2012 IL App (1st) 111669-U

FOURTH DIVISION
March 29, 2012

No. 1-11-2723

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF D.H.,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County.
	)	
VICTORIA L.,	)	
	)	
Mother-Respondent-Appellant,	)	
	)	No. 08 JA 44
	)	
v.	)	
	)	
PEOPLE OF THE STATE OF ILLINOIS,	)	Honorable
	)	Marilyn Johnson,
Respondent-Appellee.	)	Judge Presiding.
	)	

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

ORDER

Held: The lower court properly terminated the parental rights of Victoria L., as the State presented clear and convincing evidence of her failure to maintain a reasonable degree of interest, concern or responsibility as to her child's welfare. Furthermore, Victoria failed to preserve the constitutional challenges raised on appeal.

¶ 1 Following a hearing on the State's petition, the circuit court found Victoria L. (Victoria). unfit to be a mother due to her failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare pursuant to 750 ILCS 50/1(D)(b) and 705 ILCS 405/2-29

(West 2006); as well as her failure to make reasonable efforts to correct the conditions that were the basis for the removal pursuant to 750 ILCS 50/1 (D)(m) and 705 ILCS 405/2-29 (West 2006). The lower court held that it would be in the minor's (D.H.'s) best interest to terminate Victoria's parental rights. In this timely appeal, mother-respondent contends that she is entitled to a new trial because, *inter alia*, sections of the Illinois Juvenile Court Act and Adoption Act are unconstitutional because they violate procedural due process and equal protection of the laws. For the reasons that follow, we affirm.

¶ 2 On January 17, 2008, the State filed a petition for adjudication of wardship and a motion seeking temporary custody. The petition cited two different sections of the Juvenile Court Act, alleging that the minor's parents Victoria and Darnell H[1], created an environment injurious to D.H.'s welfare and that Victoria had abused D.H. by creating a substantial risk of physical injury. 705 ILCS 405/2-3(2)(ii)[2] and 2-3(1)(b) (West 2008).

¶ 3 On August 12, 2008, following an adjudicatory hearing on state's petition, the lower court entered findings that D.H. was neglected based on an environment injurious to her welfare and was abused based on a substantial risk of physical injury. That same day, a dispositional hearing was held, D.H. was adjudged a ward of the court, and Victoria was found to be unable to care for D.H., resulting in D.H. being placed under Department of Children and Family Services (DCFS)

---

[1]The minor's father, Darnell H., whose parental rights were also terminated did not file a notice of appeal and is not a party to this appeal. The termination of Darnell's parental rights is not an issue before this court.

[2]The petition included in the record uses 702 ILCS, however, it can be inferred from reading the language cited that the State intended to use 705 ILCS.

guardianship. A permanency hearing was also held, in which the court entered an order which set a goal for D.H. to "return home" within twelve months, noting that respondent was engaged in some services and had been visiting D.H. consistently.

¶ 4 Permanency hearings were conducted in order to monitor Victoria's progress in effectuating a "return home" for D.H. At the second permanency hearing, the court noted the failure of both parents to engage in services necessary for reunification, but continued to set a goal for returning the child to her family home within 12 months year. At third permanency hearing on July 7, 2009, the court changed course and entered an order changing the permanency goal from "return home" to "substitute care pending court determination on termination of parental rights." The court noted in its order that neither parent had maintained contact with D.H. or engaged in any social services.

¶ 5 On November 3, 2009, the State filed a motion to permanently terminate parental rights and appoint a guardian with power to consent to adoption. In relevant part, the motion alleged that Victoria was unfit to be a parent because: (1) she failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare in violation of 750 ILCS 50/1(D)(b) (hereinafter "ground(b)") and 705 ILCS 405/2-29; (2) she failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from her and/or failed to make reasonable progress toward the return of the child to her within 9 months after the adjudication of abuse under the Juvenile Court Act, or after an adjudication of dependency under the Juvenile Court Act, and/or within any 9 month period after said finding, in violation of 750 ILCS 50/1(D)(m) (hereinafter "ground (m)"). The termination motion requested that the court

find D.H.'s parents unfit, permanently terminate their parental rights and further that it was in D.H.'s best interest to appoint a guardian with the right to consent to adoption.

