2014 IL App (4th) 131049-U

NO. 4-13-1049

FILED
April 4, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12J12
CARLOS GARCIA,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order terminating respondent's parental rights is affirmed.

¶ 2 In September 2012, the State filed a petition for adjudication of dependency as to J.P. (born June 8, 2003), who is respondent's son. On October 16, 2012, respondent stipulated J.P. was dependent as J.P. was under 18 years of age and was without a parent or guardian who was able or willing to care for him. On July 18, 2013, the State filed a motion to terminate respondent's parental rights. On November 20, 2013, the trial court terminated respondent's parental rights to J.P. Respondent appeals, contending the agency working with respondent, the Center for Youth and Family Solutions (CYFS), failed to communicate effectively with respondent, rendering the court's decision to terminate his parental rights against the manifest weight of the evidence.

¶ 3 We affirm.

¶ 4 I. BACKGROUND

¶ 5 J.P. is a United States citizen, having been born in this country. His mother was living in Tijuana, Mexico, at the time of all of the proceedings in this case. Neither of J.P.'s parents is a citizen of the United States.

¶ 6 J.P.'s maternal grandfather brought him to Champaign from Mexico in 2011. In July 2012, J.P.'s grandfather apparently returned to Mexico after police arrived at his house to investigate him regarding sexual abuse of his paramour's four-year-old son. J.P. had been residing with his grandfather, the grandfather's paramour, and her two children. J.P. was taken into shelter care and placed with his maternal aunt in Champaign.

¶ 7 Shortly thereafter, respondent contacted the Illinois Department of Children and Family Services (DCFS), requesting his son, J.P., be placed in his care.

¶ 8 According to the shelter-care report prepared by DCFS, respondent was in Mexico when J.P. was born. Apparently, he had returned to Mexico after he was charged in Champaign County with sexual assault because he was 22 years old and J.P.'s mother was a minor when J.P. was conceived. Shortly after J.P. was born, J.P. and his mother traveled to Mexico and lived with respondent until 2011, when J.P. came back to Champaign with his grandfather. J.P., according to respondent, is not a Mexican citizen because respondent and J.P.'s mother never completed the process to achieve dual citizenship.

¶ 9 The shelter-care report reflects a Spanish interpreter was present during this conversation with respondent. In September 2012, J.P. was removed from his aunt's house, as she was unable to care for him any longer, and placed in foster care. At the shelter-care hearing

on September 5, 2012, respondent stipulated to DCFS being named temporary guardian of J.P. A Spanish interpreter was present for the shelter-care hearing.

¶ 10 On October 16, 2012, respondent admitted J.P. was dependent because he was under age 18 and did not currently have a parent willing or able to care for him. 705 ILCS 405/2-4(1)(a) (West 2012). (While the trial court's adjudicatory order indicated the finding of dependency was pursuant to section 2-4(1)(c) (705 ILCS 405/2-4(1)(c) (West 2012)), which would not permit a termination of parental rights, respondent actually admitted to the language of dependency found in section 2-4(1)(a). The language of section 2-4(1)(a) was contained in the petition for adjudication of dependency, but the petition miscited to section 2-4(1)(c). The court later entered an order *nunc pro tunc* to correct the statutory citation in the October 16, 2012, adjudicatory order to conform to section 2-4(1)(a), finding it to be a scrivener's error.) A Spanish interpreter was present for this hearing.

¶ 11 Following a dispositional hearing on November 14, 2012, the trial court found respondent unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline J.P. The court specifically found respondent had not had contact with J.P. for a year, paternity had not been confirmed, and there was no safety plan to deal with respondent's illegal status. A Spanish interpreter was present for this hearing. Later paternity testing confirmed respondent to be J.P.'s father. The dispositional order provided for supervised visitation between respondent and J.P.

¶ 12 At the end of the dispositional hearing, the trial court set a permanency review hearing for February 26, 2013. Respondent failed to appear at the permanency hearing and the court suspended visitation until further order. According to the permanency report provided to

the court by CYFS, respondent had contacted the agency on February 19, 2013, asking for a final visit or phone call with J.P. because of respondent's possible deportation the next day.

