2013 IL App (3d) 130262-U

Order filed August 27, 2013

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

In re K.B.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-13-0262
	)	Circuit No. 09-JA-50
v.	)	
	)	
Verdell S.,	)	Honorable
	)	Raymond J. Conklin,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the circuit court's orders finding the respondent to be an unfit parent and terminating his parental rights to the minor.

¶ 2 The circuit court entered orders finding the respondent, Verdell S., to be an unfit parent and terminating the respondent's parental rights to the minor, K.B. On appeal, the respondent challenges both of the circuit court's rulings. We affirm.

¶ 3 FACTS

¶ 4 On April 13, 2009, the State filed a juvenile petition alleging that the minor was dependent in that the minor's mother suffered from schizophrenia. After an adjudication hearing, on June 16, 2009, the court found that the minor was dependent. After a dispositional hearing, on August 4, 2009, the court made the minor a ward of the court, placed the minor with the maternal grandmother, and granted guardianship to the Department of Children and Family Services. The court also ordered, *inter alia*, the respondent to complete parenting classes, to obtain a substance abuse evaluation and comply with any associated recommendations, and to cooperate with an integrated assessment and to comply with any associated recommendations. Documents filed in the case indicated that after the integrated assessment, Lutheran Social Services (LSS) tasked the respondent with additional tasks, which will be noted below.

¶ 5 Other documents filed in this case indicated that the respondent and the minor's mother had two incidents of domestic violence; once in October 2009 and once in November 2009.

¶ 6 Numerous permanency review hearings were held in this case after the adjudicatory and dispositional hearings. A permanency review hearing report compiled on January 13, 2012, stated that the respondent's tasks included participating in individual counseling, maintaining stable housing, obtaining a substance abuse evaluation and submitting to random drug testing, participating in parenting classes, and maintaining employment. The report also noted that the respondent "reported that he has to complete community service but he is not willing to sign releases or reveal why he has community service." The report concluded that there was no indication that the respondent had made progress on any of his tasks. He had not contacted LSS at all during the time period covered by the report, which was July 8, 2011, to January 13, 2012. The relative caregiver told LSS that the respondent only had minimal contact with the minor; the

last reported visit was on December 25, 2011.

¶ 7 A permanency review hearing report compiled on June 25, 2012, stated that the respondent had contacted LSS only once during the time period covered by the report, which was since January 27, 2012. The respondent called to complain that the relative caregiver was not allowing him to see the minor. The caseworker told the respondent that LSS would schedule visits to be held at LSS, but the respondent did not contact LSS at all after that call to schedule any such visits. The respondent also told the caseworker that he had completed parenting classes and that he was working for the Acri Company. The report concluded that there was no indication that the respondent had made progress on any of his tasks.

¶ 8 A permanency review hearing report compiled on September 5, 2012, which covered the time period since July 17, 2012, stated that the respondent was incarcerated in the Rock Island County jail on allegations of domestic battery and aggravated battery. He had a domestic violence incident with the minor's mother in which she sustained a broken arm that required surgery. The report also stated that LSS had no contact with the respondent during the time period covered by the report.

¶ 9 On October 29, 2012, the State filed a petition to terminate the parental rights of the respondent and the minor's mother. With regard to the respondent, the petition alleged that the respondent had failed to: (1) show a reasonable degree of interest, concern, or responsibility as to the minor's welfare; (2) make reasonable efforts to correct the conditions that were the basis for the minor's removal; (3) make reasonable progress toward the return of the minor during the nine-month period following the August 4, 2009, adjudication; and (4) make reasonable progress toward the return of the minor during the nine-month periods between May 4, 2010, and

February 4, 2011, between February 4, 2011, and November 4, 2011, and between November 4, 2011, and August 4, 2012.

¶ 10 The petition further alleged that the respondent failed to maintain a substance-free lifestyle; allegedly perpetrated multiple instances of domestic violence and that he was currently in jail awaiting aggravated battery and domestic battery charges; failed to attend counseling; failed to attend all visits with the minor and had little contact with him over the past year; failed to maintain employment; and failed to maintain regular contact with Lutheran Social Services over the past year.

