2013 IL App (4th) 130368-U

NO. 4-13-0368

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 12, 2013
Carla Bender
4th District Appellate
Court, IL

In re: A.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 11JA60
JUANITA ROBERTS,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding that the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In January 2013, the State filed a petition to terminate the parental rights of respondent, Juanita Roberts, as to her daughter, A.H. (born August 4, 2007). Following a March 2013 fitness hearing, the trial court entered a written order finding respondent unfit. In May 2013, the court conducted a best-interest hearing that resulted in the termination of respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Circumstances Preceding the State's Petition To Terminate Respondent's Parental Rights

¶ 6 On April 18, 2011, the State filed a petition for adjudication of wardship pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 to 18 (West 2010)), alleging that A.H. was in an environment injurious to her welfare due to respondent's substance abuse (705 ILCS 405/2-3(1)(b) (West 2010)). At a shelter-care hearing conducted the following day, the trial court granted the Department of Children and Family Services (DCFS) temporary custody of A.H. based on evidence showing that in the early morning hours of April 17, 2011, police found A.H. outside of a residence without shoes or socks and respondent lying on the front lawn yelling. Medical tests later revealed respondent was under the influence of cannabis with a 0.331 blood-alcohol level. A.H.'s medical examination revealed unexplained scratches to her shoulder and upper chest that had been recently inflicted.

¶ 7 At a June 2, 2011, adjudicatory hearing, the trial court accepted respondent's admission that she had neglected A.H. as the State alleged. After a July 2011 dispositional hearing, the court adjudicated A.H. a ward of the court and maintained DCFS as her guardian.

¶ 8 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 9 In January 2013, the State filed a petition to terminate respondent's parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2010)). Specifically, the State alleged that respondent was an unfit parent in that she had (1) failed to maintain a reasonable degree of interest, concern, or responsibility for A.H.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) engaged in habitual drunkenness or addiction to drugs, other than those prescribed by a physi-

cian, for at least one year immediately prior to the commencement of the proceeding (750 ILCS 50/1(D)(k) (West 2010)); (3) failed to make reasonable efforts to correct the conditions that were the basis of A.H.'s removal from her care (750 ILCS 50/1(D)(m)(i) (West 2010)); (4) failed to make reasonable progress toward the return of A.H. to her care within nine months after the trial court's neglect adjudication (June 2, 2011, to March 2, 2012) (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (5) failed to make reasonable progress toward the return of A.H. to her care within any nine-month period after the end of the initial nine-month period following the court's neglect adjudication (after March 2, 2012) (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 10 C. Respondent's Fitness Hearing

¶ 11 1. *The State's Evidence*

¶ 12 Jacqueline M. Ward, a DCFS high-risk specialist, testified that she managed A.H.'s case from April 2011 through April 2012. In June 2011, Ward conducted an integrated assessment, which guided her in crafting the following goals for respondent's initial client-service plan: (1) refrain from using alcohol, (2) complete a substance-abuse assessment and comply with treatment recommendations, (3) attend counseling to address respondent's substance abuse and domestic-violence issues between her and her paramour, Mario Houston, (4) comply with random blood or urinalysis testing, (5) attend parenting classes, and (6) gain financial independence through employment. (The record reveals that Houston was A.H.'s putative father; medical testing was not performed to confirm his biological relationship to A.H.)

¶ 13 Although Ward did not rate respondent's overall progress in complying with her initial service plan, she noted that respondent attended her counseling sessions regularly and was cooperative with drug testing, but had tested positive for alcohol once in June 2011 and twice in

August 2011. Ward also disclosed a July 2011 incident in which police arrested respondent—who was drunk—for initiating a domestic-violence incident with Houston that the police witnessed. Respondent's counseling sessions eventually ended with a "neutral" evaluation because the provider opined that "they had gone as far as they could go."

