2024 IL App (4th) 230895-U

NOS. 4-23-0895, 4-23-0896 cons.

FILED
February 14, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re E.D. and K.D., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Tazewell County
Plaintiff-Appellee,	)	Nos. 20JA64
v.	)	20JA296
Noah D.,	)	
Respondent-Appellant).	)	Honorable
	)	David A. Brown,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Cavanagh and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment finding respondent unfit was not against the manifest weight of the evidence.

¶ 2 In December 2022, the State filed separate petitions to terminate the parental rights of respondent Noah D. as to his minor children, E.D. (born in 2019) and K.D. (born in 2020). Following a fitness hearing, the trial court found respondent unfit by clear and convincing evidence. Thereafter, the court found it was in the best interest of the minors to terminate respondent's parental rights. In this consolidated appeal, respondent challenges only the court's unfitness findings, arguing the judgment is against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 The State filed separate petitions to terminate respondent's parental rights as to E.D. and K.D. in December 2022. The petitions alleged he was an unfit person, as defined by the Adoption Act (Act) (750 ILCS 50/1(D)(m)(ii), 1(D)(b) (West 2022)), for failure to (1) make reasonable progress toward the return of the minors to his care during the relevant nine-month period of March 8, 2022, through December 8, 2022 and (2) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. The minors were previously removed from the home in December 2020 due to domestic violence between the mother, Adelaida B., and respondent and because the parents failed to complete drug testing. Adelaida is not a party to this appeal.

¶ 5 In June 2023, the trial court held a fitness hearing. Jacqueline Anderson of Lutheran Social Services testified that she was respondent's caseworker during the relevant period. Another caseworker in Champaign, Illinois, handled visitation for the minors. According to Anderson, respondent was ordered to complete counseling, a domestic violence class, and a substance abuse assessment and submit to drug testing four times a month.

¶ 6 During the relevant period, Anderson was unable to refer respondent for counseling or domestic violence classes because he never signed the consent forms she mailed to him. Respondent told Anderson he completed a substance abuse assessment, but he never provided a copy of the assessment. Respondent also told Anderson he completed a parenting class and sent her a picture of a certificate from Blue Mountain Education. However, when Anderson contacted Blue Mountain Education, she was told they do not offer parenting classes.

¶ 7 Respondent also never appeared for drug testing. Anderson informed respondent in March 2022 that he was referred to Help at Home in Decatur, Illinois, for drug testing. Respondent told Anderson he called Help at Home every day and was told that he did not need to appear for

testing. However, Anderson checked with Help at Home and confirmed respondent was notified to test weekly.

¶ 8 Anderson next testified about the lack of the ability to communicate with respondent. Respondent's phone was often not working. When Anderson called, the phone would not ring and she was unable to leave a message. When Anderson was able to successfully reach respondent by phone to discuss the service plan, he would instead try to talk about Adelaida and the minors. Respondent provided Anderson with a mailing address in Macon, Illinois, but told her he lived in Decatur. We note that, although Anderson sometimes referred to Macomb during her testimony, later testimony clarifies the mailing address was in Macon. Respondent did not give Anderson an address in Decatur until August or September 2022.

¶ 9 On cross-examination, Anderson testified that she received documentation from another agency showing respondent completed a parenting class prior to the relevant period. Anderson did not ask respondent to complete another parenting class. Anderson again described her contact with respondent as "off and on." She reiterated that she tried calling respondent on multiple occasions, but he either did not answer or his phone was disconnected. In July 2022, Anderson reached out to the Champaign caseworker to obtain respondent's updated contact information, as she had not heard from him in months. She tried to contact respondent using the updated phone number, to no avail. Anderson did not hear from respondent again until November 2022.

¶ 10 Anderson noted that the Champaign office had at least three different caseworkers assigned to manage visitation with the minors during the relevant period. One of the visitation caseworkers forwarded their notes to Anderson, which stated that respondent participated in visitation with the minors, and he had a good bond with K.D. and E.D.

¶ 11 Respondent testified on his own behalf. Respondent stated that during the relevant period, he had "not really" made any progress. However, respondent claimed this was due to caseworker turnover and communication issues with the agencies. Respondent asserted that he frequently contacted Anderson through text messages to ask which services he needed to complete under the service plan. He also testified to not knowing the names of the visitation caseworkers due to high turnover in the Champaign office.

¶ 12 Respondent maintained he had signed the consent forms and sent them back to Anderson. Respondent also claimed Anderson told him he could satisfy the counseling requirement by talking with her over the phone once per week. In April or May 2022, weekly visits began between respondent and the minors. After K.D. and the visitation caseworker contracted COVID-19 in July 2022, the visits stopped occurring. Respondent stated that he repeatedly reached out to the visitation caseworker and Anderson but was never able to reestablish visitation.

¶ 13 On cross-examination, respondent admitted he did not complete any drug testing between March 8, 2022, and December 8, 2022. Respondent also acknowledged that he did not give Anderson physical copies of his substance abuse assessment or parenting certificate. Respondent agreed that it was "pretty clear" that Anderson was his services caseworker and the only confusion he had related to the visitation caseworkers. As to employment, respondent stated he worked for an Ameren subcontractor for 50 to 60 hours per week, but he did not know how much money he made in 2022.