¶ 11 After several continuances, on February 11, 2013, the circuit court set the case for a hearing on the termination petition to be held on March 15, 2013. The court's order also stated that the best-interest hearing would be held on the same day, if it was necessary.

¶ 12 The hearing was ultimately held on the petition on March 18, 2013. During the fitness portion of the hearing, the State presented evidence on the termination petition's allegations. With regard to the allegation that the respondent failed to make reasonable progress toward the return of the minor to his care during the nine-month period between November 4, 2011, and August 4, 2012, the State presented the testimony of two caseworkers. First, Miranda French testified that she was the caseworker from December 2009 to January 2012. She compiled the above-mentioned permanency review hearing report dated January 13, 2012. She testified that during that time period, she did not received return calls from the respondent after she tried calling him. She also testified that she looked into the respondent's complaints of the relative caregiver not allowing him to visit with the minor. French stated that the relative caregiver denied the allegations, and she also noted that the relative caregiver had previously agreed to

allow the respondent to visit the minor on Wednesdays and Saturdays. Ultimately, the visits were moved to Wednesdays at the respondent's home under the supervision of French or a case aide. The respondent's visitation was inconsistent, although he was appropriate during the visits. French also testified that the respondent had completed parenting classes in August 2010 and that the respondent had told her he was working for the Acri Company, but he never provided any employment verification.

¶ 13 Second, Collette Johnson testified that she was the caseworker from April 2012[1] to the present. She prepared the above-mentioned permanency review hearing reports dated June 25, 2012, and September 5, 2012. During those time periods, she had no contact with the respondent. As noted in the above-mentioned permanency review hearing report compiled on June 25, 2012, the respondent did contact LSS once; he spoke to an LSS employee other than Johnson.

¶ 14 After the circuit court took judicial notice of numerous documents from the case, including the above-mentioned permanency review hearing reports, the respondent testified. He stated that he had been performing seasonal work for the Acri Company for approximately seven years. He also stated that he was unaware of his individual counseling and domestic violence tasks. He testified that he signed releases required by his caseworkers and that he attended visits with the minor. He stated that his sporadic visitation was due to the relative caregiver preventing him from seeing the minor. He also stated that he never recalled the caseworkers asking for pay stubs to verify his employment, and, if they did, it was likely during the offseason.

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[1] Johnson testified that another caseworker temporarily had the case in between French and Johnson.

¶ 15 After closing arguments, the circuit court found that the State had proven by clear and convincing evidence that the respondent had failed to: (1) show a reasonable degree of interest, concern, or responsibility as to the minor's welfare; (2) make reasonable progress toward the return of the minor during the nine-month period following the August 4, 2009, adjudication; and (3) make reasonable progress toward the return of the minor during the nine-month periods between May 4, 2010, and February 4, 2011, between February 4, 2011, and November 4, 2011, and between November 4, 2011, and August 4, 2012.

¶ 16 During the best-interest portion of the hearing, the best-interest hearing report Johnson prepared was entered into evidence. The report alleged that the respondent failed to cooperate with substance abuse treatment, mental health treatment, and domestic violence counseling. The respondent also allegedly did not obtain housing or employment and did not maintain contact with the minor through visits. In addition, the respondent also allegedly continued to be physically violent toward the respondent's mother; he was arrested in August 2012 for domestic battery toward her and his elderly father. The minor's mother suffered a fractured arm that required surgery. In addition, the respondent was arrested in January 2013 in Iowa on allegations of domestic assault toward the minor's mother and of violating an order of protection. Johnson recommended that the circuit court terminate the respondent's parental rights.

¶ 17 Johnson also testified with regard to the minor's current placement with his maternal aunt. The minor had resided there since July 2012, but he had spent a significant amount of time there prior to the official placement. The maternal aunt had been living at the maternal grandmother's house at the time the minor had been placed there, so she had been participating in the care for the minor since that time. The minor called both his mother and the maternal aunt "mom" and

"mommy," respectively. Johnson claimed that the bond the minor had with the maternal aunt was more of a parent-child bond than aunt-nephew. Johnson stated that the maternal aunt was taking good care of the minor, including his physical, emotional, and educational needs. The maternal aunt also had a paramour of approximately three years with whom the minor was familiar for a long time; the minor called him "dad." The maternal aunt's paramour also had a six-year-old son with whom the minor was familiar. The maternal aunt also wanted to adopt the minor, which was a plan that the minor's mother supported.

