2014 IL App (4th) 131120-U

NO. 4-13-1120

FILED
May 9, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.N., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	No. 12JA33
ERIC NOBLE,	)	
Respondent-Appellant	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding respondent unfit and that termination of his parental rights was in his child's best interests.

¶ 2 Respondent, Eric Noble, appeals the trial court's termination of his parental rights to T.N. (born July 12, 2010). He challenges both the court's finding that he was unfit and its best-interest determination. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 16, 2012, the State filed a petition for adjudication of wardship, alleging T.N. was a neglected and/or abused minor in that his environment was injurious to his welfare. That same day, the trial court entered a temporary custody order placing T.N. in shelter care and appointing the Department of Children and Family Services (DCFS) as his temporary

custodian. On July 1, 2013, the court entered its adjudicatory order, finding T.N. neglected and abused based on the following facts:

> "Both parents were incarcerated. Prior to being reincarcerated, [respondent] allegedly abused minor and refused to meet with DCFS or allow a safety assessment. When father was taken into custody, he left minor with inappropriate caregivers. [Respondent] had also left minor home alone with another minor for approx. 25 min. on another day."

On August 22, 2013, the court entered its dispositional order, making T.N. a ward of the court and placing his custody and guardianship with DCFS.

¶ 5 On August 30, 2013, the State filed a motion for termination of parental rights. It alleged respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to T.N.'s welfare (750 ILCS 50/1(D)(b) (West 2012)) and termination of his parental rights was in T.N.'s best interests. (The record reflects the parental rights of T.N.'s mother were also terminated during the underlying proceedings; however, she is not a party to this appeal and we discuss the evidence only as it relates to respondent.)

¶ 6 On December 6, 2013, the trial court conducted hearings on the State's motion to terminate. During the fitness portion of termination proceedings, the court took judicial notice of (1) specific matters in the case before it, including the petition for adjudication of wardship, the adjudication order, and the dispositional order; (2) dates on which respondent failed to appear in court, including November 16, 2012, and August 22, 2013; (3) respondent's conviction for theft in case No. 13-CF-171, for which he was sentenced to one year in prison and taken into custody

on May 20, 2013; and (4) respondent's conviction for obstructing justice in case No. 13-CF-369, for which he also received a one-year sentence.

¶ 7 The State also presented the testimony of Erin Baker, a DCFS child-welfare specialist who worked with foster-care children and their parents. On March 14, 2013, Baker received T.N.'s case. She noted he was taken into care on November 15, 2012, following indicated findings against respondent for "substantial risk of physical injury, environment injurious to the health and wellbeing of [T.N.]" On December 28, 2012, an initial service plan was created. Respondent's assigned tasks included cooperating with DCFS and service providers, visitation with T.N., mental-health and substance-abuse services, maintaining appropriate housing and financial stability, and parenting services. He was given the same services on his subsequent service plan, but with the added task of domestic-violence counseling.

¶ 8 On May 2, 2013, Baker had a phone conversation with respondent, during which he asked that visitation with T.N. be suspended because he believed there was a warrant out for his arrest and, if he showed up for visitation, he would be arrested. Respondent also reported that he could not focus on getting T.N. returned to his care and "doing what he needed to do" because he was worried about going back to prison. Respondent declined Baker's offer of a bus pass and stated he could not go to counseling because of the warrant for his arrest. Baker testified respondent had no contact with T.N. after that conversation.

¶ 9 On November 15, 2013, Baker evaluated respondent's service plan. She testified he received an unsatisfactory rating on each of his assigned tasks. Baker gave respondent an unsatisfactory rating with respect to his cooperation task, stating he "was in the Department of Corrections [(DOC)], and prior to entering that, he was hiding out

from the police, not giving me his whereabouts, didn't know where he was staying, he was not visiting [T.N.], not participating in services." She testified respondent never participated in parenting services, which included going to a parenting program and displaying skills he had learned during visitations. Respondent failed to obtain employment or suitable housing, failed to attend counseling or participate in a substance-abuse assessment, and had not visited with T.N. since April 2013. Finally, Baker testified that, although respondent attended a few group sessions for his domestic-violence-counseling task, he never finished counseling. She noted, in May 2013, a domestic-violence incident occurred between respondent and his paramour, resulting in physical injury to the paramour.

¶ 10 Baker testified, on August 12, 2013, she sent correspondence to respondent in DOC, which included a court report, a medical report concerning T.N., and pictures of T.N. Her letter also included a "release of information" form for DOC. Baker noted she encouraged parents who were in DOC to take advantage of any available services. She agreed that if a parent provided proof of completion of services while imprisoned it could affect their service-plan rating. On November 26, 2013, Baker sent further correspondence to respondent, which included a letter with an update on T.N. and respondent's service plan.