¶ 13 This report reflects CYFS workers had repeatedly requested respondent provide them with a name, address, phone number, date of birth, and Social Security number of a legal resident in order to have a safety plan in effect should respondent's immigration status change. Respondent never provided this information to the caseworkers.

¶ 14 The report reflected respondent failed to attend a child and family team meeting on February 13, 2013. He failed to appear for four urine drops, including one scheduled for February 14, 2013. Respondent had not attended his intake evaluation at Cognition Works. He had an evaluation scheduled for February 14, 2013. (Both his current paramour and J.P.'s mother had reported respondent physically abused them.) Respondent was visiting once a week with J.P. until February 6, 2013. J.P. was residing in a bilingual traditional foster home and was doing well in school.

¶ 15 The permanency report for the July 22, 2013, permanency hearing reflected there had been no contact between the caseworker and respondent since February 2013. Although respondent had led the caseworker to believe he was being deported, he was spotted in Urbana in May and June 2013 by two separate CYFS staffers. Respondent did not attend the scheduled February 14, 2013, evaluation at Cognition Works. He had had no contact with J.P. since February 2013.

¶ 16 This report reflected J.P. was doing well in foster care. He achieved straight A's in his fourth-grade class. He called his foster parents "Mama" and "Papa" and was able to converse in English without translation.

¶ 17 Prior to the permanency hearing on July 22, 2013, the State filed its motion to terminate respondent's parental rights. At the permanency hearing, the trial court changed the permanency goal to "substitute care pending a determination of termination of parental rights."

¶ 18 The motion to terminate respondent's parental rights was based on respondent's failing to (1) make reasonable efforts to correct the conditions that were the basis for the removal of J.P. (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of J.P. within the initial nine months following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to J.P.'s welfare (750 ILCS 50/1(D)(b) (West 2012)).

¶ 19 Claudia Sparrow, CYFS case manager for respondent and J.P., testified at the October 8, 2013, fitness hearing (which was attended by a Spanish interpreter). She had worked with the family from late September 2012 until January 2013. She had referred respondent to individual counseling with a Spanish-speaking counselor and testified respondent was to submit to random drug testing. He never attended counseling and submitted only two of six requested urine drops. Sparrow supervised most of the visits between respondent and J.P. Sparrow stated respondent became angry when J.P. talked about his mother, frequently ending the visits early. Sparrow understands and speaks Spanish. She testified respondent understood her when she communicated with him.

¶ 20 Sparrow told respondent from the beginning of the case she needed to put a safety plan together for J.P. in the event respondent was deported. It was near the end of her time (January 2013) as case manager for the family when she finally received the information she needed for the safety plan. Sparrow learned from J.P.'s mother, by telephone, since J.P.'s mother

lived in Mexico, she had not allowed contact between J.P. and respondent because respondent had been violent with her and J.P. Sparrow also received reports about domestic violence between respondent and his current paramour. Accordingly, Sparrow recommended he be assessed at Cognition Works. Respondent never completed an assessment.

¶ 21 On February 15, 2013, respondent told Sparrow he was being deported to Mexico. He never contacted Sparrow to let her know he was returning to the United States. On May 2, 2013, though, she saw him walking out of an Urbana grocery store. This was the last time Sparrow saw respondent. He never called to ask about visiting J.P. or about engaging in the services to which he had been referred.

¶ 22 On cross-examination by respondent's counsel, Sparrow testified she had translated respondent's service plan into Spanish and believed she had done so in writing. However, she could not find a mention of having done so in her case notes. Despite the prior reports showing respondent only provided two of six requested urine drops, Sparrow testified respondent provided drops consistently and the results were always negative. Sparrow testified respondent never indicated he had any difficulty understanding her.

