2017 IL App (3d) 160776-U

Order filed April 18, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re E.O.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Tazewell County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-16-0776
	)	Circuit No. 13-JA-57
v.	)	
	)	
Halli O.,	)	
	)	The Honorable
Respondent-Appellant).	)	Mark E. Gilles,
	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Holdridge and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determination of parental unfitness pursuant to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2014)) was not against the manifest weight of the evidence.

¶ 2 The State filed a petition for termination of parental rights against respondent, alleging respondent failed to make reasonable progress toward the return of the minor pursuant to section

1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2014)). The trial court determined respondent was unfit pursuant to section 1(D)(m) and terminated respondent's parental rights. We affirm.

¶ 3 FACTS

¶ 4 In October 2013, the State filed a shelter care petition against respondent Halli O. alleging the minor, E.O. (born May 24, 2007), was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) because respondent had a history of not being able to provide safe and minimal parenting to E.O. In June 2014, the trial court entered an adjudicatory order finding E.O. was neglected because E.O. resided in an environment that was injurious to his welfare.

¶ 5 The matter was set for a dispositional hearing. At the hearing, E.O. was made a ward of the court, guardianship was granted to the Department of Children and Family Services (DCFS), and respondent was found unfit. Respondent received a service plan, ordering her to do the following: execute all authorizations for releases of information requested by DCFS or its designees; cooperate fully with DCFS or its designees; submit to a psychological examination and follow all recommendations; participate in and successfully complete counseling; participate and successfully complete a parenting course or parenting classes; obtain stable housing; provide the caseworker with any change in address and/or phone number within three days; provide the caseworker with the name, date of birth, social security number, and relationship of any individual requested by DCFS that it believes will affect the minor; and visit with the minor child at times and places set by DCFS and demonstrate appropriate parenting conduct during visits.

¶ 6 In January 2015, the matter was set for permanency review. In the permanency review report, Sarah Mark, respondent's caseworker, stated respondent made mixed efforts during the

six-month reporting period from July 3, 2014, to December 26, 2014. During respondent's visits with her son, she demonstrated appropriate parenting skills although she was a no-show or cancelled some of her visits and was often late when she did visit. Respondent completed her psychological evaluation with Dr. Luke Dalfiume. Dr. Dalfiume diagnosed respondent with obsessive-compulsive disorder and obsessive-compulsive personality disorder with some avoidant and paranoid symptoms, and he suggested individual psychotherapy and a psychotropic medication consultation. At the time, respondent had attended 11 out of 20 counseling sessions. An addendum suggested respondent should attend counseling more consistently in order to experience success. Respondent was referred multiple times to Love & Logic parenting class, but she did not successfully complete the class. Respondent obtained a mobile home in Morton, Illinois, during the reporting period but it was found not safe for the healthy rearing of a child because the home needed multiple repairs. Respondent reported that she stays at various friends' houses because there was no heat in the home. Respondent eventually moved to Peoria, Illinois, but failed to report it to DCFS. The caseworker mailed a letter to respondent's address in Peoria but the letter was returned as undeliverable.

¶ 7 The trial court determined that respondent remained an unfit parent because respondent failed to consistently engage in counseling, failed to consistently visit E.O., and lacked stable housing. The next permanency hearings were scheduled for July 2 and December 31, 2015. In both permanency review reports, respondent made mixed efforts.

¶ 8 In January 2016, the State filed a petition for termination of parental rights. Count I alleged that respondent was unfit for failure to make reasonable progress toward the return of the minor between June 6, 2014, and March 6, 2015. Count II alleged that respondent was unfit for

failure to make reasonable progress toward the return of the minor during any nine-month period after the end of the initial nine-month period in count II.[1]

¶ 9 A hearing was held on the petition for termination of parental rights. At the hearing, Sarah Williamson (formerly Sarah Mack) testified on behalf of the State. Sarah testified most of the services in respondent's plan were rated unsatisfactory in October 2014. Respondent was cooperative when signing releases requested but was dishonest and inconsistent in continuing to engage in services. Specifically, in August 2014, respondent failed to attend a child and family team meeting to discuss services; however, respondent attended a follow-up meeting. At the follow-up meeting, respondent agreed to be re-referred to a parenting class and discussed concerns with E.O.'s behavior. In October 2014, a subsequent team meeting was held in which respondent was made aware of her services and unsatisfactory rating. Sarah testified that respondent completed her psychological evaluation in which Dr. Dalfiume recommended psychotropic medication but indicated that no barriers prevented respondent from regaining fitness. Sarah attempted to have respondent sign up for health insurance under the Affordable Care Act but respondent never obtained the medication. Furthermore, Sarah stated that respondent did not complete her parenting class although she was referred three times. Sarah testified that respondent was unable to maintain stable housing because the mobile home had no heat, had a hole to the outside, and contained only a sleeping bag. Also, respondent was inconsistent in her visits with E.O.

¶ 10 On cross-examination, Sarah testified that respondent had two parenting classes left to attend but could not complete the class due to contractual problems at DCFS. Sarah stated that respondent missed eight visits during the reporting period, seven of which were the result of a

[1] To note, the State's petition was based on an outdated version of section 1(D)(m), and the State did not amend the petition to reflect the applicable version of the statute. See Pub. Act 98-532, § 5 (eff. Jan. 1, 2014) (amending 750 ILCS 50/1 (West 2014))

work conflict. Regarding respondent's counseling, Sarah testified that, by the first permanency review, respondent was not consistently attending her meetings, that Sarah had a conversation with respondent about the importance of counseling, and that respondent began attending counseling on a regular basis thereafter. Sarah stated she did not know how long the waiting period was between enrollment for health insurance under the Affordable Care Act and receipt of medication.