¶ 11 On cross-examination, Baker testified that, since his arrest, respondent sent her letters once a month or once every other month and asked for pictures of T.N. and updates on him. In his letters to Baker, respondent included letters for Baker to pass on to T.N. Baker acknowledged that respondent made statements in his letters that he was "going to do everything he [could] to get his son back." Further, she testified that, after his arrest, respondent resided in the Adams County jail and then DOC. She acknowledged services were not available to

respondent while he was in jail and he was not allowed to visit with T.N. while incarcerated. Baker testified respondent was currently at Graham Correctional Center, which she stated was a receiving facility. She did not know if that facility offered any service classes. Baker acknowledged that, since the time of the adjudicatory hearing, respondent had been in custody.

¶ 12 On redirect, Baker testified she was aware that some DOC facilities offered services to inmates. However, she received no proof that respondent had completed any services.

¶ 13 Respondent testified on his own behalf. He stated he currently resided at Graham Correctional Center, a receiving facility, that would hold inmates until they were done with their "corporates, warrants, or anything else about court." Respondent testified he had been at Graham Correctional Center for 5 1/2 months and denied that the facility offered any mental-health counseling, parenting classes, substance-abuse classes, or domestic-violence classes. He stated that prior to going to DOC he was in the Adams County jail, which also did not offer any classes or services.

¶ 14 Respondent testified he contacted Baker through letters and asked about T.N.'s welfare. He denied receiving any information about T.N. or a letter providing him with updates. Respondent asserted he wrote letters to T.N. and sent them to Baker. He testified he did not know whether those letters were passed on because Baker never wrote him back. Respondent also denied receiving a request from Baker for him to sign a "release of information" and asserted he had been unable to perform any steps of the service plan since being in custody. He testified his expected release date from DOC was May 20, 2014.

¶ 15 On cross-examination, respondent testified he was aware of his service plan and

the services he was supposed to complete. He asserted he had completed some of those services but acknowledged that he did not provide any documentation to Baker regarding what services he completed. Respondent testified he was serving a sentence for obstructing justice, an offense he committed in May 2013, and also acknowledged that he was in custody in connection with a felony theft offense, which he committed in April 2013. He pleaded guilty to both offenses.

¶ 16 Respondent further acknowledged he never paid child support for T.N. while the minor was in the care of DCFS and admitted telling the caseworker that he needed to suspend visitations for a period of time because there was a warrant out for his arrest. Respondent testified he stopped attending domestic-violence services because he did not have the money every week. He also asserted he did not sign up for parenting classes because he was never told to do so by his caseworker.

¶ 17 On redirect, respondent testified he did not turn himself in when there was a warrant out for his arrest because he was waiting to get money so that he would be able to bond out of jail. He stated domestic-violence classes were $20 per week and he did not have enough money to pay for the classes. Respondent also asserted he made an appointment with Recovery Resources but did not follow up because classes there were $100 per week and he did not have the money. On re-cross-examination, respondent asserted he asked Baker to help him come up with money for his classes but was told he had to get a job to pay for classes himself. He stated he knew that obtaining employment was a part of his service plan. Respondent also asserted he contacted other community agencies to get help with funding his services and obtained employment. He did not provide proof of his employment to Baker.

¶ 18 Following the parties' arguments, the trial court found respondent unfit as alleged

in the State's motion. It noted respondent had been incarcerated since the time of adjudication, failed to engage in services "in any meaningful way," and had not had any visits with T.N. since April 2013. The court found respondent's inability to discharge his parental obligations as a result of being in jail or DOC was brought about by his own actions. Further, it stated it based its decision on "the circumstances that [respondent] had dropped out of sight for awhile, while there apparently was a warrant out for his arrest, and from the evidence, chose to be out of contact with the caseworker for some period of time, chose not to visit his son during that time, chose not to be involved in any services because there was a warrant out for his arrest."

¶ 19 Immediately following the hearing to determine parental fitness, the trial court conducted the best-interest hearing. At the State's request, the court took judicial notice of its adjudicatory and dispositional orders in the case. The State also called Baker as a witness. Baker testified T.N. was three years old and had been in his current, traditional foster home since May 2013. She observed T.N. with his foster family and stated he was "very bonded" with his foster parents, whom he referred to as "Mom" and "Dad." T.N. referred to the other children in the home as his siblings. Baker testified T.N. went with his foster family on vacations, helped with age-appropriate chores, and engaged in seasonal activities with the family. She stated T.N.'s foster parents also provided appropriate discipline.

