2013 IL App (4th) 130625-U

NO. 4-13-0625

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 16, 2013
Carla Bender
4th District Appellate
Court, IL

In re: Cln. D., Cla. D., Car. D., Cas. D., and Cal. D., Minors,	)	Appeal from Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Champaign County
Petitioner-Appellee,	)	No. 07JA34
v.	)	
CLAVIN DAVIS, SR.,	)	Honorable
Respondent-Appellant.	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Appleton and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding the father was unfit to have custody of his children while incarcerated is not against the manifest weight of the evidence.

¶ 2 In July 2007, the trial court adjudicated four children, Cln. D., Cla. D., Car. D., and Cas. D., of respondent father, Clavin Davis, Sr., neglected. In August 2007, the court made the minors wards of the court and placed them in the custody and guardianship of the guardianship administrator of the Department of Children and Family Services (DCFS). In August 2008, Cal. D. was born and found to be neglected. She was also made a ward of the court and placed in the custody and guardianship of DCFS.

¶ 3 Respondent was in and out of county jail and state prison until January 2009, when he was sentenced to 12 years in the State of Illinois Department of Corrections (DOC) for

burglary and possession of a controlled substance. Because he was imprisoned, respondent was not able to complete many of the services he was assigned by DCFS. He also had very few visits with his children. He was still imprisoned when he was found unfit to have custody in June 2013. This finding was not against the manifest weight of the evidence, and we affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2007, the State filed a four-count petition for the adjudication of wardship of Cln. D. (born October 30, 1998), Cla. D. (born November 29, 1999), Car. D. (born November 2, 2002), and Cas. D. (born June 30, 2004). The petition named respondent and Tracy Beckett as the minors' parents. Beckett is not a party to this appeal.

¶ 6 The petition alleged the minors' environment was injurious to their welfare when they resided with (1) Beckett because it exposed them to inadequate supervision (count I), (2) respondent and/or Beckett because it exposed them to substance abuse (count II), (3) Beckett because it exposed them to the risk of physical harm (count III), and (4) respondent and/or Beckett because it exposed them to the risk of domestic violence (count IV). See 705 ILCS 405/2-3(1)(b) (West 2006). The record reflects respondent was imprisoned when the petition was filed and had been imprisoned since August 2005.

¶ 7 On July 17, 2007, the trial court held the adjudicatory hearing. Respondent stipulated to counts II (injurious environment exposed the minors to substance abuse) and IV (injurious environment exposed the minors to domestic violence). The trial court asked the State for a factual basis. Regarding respondent, the State asked the court to take judicial notice of three Champaign County cases: (1) No. 99-CF-1629, wherein respondent pleaded guilty to aggravated battery of a pregnant person, Beckett; (2) No. 04-CF-801, wherein respondent

pleaded guilty to aggravated battery of a pregnant person, Beckett; and (3) No. 04-CF-1686, wherein respondent pleaded guilty to unlawful possession of a controlled substance and obstructing justice and was sentenced to three years in DOC.

¶ 8 The trial court found an insufficient factual basis for respondent's admission to the substance-abuse issues alleged in count II. The State withdrew count II as to respondent. The court accepted respondent's admission to count IV regarding domestic violence.

¶ 9 In August 2007, DCFS filed a dispositional report. The report noted respondent remained imprisoned but was due to be paroled September 6, 2007. Beckett reported respondent was a good father who takes care of his children but admitted he had a serious drug problem.

¶ 10 The report included information about respondent's criminal record including a 1991 conviction for burglary, a 1994 theft conviction, a 1998 obstruction-of-justice conviction, a 1998 resisting-a-police-officer conviction, the 1999 and 2004 convictions for aggravated battery of Beckett, a 2002 theft conviction, 2004 convictions for unlawful possession of a controlled substance and obstructing justice, and a 2005 retail-theft conviction.

¶ 11 On August 22, 2007, the trial court held the dispositional hearing. The minors were adjudicated neglected and made wards of the court. The court specifically noted respondent was currently imprisoned. The court noted respondent's lengthy, violent criminal history, including nine convictions, two of which were for aggravated battery of Beckett, the minors' mother. Respondent had a lengthy history of substance abuse and domestic violence. The court further found respondent did not comprehend the negative role he had in his children's life. The court placed custody and guardianship of the minors with the guardianship administrator of DCFS.

¶ 12 On September 6, 2007, respondent was released from prison. He was arrested again on September 8, 2007, and jailed for driving on a suspended license. He was released from jail on October 18, 2007. As of November 15, 2007, it was reported respondent had not visited with the minors since his release and was not doing any services recommended by DCFS. As of March 18, 2008, respondent had not engaged in any services nor made contact with DCFS to have visitation with the minors. The minors had been placed with Beckett but were removed from her home when it was reported on April 30, 2008, the minors were seen with respondent.

¶ 13 On June 1, 2008, respondent was charged with burglary and possession of drug paraphernalia. On June 6, 2008, respondent signed consent forms and was given service appointments. He started having visits with the minors. On June 13, 2008, respondent was arrested again for burglary. On June 28, 2008, respondent was charged with theft and possession of a controlled substance.