¶ 6 On September 24, 2010, the State filed a pleading pursuant to section 2-29 of the Juvenile Court Act setting forth the time periods for lack of progress under ground (m) of the Adoption Act. The pleading delineated the specific time frames for lack of progress under ground (m) for both parents were May 12, 2008 through February 12, 2009, February 12, 2009 through November 12, 2009, and November 12, 2009 through August 12, 2010. It appears from the record that the pleading was amended on the same day it was filed, and that the first allegation, concerning the period from May 12, 2008 through February 12, 2009, was withdrawn.

¶ 7 On April 14, 2010, D.H.'s case was called on the State's motion to permanently terminate Victoria's parental rights. It was at this juncture that counsel for Victoria first told the court that respondent was making a constitutional challenge to "Ground (m)" based on her contention her right to due process was violated because the statute was not narrowly tailored to achieve a compelling governmental interest. The trial court expressed its puzzlement with the timeliness of this argument, but nonetheless set a briefing schedule. The court denied the motion on May 17, 2011 after argument.

¶ 8 The termination hearing then proceeded in two phases. The first part of the hearing, addressing the allegations of unfitness, began on May 17, 2011 and ended August, 8, 2011. The second part, beginning and ending on August, 18, 2011 addressed the best interests of the child issue.

¶ 9 The lower court began the hearing by taking judicial notice of the findings of abuse and

neglect made on August 12, 2008. The State also entered into the record numerous service plans and "Integrated Assessments" (hereinafter referred to cumulatively as "assessment") that were created for Victoria in order to effectuate the "return home" of D.H. The State also submitted the testimony of Ms. Lashauna Williams, a social worker, who was assigned to work with Victoria beginning in April of 2008. Ms. Williams stated that she would communicate with Victoria every few months regarding her progress and attendance at the recommended classes. Prior to Williams's assignment on the case, Victoria had been referred for parenting classes at Sinai Parenting Institute, individual therapy at Thresholds and medication management at The University of Illinois Chicago (UIC). As of April 2008, Victoria was attending the therapy sessions at Thresholds.

¶ 10 The first service plan, created on March 7, 2008, reflects the initial goal for D.H. was "return home" within 12 months, but specifically noted respondent's unstable mental health, her vagueness regarding her level of involvement in the prescribed services and ultimately held that the prognosis for reunification was "poor at this time." When the March 7, 2008 assessment was reviewed on June 5, 2008, progress toward the return home goal was rated unsatisfactory.

¶ 11 Ms. Williams testified that as of the date of the adjudicatory hearing, Victoria was residing in a one-bedroom apartment provided to her while she was a ward of the state. Furthermore, in a conversation between Victoria and Ms. Williams on August 13, 2008, Victoria admitted her lack of participation in parenting classes at Sinai and acknowledged her failure to regularly take her medication (claiming it made her feel "worse") or participate in any therapy sessions. During this conversation, Ms. Williams advised Victoria to speak with her psychiatrist

about the problem and inquire about a possible change of medication. Ms. Williams also referred Victoria to a parenting class at a more convenient location. On September 10, 2008, the two women had another conversation regarding Victoria's services and Victoria again admitted to her complete lack of participation. At this point, Ms. Williams attempted to refer Victoria to a new parenting class and therapist, but owing to circumstances outside the control of either person, Victoria was no longer eligible to receive services from both of the new providers. Thus, Ms. Williams referred Victoria back to Thresholds and Sinai Parenting Institute. Due to previous complaints Victoria made regarding liking her therapist, Ms. Williams suggested inquiring as to whether a different therapist could be assigned.

¶ 12 On December 3, 2008, Ms. Williams again spoke with Victoria. Again, Victoria stated that she had not been attending parenting classes and attempted to excuse her absence by stating that she did not know how to get to Sinai Parenting Institute. Following this conversation, Victoria was provided with directions as well as a bus card.

