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2013 IL App (3d) 130360-U

Order filed August 29, 2013

IN THE
APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

A.D., 2013

In the Interest of A.P.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
a Minor,)	Rock Island County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-13-0360
Petitioner-Appellee,)	Circuit Nos. 09-JA-57
)	
v.)	
)	
Lyvon P.,)	Honorable
)	Peter W. Church,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err when it found father unfit for failing to maintain a reasonable degree of responsibility toward the minor child's welfare. In addition, the court's conclusion that it was in the best interests of the minor to terminate father's parental rights was not against the manifest weight of the evidence.
- ¶ 2 The trial court adjudged the minor, A.P., to be neglected, because the child was born with cocaine in his system, under section 2-3 of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3 (West 2010)). The trial court found respondent father, Lyvon P., to be unfit because he

failed to maintain a reasonable degree of responsibility toward the welfare of A.P. 705 ILCS 405/2-3 (West 2010); 750 ILCS 50/1 (West 2010). Father's parental rights were terminated, and he appeals the finding of unfitness and the termination of his parental rights. We affirm.

¶ 3

FACTS

¶ 4 Respondent Lyvon P. is the biological father of A.P., born April 19, 2009. On April 23, 2009, the State filed a neglect petition alleging A.P.'s urine tested positive for the presence of cocaine shortly after his birth. The next day, on April 24, 2009, the court found the facts sufficient to establish neglect and granted the State's request for temporary custody of A.P.

¶ 5 On July 10, 2009, the trial court entered an order adjudicating A.P. neglected and placed the minor in foster care with a relative, Jacquelyn D. The trial court also ordered father to successfully complete parenting classes, obtain a substance abuse evaluation, cooperate with counseling, and obtain and maintain housing.

¶ 6 At the first permanency review hearing held January 8, 2010, the court found father made reasonable and substantial progress toward returning A.P. home. The court set the goal to return the minor home within twelve months.

¶ 7 Six months later, during the second permanency review hearing conducted on June 25, 2010, the trial court learned that on April 15, 2010, around 10:50 a.m., father entered A.P.'s mother's home while she was asleep in bed with her paramour. Father's attack caused A.P.'s mother to suffer a broken collarbone. She also suffered bruises and floor burns from being dragged. Mother's injuries required her to obtain medical care at the hospital. The State charged father with aggravated domestic battery and home invasion based on this incident.

Consequently, the court found father had not made reasonable and substantial progress toward returning A.P. home.

¶ 8 At the next permanency review hearing on December 7, 2010, the court noted there had been no progress and set the matter for a status hearing. On February 7, 2011, father pled guilty to aggravated domestic battery based on the incident involving A.P.'s mother. At the February 18, 2011 hearing, the trial court found father had made "nominal" efforts toward returning A.P. home and changed the goal to placing A.P. with substitute care pending termination of parental rights.

¶ 9 On May 26, 2011, father requested the court to reconsider the goal and to restore father's visitation with A.P. On May 27, 2011, the trial court stated it would "leave things the way they are right now" noting the sentencing hearing on father's aggravated battery conviction, based on the April 15, 2010 incident with A.P.'s mother, was scheduled for June 24, 2011. On June 24, 2011, father was sentenced to three years in the Illinois Department of Corrections.

¶ 10 At the permanency review hearing held July 12, 2011, the court found father had failed to make any reasonable efforts toward returning the minor home. Thereafter, on July 19, 2011, the State filed a supplemental petition to terminate parental rights of both mother and father. As to father, the supplemental petition alleged father failed to: (1) maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare, (2) make reasonable efforts to correct conditions that were the basis of the child's removal from the parent, and (3) make reasonable progress toward the return of the child from July 10, 2009 to June 25, 2010. Specifically, the petition alleged that father "failed to address Domestic Violence and Anger Management issues, which compromises his ability to provide the child with a safe home environment."

¶ 11 On June 18, 2012, the court held a hearing on the petition to terminate both father and mother's parental rights.¹ Father was present at this hearing in the custody of the Department of

¹For purposes of this appeal, any evidence pertaining to the termination of mother's parental rights is not included in our factual recitation, except for that evidence which also relates to the termination of father's parental rights and the issues raised in this appeal.

