2017 IL App (3d) 170215-U

Order filed August 15, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re P.H. and A.W.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-17-0215 and 3-17-0216
	)	Circuit Nos. 3-JA-227 and 13-JA-228
v.	)	
	)	
Amber H.,	)	
	)	The Honorable
Respondent-Appellant).	)	Mark E. Gilles,
	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: The trial court's finding of parental unfitness and subsequent decision to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 The State filed a petition for termination of parental rights against respondent, alleging she failed to make reasonable progress toward the return of P.H. and A.W. during the nine-

month period between July 15, 2015, and April 15, 2016, pursuant to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2016)). The trial court found respondent dispositionally unfit and terminated her parental rights. On appeal, respondent argues that the trial court's rulings were against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 In August 2013, the State filed juvenile petitions, alleging minor P.H., born February 5, 2008, was abused and neglected and minor A.W., born August 11, 2009, was neglected. In particular, the petitions stated that respondent Amber H., P.H. and A.W.'s mother, was physically and verbally abusive to P.H. on multiple occasions. Furthermore, the petitions stated police executed a search warrant in minors' home, suspecting that Billy Wade, Jr., respondent's putative paramour, was selling drugs at the home, and the search found cocaine, cannabis, a handgun, ammunition, and drug paraphernalia. Billy Wade's criminal history included attempted robbery, theft, domestic violence, possession of a controlled substance, resisting police, and possession of a weapon by a felon. Also, the petitions state respondent had mental health problems and had been diagnosed with bipolar disorder. At the adjudicatory hearing, respondent stipulated to the facts alleged in the petitions, and the court adjudicated P.H. a neglected and abused minor and A.W. a neglected minor.

¶ 5 In January 2014, a dispositional hearing was held. At the hearing, the court found respondent dispositionally unfit to have custody of the minors. Respondent received a service plan to remedy the conditions that led to the adjudication of the minors. The service plan ordered respondent to do the following: (1) execute all authorizations for release of the information requested by the Department of Children and Family Services (DCFS) or its designee; (2) cooperate fully and completely with DCFS or its designee; (3) obtain a drug and alcohol

assessment arranged by DCFS or its designee; (4) perform random drug drops three times per month; (5) submit to a psychological examination arranged by DCFS or its designee and follow any recommendations; (6) participate in and successfully complete counseling; (7) participate in and successfully complete a domestic violence course specified by DCFS or its designee; (8) obtain and maintain stable housing conducive to the safe and healthy rearing of the minors; (9) provide the assigned caseworker any change of address and/or phone number; (10) provide the assigned caseworker with the name, date of birth, and social security number and relationship of any individual requested by DCFS or its designee; (11) visit with the minors at times and places set by DCFS or its designee and demonstrate appropriate parenting conduct; (12) use best efforts to obtain and maintain employment or other legal source of income; (13) successfully complete an anger management program; and (14) use best efforts to obtain a G.E.D.

¶ 6 In May 2016, the State filed a petition for termination of parental rights, alleging respondent was unfit for failing to make reasonable progress toward the return of the minors during the nine-month period between July 15, 2015, and April 15, 2016. In January 2017, the termination hearing commenced. At the hearing, respondent testified as an adverse witness for the State. Respondent stated that, prior to the relevant nine-month period, she underwent a psychological evaluation and drug and alcohol assessment. The drug and alcohol assessment concluded that respondent did not need treatment. Respondent completed a domestic violence program, a parenting class, and was currently working on obtaining her G.E.D. At the beginning of January 24, 2016, respondent's drug test requirement was reduced to once per month. Respondent was instructed to pay for these drug tests, but she said she could not afford them. Prior to that date, respondent performed her drug tests and the results were negative.

¶ 7 Brooke Manahan, a case aide, testified that in September 2015, she overheard respondent talking on the phone. Respondent angrily stated "something along the lines of her children were living with a rapist and then she said that she was going—or she would burn the building down."

¶ 8 The judge took judicial notice of the following: the juvenile petitions; a shelter care order; a November 2013 adjudication order; the January 2014 dispositional order; permanency review orders from June 2014, October 2014, and April 2015; a July 2015 motion for unfitness; and a July 2015 permanency order in which respondent was declared unfit based on unsanitary conditions and unsuitable persons in the home.

¶ 9 The State submitted various exhibits into evidence. In the July 2015 permanency order, the court ordered respondent to attend family counseling with the minors. In the July 30 counseling report, the clinician addressed respondent's anger issues and advised her on using "locus of control" to manage her emotions. Respondent agreed that she would continue to come to counseling and complete her goals.

