2012 IL App (4th) 120588-U

NOS. 4-12-0588, 4-12-0589 cons.

FILED
November 19, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.C. and K.C., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v. (No. 4-12-0588)	)	No. 11JA21
DeJACQUELINE CHATMAN,	)	
Respondent-Appellant,	)	
	)	
In re: T.C. and K.C., Minors,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0589)	)	Honorable
WILLIAM SHAW,	)	John R. Kennedy,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness and best-interest determinations were not against the manifest weight of the evidence.

¶ 2 Respondent father, William Shaw, and respondent mother, DeJacqueline Chatman, were found to be unfit and their parental rights to their minor children, T.C., (born November 24, 2003) and K.C. (born December 20, 2004), were terminated. Shaw appeals (No. 4-12-0589), arguing the trial court erred in finding him unfit. Chatman appeals (No. 4-12-0588), arguing the court erred in finding the termination of her parental rights was in the best interests of the minor children. We affirm.

¶ 3 I. BACKGROUND

¶ 4 According to the April 2011, shelter-care report, Chatman was released from a four-year Minnesota prison term in 2010. Chatman admitting being addicted to crack cocaine for the past three years. Chatman stated she allowed drug dealers to use her home as a crack house to sell drugs. The report also indicated Chatman had a long history with Child Protection Services in Illinois and Minnesota and had lost her parental rights to five previous children. On February 23, 2011, the Department of Children and Family Services (DCFS) was notified Chatman and Troy McKinzie had been arrested for domestic battery. The report indicated police responded to a noise complaint involving a fighting couple. When police arrived, they discovered Chatman's eye was swollen. T.C. and K.C. were present during the altercations and one of them reported witnessing McKinzie punching Chatman in the face. We note McKinzie is not a party to this appeal. DCFS received another report on April 7, 2011, indicating the minors were found home alone in their unlocked apartment at 4 a.m. sleeping on the couch.

¶ 5 On April 11, 2011, the State filed petitions for adjudication of neglect and shelter care as to Chatman, T.C. and K.C.'s mother, Shaw, the putative father of K.C., and Anteo Foote, the putative father of T.C. We note Foote is not a party to this appeal. The petitions alleged the minors were neglected in that their environment was injurious to their welfare because they resided with Chatman who exposes them to substance abuse (count I) and domestic violence (count II).

¶ 6 On May 31, 2011, the trial court held an adjudicatory hearing on the State's petition and found the State had proved both counts I and II. The court adjudicated the minors neglected, made them wards of the court, and placed their custody and guardianship with DCFS.

¶ 7 According to the September 29, 2011, permanency report, Chatman had not engaged in any of the recommended services. According to the client service plan, Chatman was to engage in, *inter alia*, the following services: (1) complete a substance-abuse evaluation, (2) keep DCFS informed of all address and phone number changes, (3) keep appointments with DCFS, (4) complete parenting classes, (5) complete domestic-violence counseling, (6) obtain and maintain suitable housing, and (7) maintain suitable employment. Chatman had missed her substance-abuse evaluation and scheduled drug drops. The report noted she cannot participate in any of the other services until her substance abuse issues are resolved. The report also indicated the caseworker encouraged Shaw, who was incarcerated in Minnesota for assault with a weapon, to engage in services while incarcerated.

¶ 8 According to the February 7, 2012, permanency report, neither Chatman nor Shaw had "done anything to maintain a relationship with [the minors.]" The report indicated Chatman was residing in the Champaign County jail, since December 21, 2011, for "unlawful possession of a deadly weapon." Prior to her arrest, Chatman failed to complete any services. Chatman also was unavailable to be reached by her caseworker and failed to seek substance-abuse treatment. Shaw remained incarcerated in Minnesota. As of January 30, 2012, the caseworker had not had any contact with him.

¶ 9 On February 13, 2012, the State filed a four-count petition seeking the termination of Shaw and Chatman's parental rights. The petition alleged Shaw and Chatman were unfit (1) pursuant to section 1(D)(m)(i) of the of the Adoption Act (Act) (750 ILCS 50/1(D)(m)(i) (West 2010)) because they failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors (count I), (2) pursuant to section 1(D)(m)(ii) of the Act (750 ILCS

50/1(D)(m)(ii) (West 2010)) because they failed to make reasonable progress toward the return of the minors within the initial nine months of the adjudication of neglect or abuse (count II), and (3) pursuant to section 1(D)(b) of the Act (750 ILCS 50/1(D)(b) (West 2010)) because they failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors (count III). Count IV related to unknown fathers and is not at issue in this appeal.