¶ 13 The December 9, 2008 assessment stated that respondent had failed to attend any parenting classes, medication management, or therapy due to a variety of reasons. The assessment did characterize Victoria's visiting with D.H. as "regular," even though she canceled several parent-child visits because she was fearful of having an "emotional breakdown." The assessment concluded that respondent had not made substantial progress towards reunification.

¶ 14 On January 16, 2009, Ms. Williams received a text message from Victoria claiming that she was being held hostage by Darnell, and asked Ms. Williams to call the police. Ms. Williams called the police, and in a conversation later that day with Victoria, was informed that the police

came and took Darnell to jail. Victoria never pressed charges against Darnell. A second telephone call on February 10, 2009, revealed that on that very same day, another incident of domestic violence occurred between Victoria and Darnell which lead to Darnell's arrest but Victoria again would not press charges. Around this same time, Victoria also informed Ms. Williams that she was no longer attending medication management at UIC because she "had been really sick a lot."

¶ 15 In March of 2009, Ms. Williams found out that Victoria had been evicted from her home and that her telephone had been disconnected. At this point, Ms. Williams began conducting a diligent search for Victoria and sent letters to all of her previous known addresses. Approximately a week later, Victoria responded with a letter informing Ms. Williams that she might soon be charged with Medicare fraud and that she was considering consenting to an open adoption of D.H. Ms. Williams performed a second diligent search for Victoria in May and eventually discovered that Victoria had in fact been arrested and incarcerated on June 8, 2009.[3] Victoria did not contact Ms. Williams after her arrest or release.

¶ 16 The June 3, 2009 assessment rated respondent's visitation as unsatisfactory, noting that respondent had cancelled several visits with D.H. between December 2008 and March 2009, and following her eviction stopped visiting D.H. [4] The assessment found respondent's progress to be "unsatisfactory," noting that respondent was not currently attending the recommended services,

---

[3] The state presented evidence of Victoria's arrest, which is corroborated by a half-sheet included in the record, which details Victoria's guilty plea to the charges of forgery in July of 2009. See 720 ILCS 5/17-3(A)(1).

[4]Victoria did not visit with D.H. again until August 31, 2009.

and in fact had rarely participated in the services for the duration of the case. The assessment stated that she had been discharged from the medication management at UIC due to non-compliance. Finally, the assessment noted that respondent's whereabouts were unknown.

¶ 17 Ms. Williams testified that on July 7, 2009, D. H.'s permanency goal was changed from "return home" to "termination of parental rights." Ms. Williams stated that Victoria had failed to attend parenting classes, attend medication management, take her prescribed medication and missed numerous visits with D.H. Ms. Williams also noted Victoria's recalcitrance in participating in recommended services.

¶ 18 In August 2009, Ms. Williams discovered that respondent was living in Kankakee and again referred her for psychiatric services in the area. On September 15, however, after repeated attempts to contact Victoria, Ms. Williams received a voice mail message from Victoria, stating that she was currently homeless and was again contemplating signing the specific consents to allow D.H. to be adopted.

¶ 19 On October 2, 2009, the assessment stated that respondent's conduct "suggests profound ambivalence about assuming a primary care giving [*sic*] role," and that respondent "has not demonstrated any signs of notable change that would indicate she is in a better position to be a safe, nurturing and protective parent." On December 16, 2009, the case was reviewed again, with the goal for D.H. remaining "substitute care pending court determination of parental rights." While Victoria was now making her whereabouts known and visiting with D.H. on a monthly basis, she still failed to regularly attend parenting classes and domestic violence counseling Similarly, she didn't attend personal therapy sessions or cooperate with medication management,

ultimately refusing to take her prescribed medication and did not offer a proof of financial stability, employment or housing.

¶ 20 The assessment from June 15, 2010, however, noted some improvement, finding Victoria to be satisfactory in some aspects while unsatisfactory in others. While she did find work during the previous six-month period through the CAPS program, at the Chicago Food Depository, she refused to obtain another job through CAPS when she was laid off due to budget cuts. Finally, the assessment, while lauding her recent engagement in therapeutic services, noted that she has not made substantial progress, stating, "[i]t is important that [respondent] make the changes needed to parent her children, and it is clear that she will not be able to do this without intensive therapeutic intervention. Even then, it is questionable if she can make adequate change in a time frame that respects her child's primary need for a safe and permanent home."

