2014 IL App (4th) 140334-U

NO. 4-14-0334

FILED
August 22, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: S.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 13JA32
MARK A. GENTRY,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) In this proceeding for the termination of parental rights, when finding that respondent failed to make reasonable progress within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)), the trial court did not make a finding that was against the manifest weight of the evidence.

(2) Under the doctrine of invited error, respondent has forfeited his argument that the trial court erred by holding a best-interest hearing immediately after the unfitness hearing, and, besides, the court did not err in this respect, considering that the court made a clear distinction between the two hearings.

(3) The trial court did not make a finding that was against the manifest weight of the evidence when it found, in the best-interest hearing, that terminating respondent's parental rights would be in the child's best interest.

¶ 2 Respondent, Mark A. Gentry, appeals from a judgment terminating his parental rights to his daughter, S.W. (born February 7, 2013). He makes three arguments on appeal. First, he argues the court made findings that were against the manifest weight of the evidence when it found him to be an "unfit person" within the meaning of sections 1(D)(b), (i), (m)(i), and

(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (i), (m)(i), (m)(ii) (West 2012)). We find evidence to support a finding, by clear and convincing evidence, that respondent failed to make reasonable progress within nine months after the adjudication of neglect and that he therefore is an "unfit person" within the meaning of section 1(D)(m)(ii) (750 ILCS 50/1(D)(m)(ii) (West 2012)). We need not review the findings that he is an "unfit person" within the meaning of subsections (b), (i), and (m)(i) as well.

¶ 3 Second, respondent argues the trial court erred by holding a best-interest hearing immediately after the unfitness hearing. If indeed the court erred by doing so, it was an error that respondent invited. In any event, there was no error in this respect, considering that the court made a clear demarcation between the unfitness hearing and the best-interest hearing.

¶ 4 Third, respondent argues the trial court made a finding against the manifest weight of the evidence when it found, by a preponderance of the evidence, that terminating his parental rights to S.W. would be in her best interest. In our review of the record, however, we find evidence to support that finding. Therefore, we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 A. The Award of Temporary Custody to DCFS

¶ 7 On April 1, 2013, the trial court held a temporary-custody hearing pursuant to section 2-10 of the Juvenile Court Act of 1987 (705 ILCS 405/2-10 (West 2012)). In the hearing, the court found probable cause to believe that S.W. had been neglected, and the court awarded temporary custody of her to the Illinois Department of Children and Family Services (DCFS). In the temporary-custody order, the court wrote that its finding of probable cause rested on the following facts: "Mother not bathing or feeding infant, leaving infant in car seat all day,

mother preparing to move, but not planning to take infant with her. Putative father is sex offender; other resident of mom's home is also sex offender."

¶ 8 B. The Adjudicatory Hearing

¶ 9 On May 8, 2013, in an adjudicatory hearing, the parents stipulated to count I of the petition for an adjudication of neglect. That count alleged the same facts the trial court had cited in its temporary-custody order. After finding a factual basis for the stipulation and after finding that the stipulation was knowing and voluntary, the court accepted the stipulation and adjudicated S.W. to be a neglected minor as alleged in count I.

¶ 10 The case proceeded immediately to a dispositional hearing, in which the trial court found S.W. to be a neglected minor and concluded it would be in her best interest to make her a ward of the court. The court said a written dispositional order would follow.

¶ 11 The next day, in a written dispositional order, the trial court adjudicated S.W. to be neglected and made her a ward of the court, awarding guardianship to DCFS.

¶ 12 C. The Petition To Terminate Parental Rights

¶ 13 On December 12, 2013, the State filed a petition for the termination of parental rights.

¶ 14 The mother, Lashonda Gentry, was defaulted on January 15, 2014.

¶ 15 Paragraph 4 of the petition alleged that respondent met five of the statutory definitions of an "unfit person":

> "B. Pursuant to 750 ILCS 50/1(D)(b), [respondent] ha[s] failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare;
>
> ***

D. Pursuant to 750 ILCS 50/1(D)(g), [respondent] ha[s] failed to protect the minor[] from conditions within his [*sic*] environment injurious to the minor's welfare;

E. Pursuant to 750 ILCS 50/1(D)(i), [respondent] is depraved in that he has been convicted of Five (5) Felonies, 1999-CF-169 (Aggravated Criminal Sexual Abuse), 2004-CF-30 (Fail to Register as a Sex Offender), 2004-CF-1099 (Aggravated Battery), 2013-CF-928 (Domestic Battery With Prior and Felony Resisting), 2013-CF-1180 (Fail to Report Annually as Sex Offender);

F. Pursuant to 750 ILCS 50/1(D)(m)(i), [respondent] ha[s] failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from the parent;

G. Pursuant to 750 ILCS 50/1(D)(m)(ii), [respondent] ha[s] failed to make reasonable progress toward the return of the minor to the parent within 9 months after an adjudication of neglect or abuse."