¶ 14 On August 13, 2008, Cal. D. was born to Beckett and respondent. A neglect petition was filed as to Cal. D. and she was added to this case after she was also found to be neglected.

¶ 15 As of October 16, 2008, respondent had not completed any services. Respondent did continue to have visits with the minors and was appropriate with them. On October 16, 2008, respondent was again arrested for theft. By December 1, 2008, respondent was in the county jail and on January 8, 2009, he was sentenced to 12 years in DOC for burglary and possession of a controlled substance.

¶ 16 Respondent's projected out-date from DOC is December 27, 2014. Prior to incarceration he did not participate in services but began to do so in DOC. On July 30, 2009, he

completed an anger management program. On December 22, 2009, respondent completed a parenting class. In February 2010, respondent completed a lifestyle redirection class and was on the waiting list for a substance abuse program. He attended Alcoholics Anonymous/Narcotics Anonymous meetings. The minors continued to visit respondent at DOC once a month and the visits went well.

¶ 17 On October 19, 2010, respondent chose not to complete substance abuse treatment.

¶ 18 In December 2010, the minors were returned from foster care to living with Beckett. The living arrangements did not work out and the minors were returned to foster care in April 2011. During 2011, respondent had visits with only three of the minors as visits with the other two were deemed not to be in their best interests by DCFS.

¶ 19 In March 2011, respondent dropped out of Alcoholics Anonymous and was later placed on the waiting list to get back in the organization. As of December 28, 2011, respondent had been promoted from janitor at the correctional facility and was working "outside the fence."

¶ 20 During 2012, respondent had no visits with the minors. At the request of Cla. D., a caseworker sent respondent a letter in August to request visits with the minors. In October 2012, respondent had a visit with three of the minors. As of April 10, 2013, respondent had no contact with the caseworkers.

¶ 21 On June 24, 2013, the trial court found respondent was unfit to exercise custody and guardianship. At the same time, custody and guardianship of the five minors was given to Beckett. The court vacated the minors' wardship. The guardianship of DCFS was vacated and the petitions in regard to the minors were dismissed and the cause dismissed.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Respondent appeals from the permanency order entered June 24, 2013, finding him unfit to have custody of his children. An order entered at a permanency hearing is generally not appealable as of right and allowance of a right to appeal is within the discretion of the appellate court. *In re Curtis B.*, 203 Ill. 2d 53, 60-63, 784 N.E.2d 219, 223-25 (2002). However, where a court orders a case to be closed and the minors returned to one of the natural parents, the court's judgment represents a final appealable order. See *In re Faith B.*, 216 Ill. 2d 1, 16-18, 832 N.E.2d 152, 161-62 (2005).

¶ 25 Respondent contends the trial court erred in finding he was unfit to exercise custody of the minors. The court did not terminate his parental rights. Instead, the court found respondent was incarcerated and, thus, unfit to exercise custody and guardianship of the minors.

¶ 26 Aside from the fact respondent was incarcerated, custody of minors may only be returned to parents upon a showing the minors can be cared for at home without endangering their health or safety, such return is in the best interests of the minors, and the court finds the parent is fit to care for the minors. *In re Desiree O.*, 381 Ill. App. 3d 854, 865, 887 N.E.2d 59, 69 (2008); 705 ILCS 405/2-28(1) (West 2012). The State must prove parental unfitness by a preponderance of the evidence. *In re A.P.*, 2013 IL App (3d) 120672, ¶15, 988 N.E.2d 221. A decision is against the manifest weight of the evidence only where the record clearly demonstrates the opposite conclusion is proper. *In re M.B.*, 332 Ill. App. 3d 996, 1004, 773 N.E.2d 1204, 1210-11 (2002).

¶ 27 At the June 24, 2013, hearing, the trial court took notice of the reports filed by the

caseworkers. In those reports it was noted respondent was sentenced to 12 years' imprisonment for burglary and possession of a controlled substance in December 2008, shortly after the minors were adjudicated neglected and made wards of the court. Respondent had participated in one parent-child visit in December 2012 with the three oldest minors, and this visit had been requested by one of the minors. Respondent had no contact with the caseworkers for the six months preceding the hearing. It was unknown whether respondent engaged in any further services while incarcerated.

¶ 28 Commission of serious criminal offenses and total lack of contact with the minors for extended periods of time support the conclusion respondent is unfit to have cusotdy of the minors while incarcerated. His incarceration makes it impossible for him to have custody.

¶ 29 There is no indication respondent made any more than the slightest attempt to participate in services while incarcerated and no indication he tried to write or e-mail the minors or to contact the caseworkers in any way. The difficulties faced by respondent were caused by his own decision to engage in criminal activity at around the time his children were removed from their home for neglect. These difficulties are not an excuse to avoid a finding of unfitness. See *In re J.L.*, 236 Ill. 2d 329, 343, 924 N.E.2d 961, 969 (2010) (in determining unfitness for purposes of terminating parental rights, time in prison is included in the nine-month period during which reasonable progress must be made).

¶ 30 Respondent's parental rights were not terminated. When he is released from prison he will be able to establish whether he is fit to be a custodial parent and may file a request for visitation or custody.

¶ 31 III. CONCLUSION

¶ 32 We affirm the trial court's judgment.

¶ 33 Affirmed.