¶ 21 On cross-examination, Victoria solicited testimony from Ms. Williams regarding her progress post-December 2009. Substantially, Ms. Williams stated that as of May 2010, Victoria had completed parenting classes at Sinai Parenting Institute, a 16-week program consisting of four-hour classes on Saturdays. She also had begun attending domestic violence counseling at Neopolitan Lighthouse. Furthermore, Ms. Williams stated that Victoria's psychiatric condition was being monitored during this time period through weekly visits to St. Bernard Hospital. Ms. Williams stated that during this time period Victoria was, in fact, showing signs of progress.

¶ 22 After Ms. Williams testified, all parties rested on the unfitness phase of the hearing, and presented arguments. The case was continued for court's ruling.

¶ 23 On August 18, 2011, the court orally reviewed the evidence and found that the State met

its burden, by clear and convincing evidence, that Victoria failed to "maintain a reasonable degree of interest, concern, or responsibility" and failed to "make reasonable efforts or progress." The court noted that "there is pretty clear – I would say fairly strikingly clear— non-compliance historically with the service plans in the case." The court also made note of the testimony elicited on cross-examination by Ms. Williams showing that Victoria had made progress in recent months stating "evidence of reformed behavior goes to issues of whether termination is in a child's best interest, not to the issue of parental unfitness."

¶ 24 The court then immediately proceeded with the second part of the bifurcated hearing, addressing whether it was in D.H.'s best interest to terminate parental rights and to appoint a guardian with right to consent to D.H.'s adoption. The State called two witnesses, Demeka Vaughn, D.H.'s foster parent and Ms. Williams. Ms. Vaughn testified as to the familial relationship that had developed between herself, her two biological children and D.H. over the past three years[5]. Stating that D.H. enjoyed playing with her foster cousins, and how everyone in Ms. Vaughn's extended family treated D.H. the same as the other natural born children in the family.

¶ 25 Ms. Williams again testified, stating that she saw D.H. on a regular basis, characterizing her as a friendly, happy, talkative and likeable child. Furthermore, despite earlier concerns, D.H.'s development skills since moving in with Ms. Vaughn and receiving therapy are now "more on target" for a three-year old. Her testimony concluded by stating that she believed it to be in the best interest of D.H. for Victoria's parental rights to be terminated and for the DCFS

[5]Malease, an older son of Victoria, is also currently placed in Ms. Vaughn's home.

appointed worker to be granted the extra authority to consent to the child's adoption.

¶ 26 On cross-examination, defense counsel elicited testimony from Ms. Williams regarding two of Victoria's other children, a newborn son, whom Victoria had custody of, and her daughter, Des. H., who was then subject to DCFS proceedings. Defense counsel's line of questioning elicited evidence that Victoria's other daughter Des. H., maintained a goal of "return home" in 12 months, and that the services suggested to Victoria to effectuate a "return home" for D.H. and Des. H. were identical. Finally, Ms. Williams stated on cross-examination that she personally witnessed Victoria showing signs of competence, including displaying appropriate parenting skills, consistently visiting D.H., completing domestic violence and parenting classes and consistently attending individual counseling. Victoria also briefly took the stand, stating that she wanted to testify but that "it won't serve no purpose."

¶ 27 Following arguments, the court stated that D.H. was a "very well-adjusted, likeable, social young lady, that she has a joyful attitude about life, that she is clearly comfortable in the home of Ms. V., that she sees that as her home, that she sees Ms. V. and her extended family as her family and that at this juncture to remove her from that setting and those people and that sense of security, would, I think, be an extraordinary injustice and extraordinary trauma." The court then entered an order, finding respondent unfit under ground (b) and under ground (m) and simultaneously appointed a guardian with the right to consent to D.H.'s adoption.