¶ 16 D. The Hearing on the Issue of Whether Respondent Was an "Unfit Person"

¶ 17 On April 22, 2014, the trial court held a hearing on the issue of whether respondent was an "unfit person" as alleged in paragraphs 4(B), (D), (E), (F), and (G) of the petition for termination of parental rights.

¶ 18 At the beginning of the hearing, the trial court said: "So[,] before we start the testimony, it looks like the relevant nine-month period would be May 8, 2013[,] through

February 8, 2014. Does anyone disagree with that?" After receiving no response, the court told the assistant State's Attorney, Mary Bolton, to call her first witness.

¶ 19 Bolton called Lindsay Sites, who testified she was a foster care supervisor at Webster Cantrell Hall and that she had "been the direct supervisor since case opening."

¶ 20 Bolton asked her:

> "Q. Now, what services were [respondent], the father, supposed to do?
>
> A. The integrated assessment recommended that he participate in parenting, a Sex Offender Evaluation, due to his previous criminal charges, and then also domestic violence services.
>
> Q. Did he engage in parenting?
>
> A. He was referred to the parenting through our Nurturing Parent Program. He was scheduled to attend one-on-one sessions with an instructor through Webster. He did coordinate two sessions, but nothing thereafter.
>
> Q. Two sessions. So that was unsuccessful?
>
> A. Correct.
>
> Q. Sex Offender Evaluation, did he get that?
>
> A. He was referred for the assessment on 10-7 of 2013. He was scheduled to participate in that assessment on 11-5 of 2013, and did not participate and did not do anything thereafter.

Q. Domestic Violence Services, has he participated in those?

A. No. And actually, the DV services were not included into the Service Plan due to the need for the Sex Offender Evaluation/Parenting to take priority.

But he did occur [*sic*] several other domestic charges throughout the life of the case. So overall, that was not satisfactory.

Q. How about the visits?

A. The integrated assessment screener recommended that no visitation take place between [respondent] and [S.W.] until that Sex Offender Evaluation was completed. And since that was not done, there was no visits.

Q. Has he sent cards, letters, or anything else to [S.W.]?

A. Not to [S.W.] directly."

¶ 21 On cross-examination by defense counsel, Bruce Berry, Sites agreed that respondent's "frequent incarcerations" had prevented him from participating in services. When he was not in custody, his participation was "kind of off and on."

¶ 22 The guardian *ad litem*, Brian Finney, asked Sites:

"Q. And when asked about [respondent's] sending anything to [S.W.], you said that he had not sent anything directly. Did he send things to the agency that were to be then given to [S.W.]?

A. He wrote letters to the agency, to the case worker about his case involvement, and just kind of following up on his need for involvement. But nothing directly for [S.W.]

Q. How old is [S.W.]?

A. She is just over one."

¶ 23 On redirect examination, Bolton asked Sites:

"Q. Ms Sites, you said maybe he wanted to do his services, but he didn't because of his frequent incarcerations. Why maybe?

A. We had numerous conversations with Mr. Gentry, both the case worker and him one-on-one, but then also with myself present, in one of his places of residence and he always seemed very preoccupied with the mother in this case, as well as the ongoing drama between him and his other family members. So I do believe that that also prevented him from succeeding in his services.

Q. So would you consider that to be not having a sense of responsibility or concern?

A. Correct."

¶ 24 On recross-examination by Berry, however, Sites admitted that, by writing and talking with the caseworker about services, respondent showed he was indeed concerned. That is to say, he was "concerned about his case."

¶ 25 Next, the State offered certified copies of docket entries, charging instruments, and sentencing orders showing defendant's felony convictions. The trial court admitted these in evidence as People's group exhibit No. 1.

¶ 26 According to this group exhibit, defendant had the following felony convictions. In March 1999, in Macon County case No. 99-CF-169, he was convicted of one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c) (West 1998)).

¶ 27 In August 2004, in Macon County case No. 04-CF-30, he was convicted of failure to register as a sex offender (730 ILCS 150/3 (West 2004)).

¶ 28 In December 2004, in Macon County case No. 04-CF-1099, he was convicted of aggravated battery (720 ILCS 5/12-4(b)(6) (West 2004)).

¶ 29 In October 2013, in Macon County case No. 13-CF-928, he was convicted of domestic battery with a prior domestic battery conviction (720 ILCS 5/12-3.2(a)(1) (West 2012)), and he also was convicted of aggravated resisting a peace officer (720 ILCS 5/31-1 (West 2012)).