Corrections.² At the hearing, Tara Willard, a former child welfare specialist with Lutheran Social Services testified that she was A.P.'s caseworker from April 24, 2009, to July 9, 2010. During that time, father's service plan included a substance abuse evaluation, complying with the conditions of his Indiana parole, caretaker education, housing, and employment. Willard explained she intended to successfully discharge father, in spite of his violation of the conditions of his Indiana parole because he was residing in Iowa. However, father engaged in domestic violence toward A.P.'s mother on April 15, 2010, causing Willard to add anger management and partner abuse education to father's service plan.

¶ 12 The State then called Courtney Lamer, a foster parent case manager assigned to A.P.'s case from May 2010 until April 2011. During that time, father's goals were to maintain stable housing and employment, complete parenting classes, visit with the minor child, and complete domestic violence and anger management counseling. Lamer testified the domestic violence incident caused father to be incarcerated from April 2010 until June 2010.

¶ 13 From June 2010 to November 2010, father refused to participate in an assessment and counseling for anger management on the advice of his criminal attorney. However, in November 2010, father proceeded with the anger management and domestic violence counseling, and Lamer successfully discharged father in February 2011. According to Lamer, father continued individual counseling beyond February 2011 on his own accord. At the February 2011 permanency hearing, Lamer rated father unsatisfactory because his June 24, 2011, sentencing hearing created an uncertainty as to whether father would be able to provide for A.P. Lamer admitted that aside from father's potential sentence of incarceration, father had made reasonable progress.

²The trial court took judicial notice of Rock Island case No. 10-CF-347. Father was sentenced on June 24, 2011, to a 3-year term of incarceration upon a plea of guilty to aggravated domestic battery, a Class 2 felony.

¶ 14 Tori Rowe, a child welfare specialist with Lutheran Social Services, testified she had been assigned to A.P.'s case from April 29, 2011, until June 13, 2012. At the time Rowe became involved in the case, the goal remained substitute care pending court determination on termination of parental rights. According to Rowe, father exercised his two hours of visitation, every other week, until his incarceration June 24, 2011.

¶ 15 On the date of the last service plan, April 2, 2012, Rowe rated father unsatisfactory due to his incarceration. Rowe acknowledged father participated in parenting, sharing correctional responsibility, and parenting education classes while incarcerated, but due to father's inability to demonstrate his learned skills and behaviors with A.P., she rated father unsatisfactory. Rowe explained to the court that, despite father's success in completing service plan tasks, A.P. would not be returned to father upon his release from prison due to the length of time he had been out of A.P.'s life.

¶ 16 Next, Lisa Balk, a mental health counselor with Lutheran Social Services, testified she provided services to father, including teaching him healthy relationships, anger management, maintaining a healthy lifestyle, and to learn and demonstrate positive coping skills to alleviate his depression. Balk worked with father beginning November 22, 2009, and successfully discharged him on April 8, 2010. However, Balk retracted her successful discharge after the April 15, 2010, domestic violence incident because it appeared father had not been honest with Balk about his contact with A.P.'s mother. Balk began working with father again on July 12, 2010, with the same treatment goals, but discharged father unsuccessfully because father refused to discuss incidents with the mother. Balk also became aware of father's continued contact with A.P.'s mother, despite his denial of this contact during their sessions.

¶ 17 Father then testified he participated in a program while incarcerated which allowed him to record a book and send it to A.P. Father sent numerous cards to A.P. and spoke with A.P. on the

phone “a couple of times.” Father indicated his release date to be September 7, 2012, and he would be ready to parent A.P. upon obtaining stable housing after his release. The court took judicial notice of the permanency review orders previously entered in this case, dated January 8, 2010; June 25, 2010; December 7, 2010; February 18, 2011; and July 12, 2011.

¶ 18 After hearing arguments, the court found the State did not satisfy its burden of proof on grounds two and three, specifically, that father had not made reasonable effort or reasonable progress. However, the court found the State’s evidence proved father had shown a lack of responsibility as to the child’s welfare. The court noted that father was “specifically aware of what need[ed] to be done, he brutally assaulted the child’s mother on April [15th] of 2010, I find that is a statutory ground for me to find him unfit. I do find him unfit on that ground by clear and convincing evidence.”³

¶ 19 On November 8, 2012, the trial court conducted a best interests hearing. The State first called Christine Best, supervisor at Lutheran Social Services, who completed the best interests report for A.P. The parties stipulated to the contents of Best’s report.