¶ 23 Danielle Edenburn testified she is a foster-care worker with CYFS and worked as the case manager for respondent and J.P. starting in December 2012. She was still the case manager. Edenburn had never had personal contact with respondent. She conducted a diligent search for respondent on June 12, 2013. Her search only turned up addresses she already had. She had sent letters, translated into Spanish, to those addresses, but had never received any response from respondent. While she had been the case manager, respondent had not engaged in individual counseling, and did not attend his intake assessment at Cognition Works, nor had he

engaged in any services that would support reunification with J.P. Respondent had visited with J.P. on 5 to 10 occasions, but had not seen J.P. since January 23, 2013. Edenburn learned from Sparrow respondent was going to be deported. Respondent never contacted Edenburn to tell her he was back in the United States.

¶ 24 Respondent testified (through an interpreter) he had difficulty understanding Sparrow's Spanish because she intermixed it with English sometimes. He also said any papers Sparrow gave him were in English. Respondent related he went to Mexico in February 2013 because he determined immigration services were looking for him. He stayed in Mexico for three months, coming back in late May or early June. When he returned to Champaign, he did not contact any of his caseworkers because he believed the service providers were responsible for immigration services' actions.

¶ 25 In rebuttal, Lisa Knight, a CYFS supervisor, testified she discussed with respondent at the second court hearing the difficulties he was having understanding Sparrow. CYFS thereafter hired another interpreter, Guadalupe Abreu, to translate for respondent. Knight sat in on three meetings with respondent and one meeting with his paramour where Abreu interpreted for him. Knight, who speaks and understands Spanish (but is not fluent), stated there was never a problem with Abreu's translations. Moreover, Sparrow began translating again in January 2013, after respondent told Knight he was fine with Sparrow translating for him and no longer needed Abreu's services. Knight also testified she assisted the caseworker with writing the family-service plan in Spanish, providing it to respondent in November 2012. All of the court reports were provided to respondent in Spanish, up until the time he left the United States.

¶ 26 The trial court filed a written order on October 16, 2013, finding respondent unfit

by clear and convincing evidence. The court found respondent had attended no services or counseling. Respondent had last seen J.P. in January 2013. The court noted respondent's own testimony showed he left the country for three months and did not contact CYFS upon his return. Further, the court specifically found respondent's testimony regarding communication difficulties was not credible. The court found respondent was lying to excuse his failures, noting CYFS hired a separate interpreter who met with respondent on three occasions and respondent never indicated any difficulties understanding what he needed to do. The court found all reports had been translated into Spanish and provided to respondent. The court found respondent was proved unfit by clear and convincing evidence.

¶ 27 The best-interest hearing was held on November 19, 2013, with a Spanish interpreter present. A best-interest report was submitted and considered by the trial court. The cover letter to the report indicated respondent had not made any contact with CYFS regarding any concerns for J.P. The report, prepared by Danielle Edenburn, revealed respondent's daughter by his paramour had come into care also. The report states:

> "[Respondent] has made the decision not to be involved in his son's life and continues to blame everyone else for his not having contact. The agency has made accommodations for [respondent], yet he continues to state his needs without regard to J.P.'s needs. It is apparent he has no concern for this child and has moved on in his life."

¶ 28 The report further reflected J.P. had bonded with his foster parents, calling them "Mama" and "Papa," and was very comfortable in the home. His half-sister had been placed in

the same home and J.P. enjoyed playing with her. He was happy, healthy, and doing well in school. J.P. indicated he wanted to talk to the judge so he could tell him how respondent beat him with boards when he was younger. Edenburn felt J.P.'s being in a loving, supportive home gave him the confidence to report the abuse he suffered at respondent's hands. CYFS recommended respondent's parental rights be terminated.

¶ 29 Respondent was allowed to submit an offer of proof concerning Claudia Sparrow's ability to translate properly. (A witness had not been available at the prior hearing.) Following the offer of proof, the trial court admitted and considered the additional evidence. The court stated respondent's additional evidence did not affect the findings on fitness in any way. Thereafter, the court found it in J.P.'s best interest to terminate respondent's parental rights.