¶ 10 In the September 11 counseling report, the clinician heard respondent state that Wade was part of their family to the minors. The September 17 counseling report stated Amber was upset about her losing custody of P.H. to P.H.'s father, George Lewis. Although the clinician repeatedly encouraged Amber to practice self-control, Amber was "yelling and swearing" for the majority of the session. Amber admitted she was not living at her residence because she had found mold growing in her home, had found a rat's nest in the basement, and had discovered the ceiling had fallen. Amber stated that the night before she had slept in her car and later slept at Wade's house. Furthermore, respondent and Wade filed a petition to establish a parent-child relationship, requesting the court to acknowledge Wade as A.W.'s legal father. The petition did not mention the wardship or DCFS involvement. Amber did not request a DNA test and believed

up to four men could be A.W.'s biological father. During the September 18 counseling session, A.W. asked respondent, "Who is my father?" and respondent stated "we're going to court to set that up." The clinician advised respondent to avoid speculation and provide A.W. with the information when she was certain of the answer. Respondent then stated she knew Wade was the father.

¶ 11 The October 6 counseling report revealed Amber was "quite belligerent[ ] repeatedly and demonstrated little self-control, even with prompts from this clinician." Amber insisted on supporting Wade in establishing paternity of A.W. The counseling supervisor, Sheila Duvall, explained to Amber that she was concerned about how Amber's decision to video message Wade on FaceTime while Amber and A.W. were at church might cause A.W. confusion because she wants to know her father. Amber did not believe her actions were inappropriate and was "unwilling/ unable to state why making Billy Wade [A.W.'s] father is at this time important or helpful." It was later determined through DNA testing that Wade was not the father of A.W.

¶ 12 The January 8, 2016, counseling report showed that Amber did not have housing and that she stayed at Wade's house or with a friend when she had no children in her care. When Duvall stated she would be writing a court report explaining that respondent was not demonstrating sufficient progress toward the return of the minors, respondent became defensive and started screaming at Duvall. Respondent ignored Duvall's multiple requests to settle down and "apply learned skills to manage her emotions more productively."

¶ 13 The January 14 counseling progress report discussed concern with respondent's "severe emotional dysregulation, disruption in daily living as indicated by lack of stable housing, unresolved loss issues related to her daughter [P.H.'s] return to her and chronic lack of an appropriate support system." The report also stated "while [respondent] attends counseling on a

regular basis, her progress and goal attainment are limited. She remains excitable and intermittently explosive where she appears to lack capacity to regulate her emotions when challenged by her caseworker and on occasion this clinician."

¶ 14 Respondent also testified on her own behalf. Respondent stated she had been living at her new residence since February 2, 2016, and was current on her rent. She received $735 per month in disability payments. She attended counseling every week during the relevant nine-month period and attended parenting class. She was unable to pay for her drug drops. Her visit attendance with P.H. was "fair" and with A.W. was "good."

¶ 15 Wade testified that, during the relevant nine-month period, he was not romantically involved with respondent but that respondent did occasionally stay at his residence because "of the condition of the house she was in. It had a rat infestation in the basement and the landlord wouldn't fix it, so she was in the process of moving." Wade stated he has not had contact with the minors.

¶ 16 The guardian *ad litem* testified that although respondent completed anger management, she did not gain "the discernable skills to resolve the anger management issues." Also, she testified that respondent did not work on the issue of removing unsuitable people from her children's life; the same issue that "caused the case to come into care." Adopting the reasoning of the State and guardian *ad litem*, the court determined that the State proved respondent was unfit by clear and convincing evidence.

¶ 17 In February 2017, the best interest hearing was held. The best interest report revealed A.W. had lived in a licensed foster home for three years. The foster family expressed interest in adopting A.W. Their home was clean, safe, and inviting for children. The family met A.W.'s basic needs, and A.W. is in good health. A.W. made significant progress in school. The

caseworker observed a trusting, nurturing connection between A.W. and her foster parents, and A.W. expressed a desire to remain with them. A.W. had many friends at her church, and she appeared to be loved and accepted in the foster home. A.W. and respondent did not have a strong mother-daughter relationship. A.W. often complained about visiting respondent.

¶ 18 The report also showed P.H. lived with her father, Lewis, and there were "few concerns" about P.H.'s safety and welfare in her father's care. P.H. was doing well in school. She had a positive relationship with her father and desired to stay with him. P.H. enjoyed spending time with her extended family and knew "all of the children who live on her street." P.H. was afraid of respondent and had requested not to have visits with her. The caseworker concluded that it was in the best interest of P.H. and A.W. that the court terminate respondent's parental rights.