¶ 20 Baker described T.N.'s medical issues, stating he had extensive tooth decay before going into foster care and had speech delays. After being taken into care, he was diagnosed with neurofibromatosis. Baker testified T.N. received treatment for those issues on a regular basis and his foster parents ensured he attended necessary appointments. On their own accord, the foster parents retained a child-development specialist for T.N., who helped him with his speech

and to prepare for kindergarten. Baker noticed improvements in T.N.'s speech every time she visited him and he had been successfully discharged from speech therapy through Child and Family Connections. Additionally, she testified the foster parents wanted to adopt T.N. and had signed a written permanency commitment.

¶ 21 Following the parties' arguments, the trial court found termination of respondent's parental rights was in T.N.'s best interests. That same day, the court entered its written order terminating respondent's parental rights.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, respondent first argues the trial court erred in finding him unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to T.N.'s welfare. He notes he was in jail or DOC following the neglect adjudication and unable to participate in services. Respondent also contends the court failed to give adequate consideration to his consistent written communication with Baker, in which he asked about T.N.'s welfare, requested information about T.N., and asserted he would "do anything" to get T.N. back into his care.

¶ 25 Parental rights may be involuntarily terminated where the trial court finds that a parent is unfit pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) and termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516 (2005). On review, the trial court's unfitness determination will not be disturbed "unless it is contrary to the manifest weight of the evidence," and a decision is against the manifest weight of the evidence "only

where the opposite conclusion is clearly apparent." *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 516-17.

¶ 26 Pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)), a parent may be found unfit for failing "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." Because the language of section 1(D)(b) is in the disjunctive, a "parent may be found unfit for failing to maintain either interest, or concern, or responsibility" and "proof of all three is not required." *In re Richard H.*, 376 Ill. App. 3d 162, 166, 875 N.E.2d 1198, 1202 (2007) (citing *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004)).

¶ 27 A parent's interest, concern, or responsibility as to his child's welfare "must be objectively reasonable." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064, 859 N.E.2d 123, 135 (2006).

> "[I]n examining allegations under [section 1(D)(b)], a trial court must focus on a parent's reasonable efforts and not her success, and must consider any circumstances that may have made it difficult for her to visit, communicate with or otherwise show interest in her child. [Citations.] However, our courts have repeatedly concluded that a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern and responsibility must be reasonable. [Citation.] Noncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent

> or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under [section 1(D)(b)]. [Citations.] Ultimately, *** we accord great deference to a trial court's finding of unfitness and will not reverse that finding unless it is against the manifest weight of the evidence. [Citation.]" *Jaron Z.*, 348 Ill. App. 3d at 259-60, 810 N.E.2d at 125.

¶ 28 Here, the evidence presented was sufficient to support the trial court's finding that respondent was unfit pursuant to section 1(D)(b) of the Adoption Act. The record shows T.N. was taken into care in November 2012 and, ultimately, adjudicated neglected and abused. In connection with its adjudicatory order, the court noted respondent had allegedly abused T.N., left T.N. alone or with inappropriate caregivers, and refused to cooperate with DCFS. Beginning in December 2012, service plans were created for respondent with various tasks; however, the record fails to show he completed or meaningfully engaged in any services while the case was pending. Although respondent argues services were unavailable to him when he was in jail or DOC, the record fails to reflect he took advantage of services prior to that time. Instead, it shows respondent last visited with T.N. in April 2013, and, for a period of time thereafter, chose not to attend visits, engage in services, or have contact with DCFS because he believed there was a warrant out for his arrest. Moreover, the record reflects respondent was imprisoned at the time of the fitness hearing as a result of offenses he committed in April and May 2013, while T.N.'s case was pending and the minor was in the care of DCFS.

¶ 29 Although respondent exhibited some interest and concern as to T.N. by

expressing that he wished to parent and sending T.N. letters while imprisoned, the greater weight of the evidence shows he failed to maintain a reasonable degree of interest, concern or responsibility as to T.N.'s welfare by failing to engage in services or cooperate with DCFS, and by committing criminal offenses while the case was pending.

¶ 30 On appeal, without any citation to supporting authority, respondent asserts the trial court was limited to considering only events occurring within the six-month time frame between the neglect adjudication (July 1, 2013) and the fitness hearing (December 6, 2013) when determining whether he was unfit. However, there is no specific time frame to which the trial court must limit its findings when determining parental unfitness under section 1(D)(b) of the Adoption Act. *In re M.J.*, 314 Ill. App. 3d 649, 656, 732 N.E.2d 790, 796 (2000); see also *In re Dominique W.*, 347 Ill. App. 3d 557, 568, 808 N.E.2d 21, 30 (2004) (stating "the legislature included no evidentiary time limitation whatsoever in section 1(D)(b)," and declining to read one into the statute). Here, evidence was presented concerning events that occurred after T.N. was taken into care in November 2012 through the date of the termination proceedings. Since section 1(D)(b) of the Adoption Act sets forth no time frame, the court appropriately considered and relied upon evidence relating to events that occurred prior to adjudication and through the date of the fitness hearing.