¶ 18 The respondent testified that he believed it was important for the minor to know who his real father was and that he had the ability to care for the minor. The respondent's attorney also asked the circuit court to take judicial notice of the respondent's testimony from the fitness portion of the hearing, which included the respondent testifying that the minor calls him "dad" and that he wanted–and had the ability–to care for the minor.

¶ 19 At the close of the best-interest portion of the hearing, the circuit court found that it was in the minor's best interest to terminate the respondent's parental rights.

¶ 20 On March 22, 2013, the circuit court issued a written order in which it memorialized its rulings that the respondent was an unfit parent and that it was in the minor's best interest to terminate the respondent's parental rights. The respondent appealed.

¶ 21 ANALYSIS

¶ 22 On appeal, the respondent argues first that the circuit court erred when it found him to be an unfit parent.

¶ 23 At a hearing on a termination petition, the State must prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2010); 750 ILCS 50/1(D) (West

2010); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). While numerous statutory grounds for unfitness exist (750 ILCS 50/1(D) (West 2010)), only one ground is necessary to prove that a parent is unfit (*In re H.D.*, 343 Ill. App. 3d 483, 493 (2003)). One such ground is the "[f]ailure by a parent *** (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 ***." 750 ILCS 50/1(D)(m)(iii) (West 2010). After the establishment of a service plan, the failure to make reasonable progress includes "the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care ***." 750 ILCS 50/1(D)(m)(iii)(II) (West 2010). We will not disturb a circuit court's unfitness determination unless that ruling was against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). An unfitness determination is against the manifest weight of the evidence when "the opposite conclusion is clearly apparent." *Gwynne P.*, 215 Ill. 2d at 354.

¶ 24 Our review of the record in this case reveals that the circuit court's unfitness determination was not erroneous. The termination petition included several allegations of parental unfitness, including the respondent's failure to make reasonable progress toward the return of the minor to his care during the nine-month period between November 4, 2011, and August 4, 2012. During this time period, the respondent had essentially no contact at all with LSS, save one phone call regarding visitation. The permanency review reports dated June 25, 2012, and September 5, 2012, in conjunction with the testimony of caseworkers French and Johnson, showed that the respondent in fact made no progress at all on his tasks. Under these circumstances, we hold that the circuit court's unfitness determination was not against the

manifest weight of the evidence.

¶ 25 The respondent's second argument on appeal is that the circuit court erred when it found that it was in the minor's best interest to terminate his parental rights.

¶ 26 Once a parent has been found unfit after a hearing on a termination of parental rights petition (705 ILCS 405/2-29 (West 2010); 750 ILCS 50/1(D) (West 2010)), the issue to be determined is whether it is in the best interest of the child to terminate parental rights (705 ILCS 405/2-29(2) (West 2010)). Section 1-3(4.05) of the Juvenile Court Act of 1987 provides:

> "Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:
>
> (a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
>
> (ii) the child's sense of security;
>
> (iii) the child's sense of familiarity;
>
> (iv) continuity of affection for the child;
>
> (v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2010).

¶ 27 "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). A circuit court's best-interest ruling will not be overturned on review unless it was against the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 28 Our review of the record reveals that the circuit court's best-interest ruling was not erroneous. This juvenile case had been open for approximately four years at the time of the best-interest hearing. The minor was doing well in the maternal aunt's care. While the minor had only been placed with the maternal aunt since July 2012, the maternal aunt played a significant role in the minor's care ever since the minor was placed with the maternal grandmother over two years earlier. The maternal aunt also wanted to adopt the minor. We believe the minor's need for stability and permanence was best suited by terminating the respondent's parental rights. Accordingly, we hold that the circuit court's best-interest ruling was not against the manifest weight of the evidence.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Rock Island County is affirmed.

¶ 31 Affirmed.