¶ 19 After the admission of the best interest report, respondent testified that she had stable housing for two years and that she lived alone. Respondent completed a drug and alcohol assessment, regularly attended counseling, completed domestic violence training, and completed anger management. Respondent did not obtain her G.E.D. and was not performing the ordered drug tests. Respondent was taking her medications as prescribed by her physician. She had regular visits with A.W. but had not visited P.H. in two years. The court terminated respondent's parental rights to both minors. Respondent appealed.

¶ 20 ANALYSIS

¶ 21 I. Parental Unfitness

¶ 22 Respondent argues that the trial court's finding of parental unfitness was against the manifest weight of the evidence. The State contends that it proved by clear and convincing evidence that respondent failed to make reasonable efforts toward the return of the minors because respondent did not correct the conditions that that gave rise to the minors' removal.

¶ 23 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 2016).

¶ 24 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*. 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 relevant nine-month period. *Id.* ¶ 35; see 750 ILCS 50/1(D)(m) (West 2016). 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.*

¶ 25 We believe the record provides evidence that respondent failed to make reasonable progress toward the return of the minors. To begin, respondent failed to correct the conditions that gave rise to the removal of the minors. The minors were removed from respondent's home because Wade was selling drugs at the residence. Wade also had an extensive criminal record. Still, respondent continued her communication with Wade and occasionally spent the night at his residence during the relevant nine-month period. Also, respondent video messaged Wade on FaceTime while she was at church with A.W., potentially causing A.W. confusion about Wade's status as her father. Counseling staff told respondent that her actions were inappropriate, but she continued to have a relationship with Wade, assisted him in his petition to establish a parent-child relationship with A.W., and stated that he was a part of their family.

¶ 26 Next, respondent failed to put lessons from counseling and anger management sessions into practice. Although respondent completed anger management, she exhibited anger toward the

counseling staff on several occasions even after staff reminded her to utilize self-control techniques. In particular, during the July 30, 2015, counseling session, the clinician and respondent discussed respondent's anger issues and advised her on anger management techniques. Yet, at the September 17 counseling session, respondent was yelling and screaming for the majority of the session even though she was encouraged to practice self-control and she continued this behavior at the October 6 counseling session. The January 24, 2016, counseling report, addressed concern for respondent's emotional dysregulation, and the guardian *ad litem* testified that although respondent completed anger management, she did not gain "the discernable skills to resolve the anger management issues."

¶ 27 Also, respondent failed to obtain and maintain stable housing. In September 2015, respondent admitted that she did not live in her home because she had found mold growing in her home, had found a rat's nest in the basement, and had discovered the ceiling had fallen. As a result, respondent chose to sleep in her car and, later, at Wade's residence. Wade testified that, during the relevant nine-month period, respondent occasionally stayed at his residence because her house was in disrepair. Wade explained, "It had a rat infestation in the basement and the landlord wouldn't fix it, so she was in the process of moving." Although respondent testified that she was living in a different residence at the beginning of February 2016, there is no evidence in the record that respondent reported this information to DCFS and no evidence on the conditions of the residence.

¶ 28 Lastly, respondent failed to perform her drug tests as ordered by the court. We acknowledge that respondent was complying with her drug test requirement until January 24, 2016, and that her results were negative. Yet respondent failed to perform drug tests after January 24 and there is no evidence in the record that respondent communicated her inability to

pay for drug testing to DCFS. For the reasons presented, we hold that the trial court's finding of parental unfitness was not against the manifest weight of the evidence.

¶ 29 II. Best Interest

¶ 30 Respondent next alleges that the trial court's ruling terminating her parental rights was against the manifest weight of the evidence.

¶ 31 At the best interest stage, the State must prove by a preponderance of the evidence that it is in the child's best interest to terminate parental rights. *In re B.B.*, 386 Ill. App. 3d 686, 699 (2008). In making its determination, a court must consider at least eight factors " 'in the context of the child's age and developmental needs.' " *Id.* at 698 (quoting 705 ILCS 405/1-3(4.05) (West 2006)). The statutory factors include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background; (4) the child's sense of attachment, including love, security, familiarity, and continuity of relationships with parent figures; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). "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). The trial court's determination to terminate parental rights will be set aside if it is against the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d at 697. A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *Id.* at 697-98.

¶ 32 Based on the evidence presented, the minors' current residences provided a stable, loving home life. As shown above, there was no concern for the minors' physical safety and welfare, the minors were doing well in school, they had established friends within their communities, they desired to remain at their current residences, and A.W.'s foster parents had expressed an interest in adopting her. Also, we find P.H.'s fear of respondent disconcerting, and we note that A.W. and respondent do not have a strong mother-daughter relationship. Under the circumstances, we hold that the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 33 CONCLUSION

¶ 34 The judgment of the circuit court of Peoria County is affirmed.

¶ 35 Affirmed.