¶ 14 The State called Anderson to testify in rebuttal. Anderson testified she could not provide counseling over the phone and never told respondent she could do so. Anderson denied that respondent repeatedly called her about starting services or visitation. Respondent also never reached out to her about any issues relating to drug testing.

¶ 15 The trial court found respondent unfit as to both counts alleged in the State's petition. The court found it "telling" that respondent himself "acknowledged that he didn't make any progress." As to the conflicts between Anderson's and respondent's testimony, the court found Anderson to be more credible. While Anderson was "matter of fact" and "appeared to be sincere in trying to get to the right answer," the court observed that respondent "was confrontational with the [prosecutor] and argued with her and interrupted her" during the questioning.

¶ 16 The trial court stated that respondent did not seem "confused at all" about how to set up visits with the minors, despite the caseworker turnover. Likewise, the court recognized that it was "very clear" from respondent's testimony "that he knew all along his primary caseworker, particularly for the services, was Ms. Anderson." The court noted that respondent did not complete counseling, domestic violence services, or drug testing, and there was a dispute as to whether he completed a qualifying parenting class.

¶ 17 The trial court concluded that respondent "didn't make the progress necessary for the return of the children to his care, and he hadn't made demonstrable steps toward that return at any time during that nine-month period of time and the return of the kids to his care was not imminent or foreseeable in the near future." See 750 ILCS 50/1(D)(m)(ii) (West 2022). The court also found that, based on his failure to complete the ordered services, respondent failed to maintain a reasonable degree of interest, concern, or responsibility in the minors' welfare. See *id.* § 1(D)(b).

¶ 18 In September 2023, the matter proceeded to a best interest hearing. The trial court found it was in the best interest of the minors to terminate respondent's parental rights.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent challenges only the trial court's findings he was unfit under sections 1(D)(m)(ii) and 1(D)(b) of the Act.

¶ 22 In a proceeding to terminate parental rights, the State must prove by clear and convincing evidence that the parent is "unfit," as defined by section 1(D) of the Act (750 ILCS 50/1(D) (West 2022)). *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). A finding of unfitness will not be overturned unless it is against the manifest weight of the evidence. *In re J.H.*, 2020 IL App (4th) 200150, ¶ 68. A decision is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354. When a parent is found unfit on multiple grounds, the reviewing court may affirm "based on evidence sufficient to support any one statutory ground." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004).

¶ 23 The trial court here found respondent unfit on two statutory grounds, including section 1(D)(m)(ii) of the Act. Section 1(D)(m)(ii) of the Act provides, in pertinent part, that unfitness will be found if a parent fails "to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(ii) (West 2022).

¶ 24 Reasonable progress is assessed under an objective standard. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). Illinois courts have defined "reasonable progress" as demonstrable movement toward reunification, such that the trial court "will be able to order the child returned to parental custody in the near future." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006).

¶ 25 Respondent argues the State failed to rebut his testimony relating to the parenting certificate, substance abuse assessment, and drug testing. Contrary to respondent's assertion, the record demonstrates that the State presented evidence, through the testimony of Anderson, on each point raised by respondent. Although Anderson's testimony conflicted with respondent's, the trial

court determined Anderson was more credible and articulated its reasoning on the record. Respondent essentially asks us to reassess the credibility of the witnesses, which we cannot do. See *In re S.M.*, 314 Ill. App. 3d 682, 687 (2000) ("The reviewing court does not reweigh the evidence or reassess the credibility of the witnesses.").

¶ 26 The evidence presented at the fitness hearing supports the trial court's finding that respondent failed to make demonstrable progress during the relevant period. When asked, respondent conceded that he had "not really" made any progress. Respondent never returned signed consent forms to Anderson, preventing a referral for counseling or domestic violence services. Respondent also never delivered a physical copy of his parenting certificate or substance abuse assessment to Anderson. The organization that respondent claimed to have offered the parenting class, Blue Mountain Education, told Anderson that they do not provide parenting classes. Respondent further did not complete any drug testing during the relevant period.

¶ 27 Moreover, we find unconvincing respondent's argument that "caseworker confusion" contributed to his failure to complete the ordered services. Respondent admitted that he knew Anderson was his services caseworker, and he fails to explain what prevented him from contacting her to begin his services.

¶ 28 Despite his lack of engagement in the services, respondent argues he made reasonable progress because he maintained housing close to the minors, held a job, and made "every effort" to visit the minors. However, the trial court found that "[respondent's] testimony about his income and source of employment was not credible at all." While respondent told Anderson he lived in Decatur, he did not provide an address to her until August or September 2022. As to visitation, the court found that respondent was not confused about "who to contact and how to set up visits."

¶ 29 Ultimately, K.D. and E.D. were never close to being returned to respondent's care. The minors were initially removed from the home due to the parents' domestic violence and failure to complete drug testing. During the relevant period, respondent never engaged in the services directly related to the conditions which gave rise to the minors' removal. As such, the trial court properly concluded that respondent failed to make reasonable progress towards the return of the minors to his care.

¶ 30 Accordingly, we conclude that the trial court's determination that respondent was unfit was not against the manifest weight of the evidence. As we have upheld the court's finding that respondent was unfit based on his failure to make reasonable progress, we need not address the other basis for the court's unfitness finding. *In re C.W.*, 199 Ill. 2d 198, 210 (2002).

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.