¶ 20 Next, Jacquelyn D. testified she had been the foster parent of A.P. since his release from the hospital on April 21, 2009, at two days old. Jacquelyn testified she provides the proper food, shelter, health care, and clothing for A.P. In addition, Jacquelyn explained she maintains contact with the families of both A.P.’s father and mother, and would like to participate in family events with both sides of A.P.’s family. According to Jacquelyn, A.P. addresses her as mother, and their bonding and relationship is normal and healthy. Jacquelyn explained that A.P. has expressed to her that he wants his family “to stay the way it is” and that she would like to adopt A.P. Although Jacquelyn is Caucasian and A.P. is bi-racial, she fosters A.P.’s identity and father’s

³The trial court found mother to be unfit on all three grounds alleged in the Supplemental Petition to Terminate Parental Rights.

family, who is African American, welcomes and includes A.P. in family activities. Jacquelyn testified that A.P. tells his father that he loves him and Jacquelyn twice took A.P. to see his father, and sent his father photographs and drawings during father's incarceration. Jacquelyn stated that she did not have any concerns about father's interaction with A.P.

¶ 21 Father then testified on his own behalf, stating he was released from incarceration on September 10, 2012, and remained on parole. According to father, he had an ankle-bracelet monitoring device, scheduled to be removed on December 9, 2012. Father was unemployed and had been unable to find employment since his release. He was currently living with a friend of the family in Rock Island. According to father, he completed an 8-week anger management class, which he began two days after his release and visited with A.P. at least once each week since his release from prison. He stated each visit lasted between one and five hours. Father indicated A.P. calls him dad and A.P. tells him he loves him. After hearing arguments, the court took the matter under advisement.

¶ 22 On January 25, 2013, the trial court issued a detailed 12-page opinion finding that it was in the best interests of the minor to terminate the parental rights of both mother and father. The court concluded, after considering the totality of the evidence presented in light of the factors set forth in 705 ILCS 405/1-3(4.05) (West 2010) of the Act, the State met its burden by a preponderance of the evidence that termination of parental rights was in A.P.'s best interests.

¶ 23 The court specifically noted that "the testimony at both the fitness stage and best interest stage was consistent with a father who has repeatedly complied with a number of the requirements of the service plan, exercised independent efforts to maintain a relationship with his son, taken parenting classes above and beyond that which was required and in general done things the Court rarely sees any parents in Juvenile Court do." The court acknowledged the evidence that A.P. had bonded with his father and "the court has no doubt that the father would

like to continue to maintain a relationship with [the minor] and that [the minor] would benefit by that continued relationship.”

¶ 24 The court stated that the adoption of the minor by the foster parent is in the minor’s best interests, but the court was hopeful father will be able to maintain continued contact with the minor. The court noted that past performance is the best indicator of future conduct and, in this case, past performance indicates “an exceptional willingness on the part of the foster mother to foster a relationship between [the minor] and both of his parents. Likewise, past performance indicates a desire by the father to continue to maintain a relationship with his son.” The court also found, “the foster mother will continue to act in [the minor’s] best interest and in all likelihood, regardless of the formalities of the parent-child relationship between [the minor] and his father, she is likely to continue to foster the relationship between [the minor] and his father. Accordingly, the court “reluctantly” terminated father’s parental rights. On February 15, 2013, the trial court entered a judgment terminating the parental rights of father and mother.

¶ 25 On March 15, 2013, father filed a motion to reconsider the termination of his parental rights arguing that father should be given credit for his continued efforts in complying with the service plans. After a hearing on May 24, 2013, the trial court denied father’s motion to reconsider. Father filed a timely notice of appeal.

¶ 26 ANALYSIS

¶ 27 Father argues on appeal that the court’s findings he was unfit and it was in A.P.’s best interests to terminate father’s parental rights were against the manifest weight of the evidence.

¶ 28 Proceedings on a petition for termination of parental rights involve a two-step, bifurcated approach where the court first holds an “unfitness hearing” (705 ILCS 405/2-29 (West 2010); 750 ILCS 50/1(D) (West 2010)) and, if the parent is found unfit, conducts a subsequent “best interests hearing.” 705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 352 (2004).