¶ 14 In October 2011, Ward evaluated a "subsequent" client-service plan for respondent that covered April through October 2011. That plan required respondent, in part, to (1) refrain from using alcohol, (2) complete a substance-abuse assessment and comply with treatment recommendations, (3) comply with random blood or urinalysis testing, (4) attend parenting classes with a drug-treatment provider, and (5) gain financial independence through employment. Ward rated respondent's overall progress in complying with her client-service-plan goals as unsatisfactory, commenting in her family-service-plan report, as follows:

> "Rating of unsatisfactory is due to [respondent] not using the skills learned to prevent relapse. [Respondent] engaged in substance abuse treatment immediately. She was assessed [as] alcohol dependen[t] and [cannabis] dependen[t]. She entered [treatment] on May 2, 2011. Her first group [therapy session] began on May 12, 2011. She was recommended to engage in the Intensive Adult Outpatient Program. After the dispositional hearing on July 6, [2011], [respondent] was arrested for domestic battery to *** Houston. She was under the influence of alcohol at the time. [A subsequent evaluation] assessed [respondent] after her release from the public safety building at a higher level of

alcohol and drug treatment. [Respondent] began the 21-hour, Monday through Friday Day Treatment Program on August 8, 2011. [Respondent] is participating in treatment regularly."

Ward rated respondent's financial independence goal as satisfactory because although respondent was not working, she was looking for employment. Ward added that respondent was not in a position to have A.H. returned to her care at that time.

¶ 15 Respondent's next client-service plan covered October 2011 through April 2012. In April 2012, Ward rated respondent's progress in complying with her substance-abuse treatment, domestic-violence counseling, and financial independence goals as satisfactory. (The record shows that respondent was receiving public assistance.) Ward noted that in December 2011, respondent began unsupervised visits with A.H. twice a week for two hours. In February 2012, however, those visits reverted back to supervised visitation based on the following incident, which Ward documented in her April 2012 family-service-plan report:

"[Respondent] was reported by [the Illinois] Department of Human Services as smelling of alcohol at a meeting on February 2, 2012. [Respondent] did not follow recommendations for a drug screen that day. [Respondent] denied the use of alcohol. [Respondent] made progress in identifying external motivation in making a personal choice for change. However, [respondent] internally is ambivalent for change. The prognosis from the [treatment c]enter is guarded. [Respondent] has successfully participated in services. [Respondent] has been recommended to fully engage in Narcotics

Anonymous or [an] Alcoholics Anonymous Support Program ***

to maintain her sobriety."

¶ 16 Ward stated that she rated respondent's overall progress in completing her client-service-plan goals as unsatisfactory, specifically noting that respondent lost unsupervised visitation with A.H. due to her relapse, which caused Ward to investigate other treatment programs that respondent could attend so that she could safely care for A.H. Ward opined that although she had been considering the return of A.H. to respondent's care, the events of February 2012 gave her pause because she could not ensure A.H.'s safety. Ward lamented that almost a year into her tenure with respondent, she was basically back at the beginning.

¶ 17 Ward acknowledged that from August 2011 through February 2012, respondent had made satisfactory progress in complying with her client-service-plan goals.

¶ 18 In March 2012, Megan Sellers, a DCFS contractor, began supervising respondent's visitation with A.H., which initially occurred twice a week but, in August 2012, changed to once per week. Sellers' responsibilities included ensuring that A.H.'s needs were being met and respondent was interacting appropriately with A.H. Sellers explained that she took a "hands off" approach because respondent required "very little redirection." Sellers described respondent's interaction with A.H. as "very attentive and loving."

¶ 19 On March 19, 2012, Sellers was supervising a visit in respondent's home when Houston entered and took A.H. into his arms. Sellers informed Houston that he should contact DCFS to schedule visitation with A.H. After Houston left, Sellers recalled that respondent "became furious and threw a book she was holding up against the wall[,] scaring [A.H.] who threw herself in my arms crying." That same month, Sellers found cannabis seeds located on a

table in respondent's apartment. Sellers did not confront respondent, but instead alerted DCFS. Sellers documented that in July, September, and October 2012, she smelled alcohol when respondent entered her vehicle to visit A.H. Respondent explained that the smell was merely mouthwash.