¶ 30 Additionally, in October 2013, in Macon County case No. 13-CF-1180, he was convicted again of failure to register as a sex offender (730 ILCS 150/3 (West 2012)).

¶ 31 The State then rested, and respondent testified on his own behalf. He testified that a DNA test had established he was indeed S.W.'s father.

¶ 32 He explained that being in and out of jail had prevented him from completing his service plan.

¶ 33 He testified he had tried to obtain the sex offender risk assessment but that he had been unable to get a ride to Springfield. "[T]he cab company at that time was booked up." He claimed he had repeatedly left phone messages for someone named Nicky Bond, to explain to

her his difficulties with transportation, but that she never called him back. He claimed he even had written her letters, asking her to take him to the assessment, but that she never responded. She refused to allow him to see S.W.

¶ 34 Respondent pointed out that if the agency wanted a sex offender risk assessment, the agency could have obtained it from one of his felony cases ("And my attorney that I got on my felony case has got it done.").

¶ 35 Because the house respondent had been occupying was "a wreck," "a total disaster," he had bought a different house, just for S.W. He testified: "I was getting ready to move over onto West King in a real nice home when I got locked up this last trip."

¶ 36 Finney asked respondent:

> "Q. During—I guess I'm trying to figure out your incarceration pattern here. Did you keep getting arrested for the same event, like were you missing court or were you getting arrested for new offenses?
>
> A. For a new offense.
>
> Q. And since May 8th of last year, how much time did you spend out of custody?
>
> A. I spent quite a bit out.
>
> Q. And the matter that you're sitting in custody for right now, have you plead [*sic*] to that or is that set for trial, or—
>
> A. It's set for trial.
>
> Q. Set for trial, okay.
>
> A. I go tomorrow for trial."

¶ 37 Respondent rested. During closing arguments, Bolton told the trial court: "The People are not going to go forward in paragraph D," *i.e.*, the paragraph alleging that respondent had "failed to protect the minor[] from conditions within his environment injurious to the minor's welfare." Bolton argued, however, that the remaining allegations against respondent had been proved by clear and convincing evidence.

¶ 38 After hearing the arguments, the trial court stated: "The Court finds People have proven by clear and convincing evidence that the father, Mark Gentry, is unfit for the reasons set forth in paragraphs 4B, B as in boy, 4E, 4F, and 4G."

¶ 39 None of the parties objected to proceeding immediately to a best-interest hearing. The only evidence the State offered therein was the best-interest report. None of the other parties had any objection to the trial court's considering the report. Respondent presented no evidence in the best-interest hearing but merely rested.

¶ 40 The best-interest report, filed on April 21, 2014, is by two foster care supervisors at Webster Cantrell Hall: Lindsay Sites and Amanda Beasley-Ricks. Under "Housing and Financial Stability," they write:

> "At the time of the integrated assessment, [respondent] reported living with a niece and nephew in Decatur; however, throughout the life of this case, [respondent] has reported ongoing drama and domestic disputes within the family, preventing him from maintaining that residence and contact. Since that time, [respondent] spent a brief period of time residing with another family member in a very small house on Decatur's Northeast side, but spent the majority of the case in and out of the Macon County

Jail for his various charges and criminal convictions. [Respondent] has never achieved any type of stable living arrangements for himself and has acknowledged the detriment of this instability for [S.W.] as well."

¶ 41 Under the heading of "Current Situation," Sites and Beasley-Ricks write:

"[Respondent] is presently incarcerated within the Macon County Jail and is awaiting trial for a charge of Criminal Sexual Assault that he incurred on 12/23/13. [Respondent] is scheduled for a dispositional hearing on 4/23/14. [Respondent] has not successfully engaged in any of his recommended services throughout the life of this case and has never achieved any period of stability for himself, or for the safety and well-being of his daughter, [S.W.] Webster Cantrell Hall has made several attempts to engage [respondent] in his service planning; however, due to his frequent incarcerations and inability to refrain from further domestic disputes with others, [respondent] has made it abundantly clear that he is unable to make positive choices for his life and well-being, much less for the life of a young child."

¶ 42 Regarding S.W., they write:

"[She] is currently residing within the home of a maternal relative, who also happens to be a licensed traditional foster home with Webster Cantrell Hall. [S.W.] has been placed within this home since April 2013. The caregivers have ensured that all of

> [S.W.'s] medical, developmental and emotional needs have continued to be met on an ongoing basis, and have continued providing her with a safe and secure environment. Since [S.W.] was just two months old when she was placed into this home, she has grown to know and love them as parents. She is bonded with them and has developed a sense of safety and security within their home. This home is an adoptive placement, which was confirmed through the caregivers' signing of a permanency commitment prior to legal screening. [S.W.] is not presently involved with or in need of any services."