A parent is considered unfit under the Adoption Act if the parent fails to maintain reasonable concern, interest, or responsibility for the welfare of the child. 750 ILCS 50/1(D)(b) (West 2010). When evaluating an allegation under section 1(D)(b), a trial court must focus on the reasonableness of the parent's efforts to show interest, concern, or responsibility and not necessarily focus on the success of those efforts. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). The trial court must also consider any circumstances that have made it difficult for the parent to show interest, concern, or responsibility for the well-being of the child. *Id.* A trial court's ruling of unfitness will not be reversed unless the record shows the findings are against the manifest weight of the evidence. *Id.*

¶ 29 In this case, the record reveals the trial court considered all of the evidence when finding father unfit. The court focused on father's brutal attack on A.P.'s mother, which occurred while father was engaged in a service plan to try to return A.P. home. As a result of the attack, father was incarcerated from June 24, 2011 until September 2012. The lengthy incarceration resulted in father being unable to satisfactorily complete all of his service plan goals, including obtaining stable housing and employment or demonstrating that A.P. could return home in a reasonable time. Our supreme court has held that a parent's incarceration, during any nine-month period alleged in a petition to terminate parental rights, does not excuse a parent's failure to make reasonable progress toward completion of his or her court-ordered tasks, nor does time spent in prison toll the nine-month period during which the parent must show reasonable progress. *In re J.L.*, 236 Ill. 2d 329, 343 (2010). While we acknowledge father's progress in many areas of his service plan, we cannot say the trial court's decision, that father failed to maintain a reasonable degree of responsibility as to A.P.'s welfare, was against the manifest weight of the evidence. Therefore, the trial court's decision finding father unfit should not be disturbed.

¶ 30 Once a court finds a parent unfit by clear and convincing evidence under the Adoption

Act, the burden is on the State to prove, by a preponderance of the evidence, that it is in the child's best interests to terminate the parental rights. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). In making a best interests determination, the trial court focuses on the child's welfare and whether termination would improve the child's future, including his financial, social, and emotional well-being. *In re Daphnie E.*, 368 Ill. App. 3d 1052 (2006). It is well-established that courts must not allow children to live indefinitely with a lack of permanence inherent in foster placements. *In re A.H.*, 215 Ill. App. 3d 522, 530 (1991).

¶ 31 When determining the best interests of a child for purposes of a termination petition, the court considers a number of statutory factors including: the child's physical safety and welfare, the child's sense of attachment, the child's need for permanence, and the preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05)(a) through (j) (West 2010). A trial court's finding that termination of a parent's rights is in the child's best interests will not be reversed unless it is against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 892 (2004). A trial court's decision is against the manifest weight of the evidence and subject to reversal if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002).

¶ 32 During the best interests hearing, the focus shifts from the parent's interest in maintaining the parent-child relationship and yields to the child's needs and best interests to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364. Father argues the evidence at the best interests hearing showed a "very strong parent-child attachment that, if severed, would be against the child's best interests." On this basis, father argues on appeal the trial court erred when it terminated his parental rights.

¶ 33 In this case, the trial court noted that father strongly desired to maintain a parent-child relationship with A.P. However, the trial court properly focused on the child's best interest, rather than deciding the best interests based solely on father's wishes and desires. In this case,

the evidence established that during the three and one-half years A.P. lived with his foster mother, A.P. bonded with Jacquelyn and her family. The child expressed a desire for things to “stay the way [they are],” and Jacquelyn hoped to adopt A.P. In addition, Jacquelyn provided all of A.P.’s medical, emotional, and physical needs, as well as stability and permanence.

¶ 34 The trial court was not unsympathetic, nor are we, concerning the desire of father to maintain a parent-child relationship with A.P. However, circumstances removed A.P. from father’s care for the child’s protection and well-being. During the three years A.P. was nurtured in a foster home, he formed significant attachments in this home, as father lapsed into old habits, at times, that were inconsistent with the well-being of this child. Moreover, while A.P. was in foster care, his foster mother has encouraged father’s ongoing relationship with the child.

¶ 35 The trial court recognized father’s attempts to improve his parenting skills. We note these new skills may cause foster mother to allow father to maintain a healthy role in A.P.’s life, with the support of A.P.’s foster family. Based on the facts of this case, we conclude the trial court’s decision to provide this child with the permanency and safety offered by the foster family and terminate father’s parental rights was not against the manifest weight of the evidence.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the decision of the circuit court of Rock Island is affirmed.

¶ 38 Affirmed.