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2011 IL App (3d) 110505-U

Order filed December 20, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> P.R. and S.R.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0505
)	Circuit Nos. 06-JA-90 and 07-JA-271
v.)	
)	
Perry R.,)	Honorable
)	Chris L. Fredericksen,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that the respondent failed to make reasonable progress toward the return home of his children and that it was in their best interest to terminate his parental rights were not against the manifest weight of the evidence.

¶ 2 The trial court found the respondent, Perry R., unfit to parent the minors, P.R. and S.R.

Following a best interest hearing, the trial court determined that it was in the minors' best interest

to terminate the respondent's parental rights. The respondent appeals, arguing that: (1) the State failed to prove that he was unfit by clear and convincing evidence; and (2) the trial court's finding that it was in the minors' best interest to terminate his parental rights was against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4 P.R. was born on March 18, 2006. On April 4, 2006, the State filed a juvenile petition alleging that P.R. was neglected in that her environment was injurious to her welfare because: (1) she experienced heroin withdrawal at birth, and her mother tested positive for opiates on the day of her birth; (2) on August 25, 2005, while P.R.'s mother was pregnant with P.R., the respondent slapped and choked P.R.'s mother, barricaded P.R.'s mother in a bathroom, dragged her back into their motel room when she attempted to flee, and later dragged her into a parking lot after she had gotten away; and (3) the respondent had been convicted of "motor vehicle aggressive offense" in 1992 and armed robbery in 1998. Initially, the trial court found both P.R.'s mother and the respondent to be dispositionally unfit. On November 13, 2007, the trial court restored the respondent's fitness and authorized P.R. to be returned his custody.

¶ 5 S.R. was born on September 25, 2007, while her mother was in a rehabilitation program. S.R. was placed with the respondent. On November 20, 2007, the State filed a juvenile neglect petition on behalf of S.R., alleging that her environment was injurious due to acts committed by her mother. On February 26, 2008, in S.R.'s case, the trial court made S.R. a ward of the court, found the respondent to be dispositionally unfit, and ordered that both minors be placed outside the respondent's home. On appeal, on February 18, 2009, this court reversed the trial court's unfitness finding. We concluded that the trial court in S.R.'s case was bound by the respondent's fitness

determination in P.R.'s case and, additionally, the trial court's unfitness finding was against the manifest weight of the evidence. *In re S.R.*, No. 3-08-0159 (2009) (unpublished order under Supreme Court Rule 23).

¶ 6 On May 27, 2009, the respondent filed a motion for restoration of fitness and return of custody of the minors. On July 28, 2009, the trial court found the respondent fit and ordered that the minors be returned to him within five months. The respondent was granted unsupervised visits with the minors and was ordered to submit a financial affidavit within 30 days, find a legal source of income, and prepare his home for the return of the minors. The respondent filed his financial affidavit on September 10, 2009, indicating that he was unemployed and received section eight housing and food assistance through a LINK card.

¶ 7 Initially, the respondent had visited with the minors two or three times in August until his arrest on August 18, 2009, for driving on a suspended license. After his arrest, the respondent went to jail for two days. The respondent refrained from attending any additional visits with the minors in an attempt to avoid a pending warrant for his arrest for failure to pay child support regarding his children unrelated to this case. On November 9, 2009, the respondent was again arrested for driving on a suspended license and remained in jail. On December 11, 2009, the State filed a motion for a finding that the respondent was unfit, alleging that he had not visited the minors in four months, failed to cooperate with his caseworker, and was incarcerated twice for driving on a suspended driver's license. On December 15, 2009, at a permanency review hearing, the trial court found the respondent to be dispositionally unfit.

¶ 8 On September 7, 2010, the State filed a petition to terminate the respondent's parental rights, alleging that the respondent was unfit pursuant to section 1(D)(m)(iii) of the Adoption Act (Act)

(750 ILCS 50/1(D)(m)(iii) (West 2010)) in that he failed to make reasonable progress toward the return of the minors during a nine-month period after the end of the initial nine-month period following adjudication of neglect—in this case, the period of October 31, 2009, to July 31, 2010. At the hearing on the State's termination petition, the trial court took judicial notice of the case file, and the State entered into evidence: (1) the respondent's counseling records; (2) Peoria County jail records showing the respondent was jailed from November 9, 2009, until March 2, 2010; (3) a transcript of the December 15, 2009, permanency review hearing containing the respondent's admission that he did not attend visits with the minors because he was avoiding pending bench warrants for his arrest; and (4) records of the respondent's August 18 and November 9, 2009, offenses of driving while license suspended, and July 23, 2010, offenses of driving while license suspended and leaving the scene of an accident.

¶ 9 The caseworker testified that after the respondent was released from jail in March 2010, his weekly visits with the minors resumed and were of good quality. The respondent did not have stable housing during the applicable nine-month period and lived with various friends. The respondent refused to provide the caseworker with their names or addresses because he did not want to involve them with the Department of Children and Family Services. The respondent's source of income was money from family members and his LINK card. The respondent had completed counseling prior to the applicable nine-month period but was required to resume anger management counseling during the nine-month period following an outburst at an administrative case review (ACR). The respondent made little to no progress in counseling, because he often became contentious during sessions and vented his anger about the child welfare system without acknowledging his responsibility for the minors' goal being changed from return home due to his disappearance to avoid

pending arrest warrants.

¶ 10 The respondent testified that on October 31, 2009, he was forced to move because his home no longer qualified as section eight housing due to flooding. Before the respondent could secure alternate housing, he was arrested in November 2009 and remained in jail until March 2010. After being released from jail, the respondent stayed with his sister and various friends until he and his mother secured an apartment on August 3, 2010. The respondent testified that he contacted his caseworker upon being released from jail. The respondent provided the caseworker with his contact information and reported that he was on the waiting list for section eight housing. The respondent acknowledged that he did not inform his caseworker of the address where he was staying.