¶ 31 Although not addressed by either party, we note the trial court erroneously excluded certain evidence based on the mistaken belief that an evidentiary time limitation applied at the fitness hearing. Specifically, the following occurred during the questioning of Baker by respondent's counsel:

"Q. You stated that his housing employment [*sic*] was

unsatisfactory due to his not being employed and not having stable housing. During the time this case had been pending up until the time he went on warrant status, where was he living at?

A. I believe he was living—prior to the warrant status, he was living with his paramour at that time.

Q. And, it was—you were kept informed of where he was staying at during that time?

A. Prior to the warrant, yes.

MS. FRIYE [(assistant State's Attorney)]: Your Honor, I'm going to object to testimony regarding that time period. That would have been prior to the date of adjudication.

THE COURT: Mr. Jansen [(respondent's counsel)]?

MR. JANSEN: Your Honor, I think it goes to my overall finding with DCFS as unsatisfactory, and he was taking steps before and after the adjudication hearing.

THE COURT: By statute we—on a termination hearing, *the initial nine-month period for the court to consider begins on the date of adjudication, so the objection is sustained.*

MR. JANSEN: Very good, Your Honor.

BY MR. JANSEN:

Q. Since his arrest—after his arrest where was he residing at immediately following that?

A. The Adams County Jail and then [DOC]." (Emphasis added.)

¶ 32 Although the trial court's ruling was incorrect and it erred in limiting Baker's testimony, we find reversal unwarranted under the facts presented. Despite its erroneous ruling, the court otherwise allowed the parties to present evidence regarding the time period prior to adjudication (July 1, 2013) and relied upon such evidence when making its ultimate determination. Further, even if Baker had been permitted to testify that respondent cooperated with DCFS by keeping caseworkers informed of his living arrangements for a period of time prior to his warrant, the evidence nevertheless showed he did not meaningfully engage in services during the life of the case, stopped attending visitations or cooperating with DCFS when he believed there was a warrant out for his arrest, and committed offenses for which he was later imprisoned while T.N's case was pending. On appeal, respondent does not challenge the court's evidentiary ruling or argue that it excluded any relevant evidence helpful to his case. Instead, he advocates for the incorrect position taken by the court when ruling on the State's objection.

¶ 33 Given the circumstances presented, an opposite conclusion from that of the trial court is not clearly apparent and its unfitness finding was not against the manifest weight of the evidence.

¶ 34 On appeal, respondent also argues the trial court erred in finding termination of his parental rights was in T.N.'s best interests. He argues he expressed his desire to parent T.N., he had been making arrangements for T.N. to be in the care of family members before protective

custody was taken, and T.N. had been in his foster home for less than one year. Respondent also complains that the State sought to terminate his parental rights after an "unreasonably short period of time" from the date of adjudication.

¶ 35 After finding a parent unfit, the trial court moves to the best-interest stage of termination proceedings and "must give full and serious consideration to the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009). The State must prove that termination is in the child's best interests by a preponderance of the evidence. *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 290-91. In the context of the child's age and developmental needs, a court must consider the following factors:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

On review, the trial court's best-interest determination will not be disturbed unless it was against

the manifest weight of the evidence, *i.e.*, when "the facts clearly demonstrate that the court should have reached the opposite result." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 36 Here, evidence presented at the best-interest hearing on December 6, 2013, showed T.N. was three years old and had been in the same foster home since May 2013. Baker described T.N. as being "very bonded" with his foster parents, whom he called "Mom" and "Dad." Evidence showed T.N. was well cared for in the home, received appropriate discipline, and received appropriate care for his ongoing medical issues. Baker further testified the foster parents wanted to provide T.N. with permanency through adoption.

¶ 37 Conversely, at the time of the best-interest hearing, respondent was imprisoned in connection with offenses he committed while T.N.'s case was pending and the record fails to reflect he meaningfully engaged in services at any time after T.N.'s removal from his care. Although respondent complains there was an "unreasonably short period of time" between adjudication and the State's motion to terminate, the record shows more than a year elapsed from when T.N. was taken into care and the date of the best-interest hearing. During that time, respondent took no real steps toward reunification and the record fails to reflect T.N. could be returned to his care at any time in the foreseeable future. Under the facts presented, the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.