¶ 30 The trial court reiterated its finding at the adjudicatory hearing respondent was not credible about his communication difficulties. Moreover, the court found, even if there had been communication difficulties, his fitness findings would not have changed. "The facts are the facts, which is that the respondent father left the country, left the child here, did not respond to the caseworkers upon his return, and has simply not done what he was required to do by the [DCFS], or the court, nor has he acted in any way, shape, or form during the pendency of this case as a responsible respondent father." The court then reaffirmed its finding of unfitness.

¶ 31 The trial court found it clear J.P. had responded to his placement, had bonded with his foster parents, and wished to stay in his foster home. The court stated it was in J.P.'s best interest that respondent's rights be terminated and found it had been proved clearly and convincingly as well as by a preponderance of the evidence. Accordingly, the court terminated respondent's parental rights.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Respondent contends CYFS failed to communicate effectively with him, rendering both the unfitness and best-interest findings against the manifest weight of the evidence. We reject respondent's contention and affirm the trial court's judgment.

¶ 35 A. The Fitness Determination

¶ 36 A parent will be deemed unfit if the State proves, by clear and convincing evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 37 In this case, respondent was found unfit on three grounds listed in section 1(D): he failed to (1) make reasonable efforts to correct the conditions that were the basis for the minor's removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of the minor within nine months of the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)).

¶ 38 We note the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). Accordingly, we begin our analysis with respondent's argument the trial court's finding he failed to make

reasonable progress toward the return of the minor was against the manifest weight of the evidence.

¶ 39 This court judges reasonable progress according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 40 Here, J.P. was adjudicated dependent on October 16, 2012. Respondent admitted leaving the United States to return to Mexico in February 2013. Despite returning to Champaign in May 2013, respondent made no effort to contact CYFS to reestablish visitation or services. Respondent had not seen J.P. since January 2013. Thus, for over five months of the relevant nine-month period, respondent had no contact with J.P. or CYFS. He is absolutely no closer to having J.P. returned to him than he was at the start of the case.

¶ 41 As for any language difficulties, CYFS personnel testified service plans were translated into Spanish and provided to respondent. While the case file did not contain copies of the Spanish documents (and should have), Lisa Knight testified she herself saw the translations, and the caseworker who gave respondent the only copy in Spanish was no longer a caseworker with CYFS as a result. The trial court found Knight credible.

¶ 42 Further, the trial court specifically found respondent was lying when he testified

about his difficulties understanding Claudia Sparrow. This court gives deference to the trial court's credibility determinations. *In re D.F.*, 201 Ill. 2d 476, 499, 777 N.E.2d 930, 943 (2002).

¶ 43 Further, we note at every court appearance respondent attended, an interpreter was present to translate. Respondent never told the trial court he was having any difficulty communicating with CYFS staff. Last, any potential difficulty in communication had nothing to do with respondent leaving J.P. in this country and going to Mexico for three months. Nor did it have anything to do with respondent failing to contact CYFS upon his return.

¶ 44 The State proved by clear and convincing evidence respondent failed to make reasonable progress toward the return of J.P. during the first nine months following adjudication. The trial court's finding to that effect was not against the manifest weight of the evidence. Because we find the trial court did not err in concluding respondent was an unfit parent on one ground listed in section 1(D) (see 750 ILCS 50/1(D)(m)(ii) (West 2010)), we need not address the other fitness findings.

¶ 45 B. The Best-Interest Determination

¶ 46 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228.

¶ 47 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." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141; 705 ILCS 405/1-3 (4.05)(a) to (4.05)(j) (West 2012).

¶ 48 The trial court's finding termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). 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.

¶ 49 Here, J.P. had been placed with the same bilingual foster family for the entire duration of the case. His half-sister was also placed in the same home. J.P. was thriving in the

foster home. He was excelling in school, becoming fluent in English, and was well-cared for and supported in the home. Respondent had no contact with J.P. since January 2013, basically abandoning J.P. when he returned to Mexico and never contacting CYFS upon his return. J.P. called the foster parents "Mama" and "Papa" and had clearly bonded with them. The trial court's finding it was in J.P.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 50 III. CONCLUSION

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

¶ 52 Affirmed.