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No. 3-10-0104

Order filed February 7, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

IN RE THE INTEREST OF B. M.-S.,)	Appeal from the Circuit Court
)	for the 10th Judicial Circuit,
A Minor.)	Tazewell County, Illinois
)	
(THE PEOPLE OF THE STATE OF ILLINOIS)	
)	
Petitioner-Appellee,)	No. 07-JA-97
)	
v.)	
)	
ANGELA S.,)	Honorable
)	Glenn Collier,
Respondent-Appellant.))	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Schmidt and McDade concurred in the judgment.

ORDER

Held: The trial court did not err in denying Angela S.'s petition to regain fitness. The evidence demonstrated that Angela S. failed to fully comply with the trial court's requirements to regain fitness. Specifically, she had not remedied the conditions that lead to her unfitness adjudication, in that she continued to associate with an individual with a criminal history and intentionally concealed this relationship from DCFS.

Appellant Angela S. was found unfit to parent the minor B. M.-S. after her arrest for allowing the production of methamphetamine in her home. After completing the trial court prescribed

rehabilitation courses, Angela petitioned for fitness. The trial court denied fitness and closed the case, citing Angela's failure to notify the Illinois Department of Children and Family Services (DCFS) of some of her associations, combined with her intentional concealment of her relationship with Samuel Lane. Angela appeals the court's denial of fitness. We affirm.

FACTS

Angela was adjudicated unfit to parent her son B. M.-S. on September 13, 2007. Prior to the trial court's unfitness finding, B. M.-S. was deemed neglected on August 24, 2007. The trial court based its findings on Angela's history of methamphetamine use and her permitting others to use her home for methamphetamine production. B. M.-S. was not present when the methamphetamine was produced in Angela's home, however, the chemical residue remained, creating an injurious environment, as defined by 705 ILCS 405/2-3(1)(b) (West 2006). Following entry of the dispositional order, B. M.-S. was placed in the custody of his father, David M. On January 4, 2008, David's parents, Jesse and Connie C. were appointed guardians. David was thereafter arrested on drug offenses and sentenced to a term of imprisonment. Despite his drug arrest and conviction, the trial court has never adjudicated him unfit.

Following the incidents that lead to Angela's unfitness adjudication, she was convicted of methamphetamine production and spent three months in prison. On October 19, 2007, Angela was released from prison and has maintained sobriety since this date. Angela petitioned the trial court to reopen the juvenile case and establish her fitness on December 29, 2008. The trial court granted Angela's petition in part and reopened the case on a limited basis. To regain fitness, the trial court ordered Angela to: (1) perform random drug drops, (2) participate in domestic violence classes, (3) obtain and maintain stable housing, (4) provide DCFS caseworkers with any change in address,

phone number, or members of her household, and (5) provide information regarding any associated individual requested by DCFS. The trial court reviewed Angela's progress one month later and denied fitness, requesting Angela demonstrate compliance and a drug-free lifestyle for an additional six months.

In anticipation of the six-month review, DCFS filed a report dated October 14, 2009, recommending that Angela regain fitness. The report cited Angela's cooperation and compliance with all of the court-ordered criteria. Specifically, Angela had completed all drug and alcohol assessments, obtained an assessment indicating no further treatment was necessary, all of her drug drops were negative, her probation requirements were satisfied, she attended domestic violence groups, participated in counseling, obtained stable and clean housing, kept her caseworker informed, and maintained consistent visitations with B. M.-S. DCFS filed an addendum, drafted on December 9, 2009, to its earlier report addressing the concerns raised by the grandparents that Angela had been seen drinking in a bar on two occasions. The addendum states that Angela admitted that she had consumed alcohol on a couple of occasions, but she appeared remorseful and stated that she would not place herself in this situation again. DCFS continued to recommend Angela be found fit to parent B. M.-S.