¶ 11 At the end of Sarah's testimony, the parties rested their cases. The trial court ruled that the State proved by clear and convincing evidence that respondent failed to make reasonable progress within the nine-month period, stating:

> "With respect to Count I, obviously, a much more difficult decision. Parties have taken very reasonable and well spoken positions on what the Court ought to do. Considering everything as it was presented, I do find that by clear and convincing evidence it's been proved, that there was a failure to make reasonable progress in the nine-month period alleged in Count I.
>
> I say that even though I note that there were efforts that were made on behalf of the mother. I say that knowing that in the scheme of failure to make progress in these types of cases that have been before me and those others that are in the courtroom, this isn't the most egregious. The fact remains I find that there was failure to make reasonable progress when considering all set before the Court today and all that was asked of the Court to note which have transpired in other moments prior that the prior judge sat in

here with respect to the applicable time period, and I've already made note of those orders which I'm taking note of. So I find Count I proved by clear and convincing evidence."

¶ 12 In July 2016, the best interest hearing was set. At the hearing, Austin Haddock, respondent's caseworker from August 2015 to August 2016, testified to the best interest report he drafted for the court. Particularly, Austin testified that since E.O. had lived with his current foster family, his behavior had significantly improved and he enjoyed the structure of his current residence. Also, Aimee Dluski, guardian *ad litem*, testified that E.O. enjoyed the structure at his current foster home. Wendy Anderson, E.O.'s foster mother, testified that E.O. had lived with her family since June 2016 and that both Wendy and E.O. desire to continue living together in the Anderson home.

¶ 13 Respondent testified that she had resided in a two bedroom duplex since July 2016, that she was employed full-time, and that E.O. appeared happy to see her during visits. Furthermore, respondent testified that she did not believe it was in the best interest of E.O. to terminate her rights.

¶ 14 At the end of the hearing, the trial court terminated respondent's parental rights and named DCFS guardian with the right to consent to adoption. Respondent appealed.

¶ 15 ANALYSIS

¶ 16 Respondent argues the trial court's determination that she was unfit pursuant to section 1(D)(m) was against the manifest weight of the evidence. Respondent does not contest the trial court's ruling that termination of respondent's parental rights was in the best interest of E.O. Therefore, we focus our review on the trial court's determination of parental unfitness.

¶ 17 The State brought count I pursuant to item (ii) of section 50/1(D)(m) and count II pursuant to item (iii) of section 50/1(D)(m). However, item (iii), which defined an unfit parent as one who failed to make reasonable progress during any nine-month period after the end of the initial nine-month period, was stricken from the section in January 2014 (Pub. Act 98-532, § 5 (eff. Jan. 1, 2014)), and the State did not amend its complaint, which was filed in January 2016. Currently, item (ii) of section 1(D)(m) is broad enough to cover the allegations made in count II, as the statute now defines the relevant time period for reasonable progress as any nine-month period following adjudication. 750 ILCS 50/1(D)(m) (West 2014). Because the standard of review is whether the trial court's ruling is against the manifest weight of the evidence, we examine respondent's claims based on the trial court's determination that respondent failed make reasonable progress toward the return of E.O. during the nine-month period of June 6, 2014, and March 6, 2015.

¶ 18 Section 1(D)(m) states, in relevant part:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***
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> * * *
>
> (m) Failure by a parent *** (ii) 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 or dependant minor under Section 2-4 of that Act. If a service plan

> has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, 'failure to make reasonable progress toward the return of the child to the parent' 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 during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987." 750 ILCS 50/1(D)(m) (West 2014).

¶ 19 In light of the child's best interest, reasonable progress requires demonstrable action toward the goal of the return of the child. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. "[T]he benchmark for measuring a parent's progress toward the return of the child under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." (Internal quotation marks omitted.) *Id.* (quoting *In re C.N.*, 196 Ill. 2d at 216-17). Evidence of reasonable progress is present when "the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Id.* Courts must only consider evidence occurring during the nine-month period stated in section 1(D)(m) of the Adoption Act. *Id.* ¶ 35; see 750 ILCS 50/1(D)(m) (West 2014). A trial court's determination of parental unfitness will be reversed only if it is against the manifest

weight of the evidence. *In re C.N.*, 196 Ill. 2d at 208. A finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *Id.*

¶ 20 Although respondent improved toward the end of the relevant nine-month period, respondent still failed to comply with numerous objectives in her service plan. After E.O. was made a ward of the court, respondent received a service plan that required respondent to perform certain tasks in order to correct the conditions that led to E.O.'s removal, including cooperate with DCFS; complete counseling; complete a parenting course; obtain stable housing; provide caseworker with change of address; and visit E.O. at times and places set by DCFS. During the relevant nine-month period, respondent did not complete her parenting class after being referred multiple times to the Love & Logic parenting class. Respondent did not complete her counseling as she only attended 11 out of 20 sessions. Respondent did not consistently visit E.O. during DFCS's scheduled dates and times because respondent missed approximately 8 out of 25 visits or was frequently late to visits.

¶ 21 Moreover, respondent failed to obtain stable housing. Specifically, the mobile home that respondent obtained during the reporting period was not safe for the healthy rearing of a child because it needed multiple repairs, *i.e.*, it did not have heat, there was a hole to the outside, and it contained only a sleeping bag. Because of this, respondent stayed at various friends' houses. Respondent eventually moved to Peoria but failed to report it to DCFS. When Sarah mailed a letter to the Peoria address, the letter was returned as undeliverable. Respondent's failure to comply with her service plan continued even after she was made aware of her unsatisfactory rating in October 2014. Under the circumstances, we hold the trial court's determination that respondent was unfit pursuant to section 1(D)(m) was not against the manifest weight of the evidence. We affirm the trial court's ruling.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Tazewell County is affirmed.

¶ 24 Affirmed.