¶ 28 Respondent's notice of appeal from the August 18, 2011 order terminating parental rights was timely filed on September 14, 2011.

¶ 29 Analysis

¶ 30 Respondent raises a number of spurious constitutional challenges in this appeal. She first contends that the notice provided in the motion to permanently terminate parental rights and appoint guardian with power to consent to adoption violates procedural due process and equal protection of the laws. She also complains that ground (b) is facially vague and, as applied, is in violation of due process of law, and that it is not narrowly tailored to serve a compelling state interest, thus violating due process of law under the 14th amendment. The final constitutional challenge similarly avers that ground (m) violates the equal protection clause of the 14th amendment and is not narrowly tailored to achieve a compelling government interest. Respondent's lone non-constitutional challenge on appeal is that even if ground (b) were found to be constitutional, the state failed to show by clear and convincing evidence that Victoria failed to maintain a reasonable degree of interest, concern, or responsibility for D.H.'s welfare. For the following reasons, we affirm.

¶ 31 I. Constitutional Issues

¶ 32 As a primary matter, respondent concedes that she did not object to either the constitutionality of ground (b) or the adequacy of notice provided in the motion to permanently terminate parental rights. These objections are therefore forfeited. See 735 ILCS 5/2-612(c) (all defects in civil pleadings not objected to in the trial court are waived.) Furthermore, this court held *In re Einbinder*, 31 Ill. App. 3d 133, 136 (1975), that a respondent's failure to raise constitutional issue at trial precludes her from raising it for the first time on appeal.

¶ 33 Nonetheless, respondent cites *People v. Bryant*, 128 Ill. 2d 448 (1989), in support of her contention that a constitutional claim regarding the validity of a statute can be raised at any time.

Contrarily, petitioner points out that several cases have held that the *Bryant* is not applicable to unpreserved constitutional challenges in civil matters, most notably in cases involving the Illinois Juvenile Court Act and Adoption act. See. *In re J.F.*, 325 Ill. App. 3d 812,817 (2001); *In re Jaron Z.*, 348 Ill. App. 3d 239, 255 (2004). (Arguments regarding the constitutionality of the Juvenile Court Act and Adoption Act are forfeited and waived if not raised at trial.)

¶ 34 Despite this rather persuasive case law, we acknowledge respondent's argument that the First District has reviewed a constitutional argument in a civil case despite the respondent's failure to raise the issue at the initial hearing. *In Re Janira T.*, 368 Ill. App. 3d 883, 895 (2006). In that case, the First District elected to reach the constitutional issues raised as they related to the burden of proof of several of the same sections of the same statute involved in the case at bar. It also bears mention that court specifically upheld the constitutionality of the two sections that respondent complains of here. We, however, decline to reach the somewhat different challenges that respondent is pursuing here because we are persuaded that the supreme court's opinion in *In Re J.W.*, 204 Ill. 2d 50, 61 (2003), which held that a "constitutional challenge to a criminal statute can be raised at any time" does not extend to civil cases such as the one *sub judice*. See, *In Re P.S.*, 175 Ill. 2d 79, 89 (1997) (failure to argue issue regarding state constitution in the lower court waives the issue on appeal.) In light of these cases, we agree with the State in finding that *Bryant* does not apply to civil cases. See Supreme Court Rule 660(b) (eff. Oct. 1, 2001) (except in cases of juvenile delinquency, appeals from final judgments under the Juvenile Court Act are governed by the rules applicable to civil cases.)

¶ 35 Therefore, we find that respondent has failed to preserve his two alleged errors regarding

the constitutionality of ground (b) and the pleading requirements of the motion to permanently terminate parental rights and thus has waived the issue on appeal. Finally, this court will not review constitutional questions if there are other grounds upon which the case can be decided. *City of Chicago v. Powell*, 315 Ill. App. 3d 1136, 1140 (2000).