¶ 10 On April 25, 2012, Chatman stipulated to her unfitness as alleged in count II of the State's petition (failure to make reasonable progress within nine months of the May 31, 2011, adjudication). In exchange the State agreed to withdraw counts I and III. The court accepted her stipulation and adjudicated her unfit.

¶ 11 On May 9, 2012, the State filed a supplemental petition seeking the termination of Shaw's parental rights as to K.C. The single-count petition alleged Shaw was unfit pursuant to section 1(D)(s) of the Act (750 ILCS 50/1(D)(s) (West 2010)) because "he is incarcerated at the time the motion for termination of parental rights is filed, has repeatedly been incarcerated as a result of criminal convictions, and his repeated incarceration has prevented him from discharging his parental responsibilities for [K.C.]" That same day, a hearing on the State's petition seeking a finding of unfitness and termination of Shaw's parental rights took place. The trial court took judicial notice of all prior orders as well as Shaw's prior conviction. Shaw, the only witness to testify, did so by telephone due to his incarceration. Shaw testified he had begun participating in parenting classes two weeks prior to the hearing. While Shaw testified he tried to keep in touch with the caseworker, he could not recall her name.

¶ 12 In its May 16, 2012, written order, the trial court found Shaw was an unfit parent as alleged in count III of the State's initial petition and the single count of the State's supplemental

petition. The court reserved ruling on count II of the initial petition because it was "filed February 13, 2012," *i.e.*, less than nine months after the May 31, 2011, adjudicatory order. The court allowed the parties to submit "additional evidence and argument addressing [the] allegation until the expiration of the nine[-]month period." In its June 20, 2012, order the court found Shaw unfit as alleged in count II of the initial petition because he failed to make reasonable progress toward the return of the minor within the nine month period following the adjudication of neglect (May 31, 2012 to February 29, 2012).

¶ 13 According to the June 7, 2012, best-interest report, filed by DCFS, Chatman had been in jail since May 21, 2012. The minors had not had any visits with Chatman since August 2011. K.C. was moved from her initial foster placement at the request of her previous foster mother, who was unable to meet K.C.'s mental health needs. K.C. would "constantly kick, scream, swear, and try biting her foster mom." K.C. was moved to a new placement and is doing well. The report indicated "[s]he has not had many behavioral issues since this move." She has also bonded with her foster mother and calls her "mom." K.C.'s foster mother has inquired about sibling visits so that she may get to know T.C. as well. According to the report, T.C.'s foster mother has expressed "several times" she is interested in adopting both T.C. and K.C.

¶ 14 According to the June 13, 2012, best-interest report, filed by Court Appointed Special Advocates (CASA), T.C. had bonded with his foster family and was doing well in his foster placement. The report also stated the placement looked to be a "permanent solution" for him and "adoption should be moved ahead rapidly if termination is ordered." While the report opined K.C. was a "long way from being a candidate for adoption" due to her behavioral problems, it also noted T.C.'s foster mother "said she would consider it if [K.C.] becomes

manageable." Both reports recommended the termination of Chatman's and Shaw's parental rights.

¶ 15 During the June 13, 2012, best-interest hearing, Chatman, who was serving a prison sentence at the time, appeared personally. Shaw appeared by telephone due to his incarceration. Neither parent testified at the hearing. Chatman's counsel stated Chatman believed her projected release date would be January 27, 2013. At the conclusion of the hearing, the trial court stated it had considered the best-interest reports filed by DCFS and CASA as well as the prior findings and orders in this case. The court concluded it was in the minors' best interests to terminate respondents' parental rights.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, Shaw argues the trial court erred in finding him to be an unfit parent. Chatman argues the court's order terminating her parental rights was not in the minors' best interest. We disagree.

¶ 19 A. Finding of Unfitness as to Shaw (No. 4-12-0589)

¶ 20 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). " '[A] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the

finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 21 In this case, the trial court found Shaw unfit for, *inter alia*, failing to discharge his parental responsibilities due to his repeated incarceration (750 ILCS 50/1(D)(s) (West 2010)). Section 1(D)(s) of the Act, provides the following ground for unfitness:

> "The child is in the temporary custody or guardianship of [DCFS], the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child." 750 ILCS 50/1(D)(s) (West 2010).