¶ 11 The trial court found that the respondent did not make reasonable progress in the specified nine-month period. The case proceeded to a best interest hearing.

¶ 12 On June 15, 2011, a best interest report was filed with the court. The report indicated that both minors had resided with their current foster mother since June 1, 2009. P.R. referred to the foster mother either by her first name or as "mom." S.R. referred to the foster mother as "mommy." The minors' foster mother met all of the minors' needs, took them on vacation, met with their day-care providers daily, and provided suitable housing and appropriate discipline. She was willing to adopt both minors. The minors both referred to the respondent as "daddy" and had a significant bond with him. The minors indicated that they did not want to leave their current placement but also indicated they would like to return home to the respondent. A bonding assessment indicated that the minors did not reciprocate the respondent's attempt to emotionally connect. Although the minors enjoyed playing and interacting with the respondent, they did not have a healthy parent-child bond. The minors and their foster mother were emotionally connected and had healthy parent-child bonds.

The caseworker recommended termination of the respondent's parental rights.

¶ 13 On June 29, 2011, at the best interest hearing, the caseworker testified that the respondent completed most of his service tasks and had secured housing. He acknowledged that the minors lived with their foster mother and did not have a male father figure in their foster home. The respondent testified that his one hour visits with the minors once a month were not adequate time to spend with the minors and the minors wanted to spend more time with him. During the visits the minors called the respondent "daddy" and hugged him. The respondent testified that both minors wanted to return home with him and were sad when their visits ended. The court found that it was in the best interest of the minors that the respondent's parental rights be terminated. The respondent appealed.

¶ 14

ANALYSIS

¶ 15 On appeal, the respondent argues that his parental rights should not have been terminated because the State failed to prove that he was an unfit parent under the Act (750 ILCS 50/1(D) (West 2010)) and that it was in the minors' best interest to terminate his parental rights. We disagree.

¶ 16 Section 1(D) of the Act defines an unfit person as "any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption." 750 ILCS 50/1(D) (West 2010). Pursuant to section 1(D)(m)(iii) of the Act, a parent will be found unfit for failing to make reasonable progress during any nine-month period after the end of the initial nine-month period following an adjudication of a neglected or abused minor. 750 ILCS 50/1(D)(m)(iii) (West 2010). Reasonable progress is an objective standard that requires demonstrable movement toward the goal of reunification. *In re C.N.*, 196 Ill. 2d 181 (2001). The benchmark for measuring a parent's progress toward the return of the child 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 any other conditions that later become known and would prevent the court from returning custody of the child to the parent. *C.N.*, 196 Ill. 2d 181. A parent has made reasonable progress when the court can conclude that the parent's progress in complying with directives given for the return of the child is of such quality that the court will be able to order the child returned to the parent in the near future. *In re Aaron R.*, 387 Ill. App. 3d 1130 (2009).

¶ 17 A finding of unfitness must be by clear and convincing evidence. *In re D.F.*, 201 Ill. 2d 476 (2002). We review the trial court's unfitness determination under the manifest weight of the evidence standard. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *D.F.*, 201 Ill. 2d 476.

¶ 18 Here, the trial court found the respondent unfit for failing to make reasonable progress during the nine-month period of October 31, 2009, to July 31, 2010. During the initial portion of the nine-month period, the respondent did not attend visits with the minors in an effort to avoid outstanding warrants for his arrest. Thereafter, the respondent was incarcerated from November 2009 to March 2010, and could not visit with the minors. In April of 2010, additional anger management counseling was recommended for the respondent after he had an angry outburst during an ACR meeting. The respondent refused to cooperate with his caseworker by failing to keep him advised of his current address. He was also arrested three times for driving on a suspended driver's license. Based upon this record, the trial court's finding that the respondent failed to show a demonstrable movement toward reunification with the minors and that the respondent was unfit for failure to make

reasonable progress was not against the manifest weight of the evidence.

¶ 19 Once the trial court has found the parent to be unfit, all considerations must yield to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347 (2004). Accordingly, at the best interest hearing, the focus shifts from the parent to the child's interest in a stable, loving home life. *D.T.*, 212 Ill. 2d 347. At the best interest stage, the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interest. *D.T.*, 212 Ill. 2d 347. In considering a minor's best interest, the trial court must consider certain statutory factors in light of the minor's age and developmental needs, including: (1) the physical safety and welfare of the minor; (2) the development of the minor's identity; (3) the familial, cultural and religious background of the minor; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with her parental figures; (5) the wishes of the minor; (6) the minor's community ties; (7) the minor's need for permanence, including stability and continuity of relationships; and (8) the preferences of persons available to care for the minor. 705 ILCS 405/1-3(4.05) (West 2010). On appeal, a trial court's decision to terminate the rights of a parent to their child will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005). Our review of the record indicates that the State proved by a preponderance of the evidence that it was in the minors' best interest to terminate the respondent's parental rights. The minors had been in their current foster home since June 1, 2009, and referred to their foster mother to as "mommy." They are closely bonded to their foster mother, and their foster mother is willing to adopt both minors. The minors are in their foster home together and do not have to be separated to achieve permanency. Based on the foregoing, we hold that the circuit court's best interest determination was not against the manifest weight of the evidence.

¶ 20

CONCLUSION

¶ 21 The judgment of the circuit court of Peoria County is affirmed.

¶ 22 Affirmed.