¶ 36 II. Sufficiency of the Evidence

¶ 37 Respondent next contends that the finding of unfitness under ground (b) was against the manifest weight of the evidence. In sum, respondent concedes that up until August 2009, she made minimal progress. After August 2009, however, Victoria maintains that she consistently visited D.H., and became compliant with the recommended services up until the time of the fitness hearing. She contends that the most relevant period in a fitness hearing is the most recent, and due to her recent improvements, it is impossible for the state to prove by clear and convincing evidence that Victoria failed to maintain a reasonable degree of interest, concern or responsibility to D.H.

¶ 38 "The state must prove parental unfitness by clear and convincing evidence." *In re D.F.*, 332, Ill App. 3d 112, 124. A finding of unfitness by the juvenile court's will be upheld on appeal unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). This means that the opposite conclusion must be clearly evident. *In re D.F.*, 332 Ill. App. 3d 112, 124 (2002) Further, "because of the delicacy and difficulty of child custody cases, wide discretion is vested in the trial court to an even greater degree than in any ordinary appeal to which the manifest weight principle is applied." *In re D.L.*, 226 Ill. App. 3d 177, 185 (1992).

¶ 39 Ground (b) provides that a court may find a parent unfit if the parent fails to maintain

reasonable concern, interest, or responsibility for the welfare of a child. 750 ILCS 50/1(D)(b) (West 2006). "In determining whether a parent showed reasonable concern, interest or responsibility as to a child's welfare, we have to examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." In *re adoption of Syck*, 138 Ill. 2d 255, 278 (1990). One of those factors is whether the parent routinely visited with the child, "however, if visitation is impractical, the parent can show reasonable concern, interest, and responsibility in a child through letters, telephone calls, and gifts, depending on the frequency and tone of those communications." *In re Gwynne P.*, 346 Ill. App. 3d 584, 591 (2004). Further, "completion of service plan objectives also can be considered evidence of a parent's concern, interest and responsibility." *Id.* Finally, courts will consider the parent's efforts which show interest in the child's well-being, regardless of whether those efforts were successful. *Id.*

¶ 40 As a primary matter, despite respondent's contention, nowhere in 750 ILCS 50/1(D)(b) does it state that "the most relevant time period in a fitness hearing is the most recent." It appears that respondent relies on *In re Gwynne P.*, 346 Ill. App. 3d at 593, to support its assertion that initial shortcomings can be rectified with recent progress. *In re Gwynne P.*, however, is distinguishable from the facts at hand. There, the respondent failed to comply with some of the services recommended to her because she was currently incarcerated and being held in segregation, preventing her from receiving the involved services. *Id* at 592. Once released from segregation, but while still incarcerated, the respondent completed a series of parenting classes and a substance abuse class. *Id.* Furthermore, the respondent made numerous written requests to have visits with her child. *Id.* Finally, upon release from prison, the respondent voluntarily

enrolled and completed a drug treatment program. *Id.* In the case *sub judice*, Victoria, despite being incarcerated briefly, had numerous opportunities where she was capable of visiting with D.H. and attending the recommended services but routinely failed to do so. Furthermore, at the risk of excessive reiteration, we find it particularly persuasive that Victoria failed to visit with D.H. a single time from March 9, 2009 to August 31, 2009, and that prior to those dates, Victoria did not regularly visit with D.H., saying that she missed some appointments for fear of an emotional breakdown. From the date the adjudicatory order was entered on August 18, 2008, Victoria failed to regularly visit or show interest in D.H.'s well being. Therefore, the finding of the lower court was not against the manifest weight of the evidence. Bluntly put, there was precious little evidence to the contrary.

¶ 41 Finally, respondent does not appeal the claim that the lower court erred in finding that she was unfit under ground (m). This is of particular note because, (1) "points not argued are waived" Ill. S. Ct. R. 341(h)(7) (eff July 1, 2008); and (2) "a finding of parental unfitness may be based on evidence sufficient to support any one statutory ground, even if the evidence is not sufficient to support other grounds alleged." *In re L.L.S.*, 218 Ill. App. 3d 444, 445 (1991). Therefore, this court need not address respondent's remaining contentions regarding the constitutionality of ground (m), as upholding the finding under ground (m) is sufficient to affirming the holding. The decision of the lower court is affirmed.

¶ 42 Affirmed.