¶ 22 Here, it is undisputed Shaw has an extensive history of repeated incarcerations. The record contains a certified copy of Shaw's Minnesota conviction for assault with a deadly weapon, for which he had been incarcerated during the pendency of the termination proceedings. The trial court took judicial notice of that conviction. Shaw also testified he had previously been incarcerated in 1999 or 2000, in 2005 for 7 to 11 months, and in 2007 or 2008 for 20 months. The record also contain certified statements of Shaw's prior convictions. Shaw testified he and Chatman had K.C. in their custody when she was born in December 2004 until he went to prison in 2005. According to Shaw's testimony, other than that period of time, he only had custody of K.C. during a four- or five-month period when he and Chatman were back together. When asked if he had provided any financial support for K.C. since his incarceration, he replied "I sent her

mother money." Shaw also testified the last time he saw K.C. was in 2007. It is clear Shaw's incarcerations have prevented him from discharging his parental duties with respect to K.C. Thus, the trial court's finding of unfitness under section 1(D)(s) of the Act (750 ILCS 50/1(D)(s) (West 2010)) was not against the manifest weight of the evidence.

¶ 23 The trial court also found defendant unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to K.C.'s welfare. Illinois courts have repeatedly held that because the language of subsection 1(D)(b) is stated in the disjunctive, any of the three elements alone, *i.e.*, the failure to maintain a reasonable degree of interest or concern or responsibility as to the child's welfare, may form the basis for an unfitness finding. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004); *In re C.E.*, 406 Ill. App. 3d 97, 108, 940 N.E.2d 125, 136 (2010).

¶ 24 When examining allegations under subsection 1(D)(b), a trial court must focus on the reasonableness of the parent's efforts and not the success of those efforts, while considering any circumstances that may have made it difficult for him to visit, communicate with, or otherwise express interest in his children. *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125; *C.E.*, 406 Ill. App. 3d at 108, 940 N.E.2d at 136. If visitation is impractical, the parent can show reasonable concern, interest, and responsibility for a child through letters, telephone calls, and gifts, depending on the frequency and tone of those communications. *In re Adoption of Syck*, 138 Ill. 2d 255, 279, 562 N.E.2d 174, 185 (1990).

¶ 25 However, a parent will not be found fit merely because he has demonstrated some interest in or affection for his children. *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125 (citing *In re E.O.*, 311 Ill. App. 3d 720, 727, 724 N.E.2d 1053, 1058 (2000)). Instead, the

parent's interest, concern, and responsibility must be reasonable. *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125 (citing *E.O.*, 311 Ill. App. 3d at 727, 724 N.E.2d at 1058). Evidence of noncompliance with an imposed service plan and infrequent or irregular visitation with the minors have been held sufficient to support a finding of unfitness under subsection 1(D)(b). See *In re Janira T.*, 368 Ill. App. 3d 883, 893, 859 N.E.2d 1046, 1055 (2006); see also *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125.

¶ 26 While the record in this case is unclear regarding the services Shaw was to complete, he testified at the termination hearing he had just started parenting class two weeks prior to that hearing. He also testified he had not completed any other classes or programs. While Shaw testified he had sent Chatman money, respondent did not send K.C. letters, gifts, or make telephone calls to K.C. In fact, when asked if he had written letters to K.C., Shaw responded he did not know if he was allowed to do so. Moreover, Shaw had not even seen K.C. since 2007. Based on the evidence in the record, we conclude the trial court's finding of unfitness based on section 1(D)(b) of the Act (750 ILCS 50/1(D)(b) (West 2010)) was not against the manifest weight of the evidence.

¶ 27 B. Best-Interest Finding as to Chatman (No. 4-12-0588)

¶ 28 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2010); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best-interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of

factors within "the context of the child's age and developmental needs[.]" 705 ILCS 405/1-3(4.05) (West 2010). These include the following:

> "(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 and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

The trial court's best-interest determination is reviewed under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 29 In this case, the minors were doing well in their foster placements and were bonded to their foster parents, who both appear to be potential adoptive resources. By comparison, Chatman was incarcerated at the time of the best-interest hearing. Prior to her incarceration, she

had been unemployed since 2006 and homeless and had not yet sought help for her substance-abuse problems. Thus, it is unlikely Chatman would be able to care for the minors at any time in near future. Based on the evidence presented, we hold the trial court's order finding termination of Chatman's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment in case Nos. 4-12-0588 and 4-12-0589.

¶ 32 No. 4-12-0588: Affirmed.

¶ 33 No. 4-12-0589: Affirmed.