However, DCFS changed its recommendation at the December 17, 2009, fitness hearing, to oppose Angela's fitness. DCFS raised concern with Angela's failure to notify it of her relationship with Samuel Lane. Additionally, Angela had attempted to conceal her relationship with Lane when a DCFS caseworker made an announced visit to her home. Angela told the caseworker that the visiting Lane was her mechanic. Eventually, Angela informed DCFS that Lane was her boyfriend and DCFS conducted a background investigation. The investigation revealed that Lane had a felony

for battery to a police officer and orders of protections against him. Lane also informed the caseworker that he was found unfit to parent his own child. Consequently, placing a child with him would require a special waiver. In additional opposition to Angela's fitness, DCFS referenced other instances where Angela had failed to inform it of her associations.

Following the hearing, the trial court denied Angela's motion to regain fitness. The trial court stated that in spite of Angela's progress, she continued to associate with individuals of questionable background. Noting that this case is "about association" and "[y]ou are who you hang out with," the trial court recommended that Angela be more selective in her associations if she wanted to regain fitness. Although the trial court did not recommend a specific course of action for regaining fitness, it stated, "[n]ow you have to prove by your own evidence that this is what you really want" and you must comply with "all those things that were, that the Department tried to help [you] with." The trial court then closed the case and left Angela's future visitations up to the B. M.-S.'s paternal grandparents and guardians. Angela appeals the trial court's ruling.

ANALYSIS

Two issues are raised in this appeal. The first issue is whether the trial court lacked jurisdiction to consider Angela's petition to reopen the case and regain fitness. The State contends that the trial court did not have jurisdiction to reopen the present case because Angela did not file her petition within one year of the entry of the order adjudicating her unfit. The second issue is whether the trial court's denial of Angela's motion to regain her parental fitness was against the manifest weight of the evidence. Angela argues that the trial court's ruling was in error because she has made "reasonable progress" towards regaining fitness. Furthermore, Angela contends that B. M.-S.'s father, David, has never been adjudicated unfit despite his own drug conviction and prison

sentence. We find this argument unpersuasive as David's fitness has no bearing on Angela's rights. We review the question of the trial court's exercise of jurisdiction *de novo*. *People v. Richards*, 394 Ill. App. 3d 706, 708 (2009). We review the trial court's denial of Angela's motion to regain fitness applying a manifest weight of the evidence standard. *In re J.P.*, 331 Ill. App. 3d 220, 238 (2002). The trial court's ruling is against the manifest weight of the evidence "where the opposite conclusion is clearly evident." *In re C.N.*, 196 Ill. 2d 181, 208 (2001).

We begin with the State's argument that the trial court did not have jurisdiction to hear Angela's petition. She contends that there is jurisdiction. The State argues that the trial court did not have jurisdiction because Angela's case was "closed" by the trial court after it entered the dispositional order finding her unfit on September 13, 2007. Because the trial court purportedly closed the case, Angela was required to petition the trial court to re-open her case or appeal its decision within one year. 705 ILCS 405/2-32 (West 2006). The State argues that the Juvenile Court Act of 1987 limits Angela's time to appeal the trial court's entry of a final order from 30 days after its entry and ending one year from the date of the order. 705 ILCS 405/2-32 (West 2006). As a result, Angela missed her opportunity to challenge her unfitness because she petitioned the trial court to re-open the case on December 29, 2008, nearly four months after the expiration of the statutory deadline.

We disagree with the State's argument. The trial court had jurisdiction to consider Angela's December 29, 2008, petition to reopen her case and establish fitness. Although the Juvenile Court Act limits the time in which a petitioner can petition the trial court to reopen her case or appeal the entry of a final order, a dispositional order "does not operate to close proceedings on the pending petition, but is subject to modification until final closing and discharge of the proceedings." 705

ILCS 405/3-24(3) (West 2006). Such dispositional orders will only be treated as final orders if they “expressly so provide.” 705 ILCS 405/3-24(3) (West 2006).

