that respondent had been in contact with Larkin since being incarcerated in June 2019, however, respondent's contact with Larkin had been "[n]onexistent" prior to that date. Respondent had not sent K.S. any cards, gifts, or letters since being incarcerated or during the life of the case. Larkin also stated respondent only had seven visits with K.S. during the life of the case.

¶ 26 Respondent did not present any evidence.

¶ 27 The trial court found that the State had proved by clear and convincing evidence that respondent failed to (1) maintain a reasonable degree of interest, concern, and responsibility as to K.S.'s welfare, (2) make reasonable efforts to correct the conditions that were the basis of removal within the relevant nine-month period, and (3) make reasonable progress. The court noted that respondent had not engaged in substance abuse or mental health treatment despite

multiple referrals, had only seven visits with K.S. throughout the life of the case, and had failed to demonstrate sobriety. Thus, the court found respondent was an unfit parent.

¶ 28 b. The Best-Interests Proceedings

¶ 29 Immediately following the fitness proceedings, the trial court conducted a hearing regarding whether it was in K.S.'s best interests to terminate respondent's parental rights. Larkin testified consistently with her statements during the best-interests hearing for M.M. Specifically, Larkin stated K.S. had been in the same foster home for the life of the case, about three of the five years K.S. had been alive. K.S. was very bonded with the foster family, including his biological siblings in that placement and the other children in the home. Larkin further stated that the foster family supported K.S., provided for all his needs, and was willing to provide permanency through adoption. K.S. had ties to the community and expressed a desire to remain in the current placement. Larkin believed that K.S. had not formed a bond with respondent and was supportive of K.S.'s adoption.

¶ 30 Respondent did not present any evidence.

¶ 31 The trial court, after listing and considering all of the statutory factors, found that it was in K.S.'s best interests to terminate respondent's parental rights. The court emphasized that K.S. was very bonded to his foster family and siblings within the home but had no bond with respondent. Further, K.S. expressed a desire to stay in the home and the foster parents were willing to provide stability and permanency. As a result, the court found it was in K.S.'s best interests to terminate respondent's parental rights.

¶ 32 Following the termination of respondent's parental rights in both cases, respondent appealed, and this court consolidated the cases on appeal for consideration.

¶ 33 II. ANALYSIS

¶ 34 On appeal, respondent argues that the trial court's (1) fitness determinations and (2) best-interest determinations in each case were against the manifest weight of the evidence. We disagree and affirm the trial court's judgments.

¶ 35 A. The Fitness Determinations

¶ 36 Respondent argues the trial court's findings that the State proved all three grounds of unfitness by clear and convincing evidence in each case were against the manifest weight of the evidence. It is well settled that "[a]s the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003). Based on our review of the record, we conclude that the trial court's findings that respondent failed to make reasonable progress within the applicable nine-month period were not against the manifest weight of the evidence. Accordingly, we discuss only those findings.

¶ 37 1. *The Standard of Review*

¶ 38 A determination of parental unfitness involves factual findings and credibility determinations that the trial court is in the best position to make. *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007). A trial court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001). A decision is against the manifest weight of the evidence when the opposite conclusion is clearly the proper result. *In re Nylani M.*, 2016 IL App (1st) 152262, ¶ 48, 51 N.E.3d 1067.

¶ 39 2. *Reasonable Progress*

¶ 40 The State must prove unfitness as defined in section 1(D) of the Adoption Act by clear and convincing evidence. 750 ILCS 50/1(D) (West 2016); *D.D.*, 196 Ill. 2d at 417. Section

1(D)(m)(ii) of the Adoption Act defines an unfit person as a parent who fails to make "reasonable progress toward the return of the child" during any nine-month period following an adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(ii) (West 2016). The Illinois Supreme Court has held that "the 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 ***." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001); see also *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17, 83 N.E.3d 485. Likewise, this court has defined "reasonable progress" as follows:

> " 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with 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 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).

¶ 41 3. *The Trial Court's Finding in This Case*

¶ 42 Here, the State presented evidence that respondent never engaged in any of the required services. Most important, respondent did not engage in substance abuse or mental health treatment, which were the basis for removal of the children. Respondent also failed to show up for the vast majority of her mandated drug tests and attended just seven visits during the two-

and-a-half-year case. Further, respondent's contact with Larkin was "[n]onexistent" despite Larkin's exhaustive efforts through multiple mediums. Larkin could only contact respondent when she was incarcerated, which she had been since June 2019. Accordingly, we conclude the trial court's determinations that respondent failed to make reasonable progress toward the return of M.M. and K.S. were not against the manifest weight of the evidence.

¶ 43 B. The Best-Interests Determinations

¶ 44 1. *The Applicable Law and Standard of Review*

¶ 45 At the best-interests stage of a termination proceeding, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interests. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). In reaching a best-interests determination, the trial court must consider, within the context of the child's age and developmental needs, the following factors:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006); see also 705 ILCS 405/1-3(4.05) (West 2016).

¶ 46 A reviewing court affords great deference to a trial court's best-interest finding

because the trial court is in the superior position to view the witnesses and judge their credibility. *Jay. H.*, 395 Ill. App. 3d at 1070. An appellate court "will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Id.* at 1071. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the trial court should have reached the opposite result. *Id.*

¶ 47 2. *This Case*

¶ 48 In both cases, the trial court emphasized that the minors (1) were very bonded with their foster parents and siblings, (2) had expressed a desire to remain in their foster placement, and (3) were able to receive stability and permanence in the foster home because the foster parents were willing to adopt. Additionally, the children were doing well in the home and had established ties to the community. The foster parents were able to meet all the children's needs and had even moved into a larger home to better accommodate the family. Further, the children had spent the entirety of the case in the same foster placement and had seen respondent just seven times in that same time period. Indeed, the court noted that K.S. did not have a bond with respondent at all and although M.M. had some bond with respondent, M.M.'s need for stability and permanence outweighed respondent's interest in maintaining a relationship. Accordingly, we conclude the trial court's findings that it was in the minor children's best interests to terminate respondent's parental rights in each case were not against the manifest weight of the evidence.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm the trial court's judgments.

¶ 51 Affirmed.