¶ 20 Sellers also noted that a November 15, 2012, visitation was cancelled—during the visit—because an administered Breathalyzer test revealed alcohol in respondent's system. Later that same month, respondent attempted to give A.H. a "hat set" during a visitation. A.H. responded that she was already wearing a hat. Respondent then "snatched" the gift from A.H.'s hand and told A.H. "well, give it back to me then." Immediately thereafter, respondent stormed out and left A.H. with Sellers, stating, "I don't even want my visit anymore[.]" A.H. began to cry and asked Sellers why respondent did not want to see her anymore. In January 2013, Sellers' supervision of respondent's visitation ended.

¶ 21 Carolyn Johnson, a DCFS child-welfare specialist, testified that in April 2012, she assumed management of respondent's case. On September 25, 2012, Johnson evaluated respondent's client-service plan that covered April through October 2012. Johnson explained that because respondent failed to (1) perform two drug screens as DCFS requested, (2) acquire a sponsor as the trial court had earlier ordered, and (3) attend weekly Alcoholics Anonymous sessions consistently, she rated respondent's substance-abuse goal as unsatisfactory. Respondent's inaction caused Johnson to again refer respondent to a substance-abuse center for treatment, which at the time of the hearing was ongoing.

¶ 22 Johnson noted that during an October 2012 unannounced visit to respondent's home, Houston was present. Respondent denied that Houston was living with her. That same

month, however, Johnson witnessed bruising and swelling on respondent's face. Respondent refused to explain her injuries. Johnson could not confirm that Houston lived with respondent or inflicted the injuries. Although respondent had completed domestic-violence counseling, she rated her progress as unsatisfactory because respondent was not able to remove herself from violent situations. In October 2012, respondent's visitation with A.H. was reduced to four hours a month because of her inability to make progress. Johnson rated respondent's overall progress as unsatisfactory, opining that at that time, she did not believe it was safe to return A.H. to respondent's care.

¶ 23 Johnson acknowledged that since March 6, 2013, respondent had not tested positive for alcohol.

¶ 24 2. *Respondent's Evidence*

¶ 25 Respondent did not present evidence.

¶ 26 3. *The Trial Court's Fitness Finding*

¶ 27 Following the presentation of evidence and argument at respondent's March 2013 fitness hearing, the trial court found—by clear and convincing evidence—that respondent (1) failed to maintain a reasonable degree of concern or responsibility for A.H.'s welfare, (2) failed to make reasonable efforts to correct the conditions that were the basis of A.H.'s removal from her care, (3) failed to make reasonable progress toward the return of A.H. to her care within nine months after the trial court's neglect adjudication (June 2, 2011, to March 2, 2012), and (4) failed to make reasonable progress toward the return of A.H. to her care within any nine-month period after the end of the initial nine-month period following the court's neglect adjudication (after March 2, 2012). The court also found that the State had failed to meet its clear-and-convincing

burden with regard to its allegation that respondent engaged in habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the proceeding. (At that same hearing, the court also found Houston unfit.)

¶ 28 D. Respondent's Best-Interest Hearing

¶ 29 A summary of the evidence presented at respondent's May 2013 best-interest hearing showed the following.

¶ 30 1. *The State's Evidence*

¶ 31 Testimony provided by Johnson showed that in January 2013, DCFS placed A.H. with her paternal grandmother in Chicago. Johnson explained that A.H. was originally placed with a foster family that, unfortunately, could not provide her permanency. Since that placement, Johnson had visited the grandmother's home numerous times and had no concerns regarding the home or A.H.'s interaction with her grandmother or her adult aunt, who was the only other person living in the home. Johnson opined that A.H. had bonded with her grandmother and confirmed that A.H.'s grandmother expressed her willingness to provide A.H. permanency. Johnson also noted that she had met with A.H.'s school teacher, who reported that A.H. was doing well in school with no behavioral issues of note.

¶ 32 2. *Respondent's Evidence*

¶ 33 Respondent did not present evidence.

¶ 34 3. *The Trial Court's Best-Interest Finding*

¶ 35 After considering the evidence and counsels' arguments, the trial court terminated respondent's parental rights as to A.H. In so doing, the court noted the permanency that A.H.'s paternal grandmother was willing and able to provide A.H. (The court also terminated Houston's

parental rights as to A.H.; Houston is not a party to this appeal.)