Here, the language of the trial court’s order does not contemplate finality. Rather, the language of the order states “[i]f Mother is to regain fitness Mother shall prove by competent and independent means long-term sobriety and treatment successfully completed including random drops directly supervised with proof of direct supervision.” The trial court did not direct Angela to complete a specified treatment regime until after she had petitioned it to re-open the case. But the conditional language of the trial court’s dispositional order indicates its intent to require Angela to complete rehabilitation treatment in order to regain fitness at a future date. Such language did not express the finality intended by the Juvenile Court Act. 705 ILCS 405/3-24(3) (West 2006). The language of the trial court’s order, instead, indicates treatment as an ordinary dispositional order, which is “subject to modification until the final closing and discharge of the proceedings.” 705 ILCS 405/3-24(3) (West 2006). Therefore, the trial court’s dispositional order was not a final order because it had not decided the controversy between the parties on the merits, affixing their rights, so that if the judgment is affirmed, nothing remains for the trial court to do but to proceed with its execution. *See In re A.H.*, 207 Ill. 2d 590, 594 (2003). We find the trial court had jurisdiction in this matter.

Angela raises the second issue, contending that the trial court incorrectly denied her motion to regain fitness. Angela argues that she has made “reasonable progress” toward regaining her parental fitness and therefore the trial court’s ruling was in error. “Reasonable progress” is based on an objective review of the steps the parent has taken toward the goal of reunification. *In re B.S.*, 317 Ill. App. 3d 650, 658 (2001), overruled on other grounds by *In re R.C.*, 195 Ill. 2d 291 (2001).

A mother makes “reasonable progress” towards regaining her fitness when she makes the minimum measurable or demonstrable movement toward the goal of reunification. *In re B.S.*, 317 Ill. App. at 658. Angela contends that she has made more than the minimal progress required by the reasonable progress standard because she has successfully completed all of the facets of the trial court mandated rehabilitation program. Therefore, she argues that trial court should have found her fit to parent B. M.-S.

We are not persuaded by Angela’s argument. Although Angela has made significant progress toward regaining fitness, she has not complied with all of the trial court’s requirements. Although reasonable progress is an objective standard, our objective measurement “depend[s] upon the amount of progress measured from the conditions existing at the time” custody of B. M.-S. was taken from Angela. *In the Interest of A.H.*, 215 Ill. App. 3d 522, 530 (1991). Angela was initially found unfit to parent B. M.-S. because she had allowed her acquaintance to produce methamphetamine in the home where she was residing with B. M.-S. Since this incident, Angela has begun another relationship with an individual of a questionable background. Furthermore, Angela attempted to conceal this relationship from DCFS and did not initially notify it of her relationship, as required by the trial court’s conditions to regain fitness. Because Lane lost custody of his own child and has been charged with a felony in the past, we agree with the trial court that it would not be in the best interest of B. M.-S. to be allowed unsupervised visits in a home where Lane is a regular visitor.

The trial court correctly states that the crux of this case is association. Absent Angela’s association with individuals who manufactured and used methamphetamine she would not have been found unfit to parent B. M.-S. As indicated by her initial concealment of her relationship with Lane, Angela has failed to recognize that providing a safe environment for B.M.-S. requires her to end

associations with people who may pose a threat to her child's welfare and well being. Consequently, Angela may have successfully completed the trial court's rehabilitation program but she has failed to correct the core cause of her original unfitness adjudication.

Measuring Angela's progress from the methamphetamine manufacturing incident that resulted in her unfitness adjudication, it is clear that Angela has taken many positive steps towards regaining fitness. However, this progress alone is not sufficient for Angela to establish fitness. The trial court was justifiably concerned about Angela's poor choices, which continued to place her in situations which might cause her to relapse into her prior bad habits. Such an incident would risk injury to B. M.-S. if Angela were to regain fitness and be allowed unsupervised visits. Angela's continued avoidance of "her shortcomings as a parent" and choice to associate with individuals of a questionable background "is a sufficient basis for the trial court to conclude that [she] had not made reasonable progress." *In Interests of Boolman*, 141 Ill. App. 3d 508, 512 (1986). Consequently, we conclude that the trial court's decision denying Angela's fitness was not against the manifest weight of the evidence because the opposite conclusion was not clearly indicated. *See In re C.N.*, 196 Ill. 2d at 208.

For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

Affirmed.