¶ 36 This appeal followed.

¶ 37 II. THE TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 38 Respondent argues that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We address respondent's arguments in turn.

¶ 39 A. The Trial Court's Fitness Finding

¶ 40 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 41 Section 1(D)(m)(i) of the Adoption Act provides, in pertinent part, as follows:

> "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, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:
>
> * * *
>
> (m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent[.]"
>
> 750 ILCS 50/1(m)(i) (West 2010).

¶ 42 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme

court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

> "[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."

¶ 43 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

> " 'Reasonable progress' *** exists when the [trial] court *** can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent ***." (Emphases in original.)

The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d

123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004); *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 44 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id*.

¶ 45 2. *Respondent's Claim That the Trial Court's Fitness Finding Was Against the Manifest Weight of the Evidence*

¶ 46 Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. Specifically, respondent contends that despite successfully completing all of her client-service-plan goals, DCFS believed, incorrectly, that she was not applying what she learned to her parenting. In this regard, respondent highlights the numerous goals DCFS rated as satisfactory in support of her claim that she had made reasonable efforts to correct the conditions that were the basis for A.H.'s removal from her care. We disagree.

¶ 47 In this case, A.H. was removed from respondent's care because of her drug and alcohol abuse, which directly caused A.H. to be unsupervised in the early morning hours of April 17, 2011. A subsequent historical assessment showed previous domestic-violence issues with Houston, which prompted DCFS to recommend counseling toward addressing and eliminating that physical violence. The record thereafter shows that although respondent continued, initially,

to consume alcohol and engage in physical altercations with Houston, she showed such marked improvement from August 2011 through February 2012, that DCFS was contemplating a return of A.H. to respondent's care.

¶ 48 While we commend respondent for the progress she made, the record also shows that following her six-month period of compliance, respondent began consuming alcohol and was the target of physical violence, which she refused to speak about. Thus, 10 months removed from the April 2011 incident that brought A.H. into DCFS's care, DCFS changed its position regarding A.H.'s return and began the process of recommending new services—services for which respondent thereafter received an unsatisfactory rating on because of her noncompliance. Indeed, at the time of her March 2013 fitness hearing, almost *two years* after the initial incident, respondent had only been sober for 21 days. More important, the record shows that respondent was unable to assume responsibility for A.H. in the near future.

¶ 49 Accordingly, we conclude that the trial court's finding that respondent was unfit due to her failure to make reasonable progress toward correcting the conditions that were the basis for A.H.'s removal was not against the manifest weight of the evidence. Having so concluded, we need not consider the court's other findings of parental unfitness. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental unfitness).

¶ 50 B. The Trial Court's Best-Interest Finding

¶ 51 1. *The Standard of Review*

¶ 52 At the best-interest stage of parental termination proceedings, the State bears the

burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 53 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 54 2. *Respondent's Claim That the Trial Court's Best-Interest Finding Was Against the Manifest Weight of the Evidence*

¶ 55 Respondent next argues that the trial court's best-interest finding was against the manifest weight of the evidence. In support of her position, respondent points to her appropriate visitations with A.H., A.H.'s love for respondent, and respondent's desire to care for A.H. We are not persuaded.

¶ 56 In this case, a brief synopsis of the evidence presented at respondent's best-interest hearing concerned (1) A.H.'s appropriate living conditions with her grandmother, whom A.H. had bonded with and who pledged to provide long-term stability for her and (2) A.H.'s appropriate adjustment to her new school environment.

¶ 57 Following the presentation of that evidence and argument at respondent's May 2013 best-interest hearing, the trial court found that A.H.'s need for permanence and stability (705 ILCS 405/1-3(4.05)(g) (West 2010)) was being met by her grandmother.

¶ 58 We conclude that this evidence was more than sufficient to support the trial court's decision to terminate respondent's parental rights. Accordingly, we disagree with respondent that the facts clearly demonstrated that the court should have reached the opposite result.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment.

¶ 61 Affirmed.