¶ 43 The trial court found that the State had proved, by a preponderance of the evidence, that it would be in S.W.'s best interest to terminate respondent's parental rights. Therefore, the court did so.

¶ 44 This appeal followed.

¶ 45 II. ANALYSIS

¶ 46 A. The Issue of Whether Respondent Was an "Unfit Person"

¶ 47 The State alleged that respondent was an "unfit person" because, among other reasons, he failed to make reasonable progress within nine months after the adjudication of neglect, that is, from May 8, 2013, to February 8, 2014. See 750 ILCS 50/1(D)(m)(ii) (West 2012). The supreme court has stated:

> "[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." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001).

¶ 48 Respondent has a conviction for a sexual offense as well as a conviction for domestic battery. Given those convictions, the trial court could not responsibly turn over S.W. to his custody unless he underwent a sex-offender risk assessment and unless he received services addressing the subject of domestic battery.

¶ 49 Respondent argues that, contrary to the trial court's finding, he "made reasonable progress given the fact that he was incarcerated for periods of time." He points out that he "attended a couple of parenting classes and asked for visitation with his child."

¶ 50 Actually, time in jail or prison does not toll the nine-month period during which a parent must make reasonable progress. *In re J.L.*, 236 Ill. 2d 329, 343 (2010). If services were unavailable in the Macon County jail, that is unfortunate, but the legislature has determined that nine months are "a reasonable period to wait for the parent to make demonstrable progress before a finding of unfitness can be made." (Internal quotation marks omitted.) *In re K.S.*, 203 Ill. App. 3d 586, 604 (1990). Those nine months have passed, and "[r]espondent's interest does not outweigh the interest of the minor in having a chance for a normal home environment." (Internal quotation marks and emphasis omitted.) *Id.*

¶ 51 As of the date of the parental fitness hearing, respondent had completed no services. The trial court did not have to believe his excuse that he was unable to obtain transportation from Decatur to Springfield to undergo a sex-offender risk assessment. See *In re*

Tiffany M., 353 Ill. App. 3d 883, 889-90 (2004) ("A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make."). He attended parenting services two times, and then, for whatever reason, he quit. He did not give the agency the minimal cooperation requisite to scheduling domestic-violence counseling. We cannot say it is clearly evident he made reasonable progress during the nine months after the adjudication of neglect. See *id.* at 890. ("A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the determination is unreasonable, arbitrary, and not based on the evidence."). We cannot say it is clearly evident that he "substantially fulfill[ed] his *** obligations under the service plan." 750 ILCS 50/1(D)(m) (West 2012). Therefore, we uphold the finding that respondent is an "unfit person" in that he failed to "make reasonable progress toward the return of the child to the parent during [a] 9-month period following the adjudication of neglected *** minor." *Id.* That finding is not against the manifest weight of the evidence. See *Tiffany M.*, 353 Ill. App. 3d at 890.

¶ 52 Because we uphold the finding that respondent meets one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West 2012)), and because meeting one definition is enough to make him an "unfit person," we need not review the trial court's findings that he meets additional definitions. See *Tiffany M.*, 353 Ill. App. 3d at 891.

¶ 53 B. The Issue of Whether It Was in S.W.'s Best Interest To Terminate Respondent's Parental Rights

¶ 54 Respondent contends that the best-interest hearing was flawed for two reasons. First, he contends the trial court erred by holding the best-interest hearing immediately after the unfitness hearing. He believes that, with such a procedure, "it is very easy for the Court to consider evidence that was presented at the unfitness hearing when making its decision after the best interests hearing."

¶ 55 If indeed the trial court erred by holding the best-interest hearing immediately after the unfitness hearing, it was an error that respondent expressly approved. The doctrine of invited error bars a party from requesting the trial court to proceed in a certain manner and later claiming on appeal that the trial court erred by following that request. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004). Having acquiesced to the trial court's ruling, a party cannot challenge that ruling on appeal, even if the ruling was, from a legal point of view, erroneous. *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437 ¶ 61, *aff'd*, 2013 IL 114876. In this case, the trial court specifically asked respondent's attorney:

> "THE COURT: Mr. Berry, may I call the case for an immediate best interest hearing, or do you prefer that I set it over for an immediate [*sic*] best interest hearing?
>
> THE WITNESS: I want it over with.
>
> MR. BERRY: I believe we would go to best interest.
>
> THE COURT: Anybody have any objection to calling the case for an immediate best interest hearing?
>
> MS. BOLTON: No, Your Honor. Ms. Sites in fact filed a report yesterday."

¶ 56 Setting aside the doctrine of invited error, there actually was no error. We have held it is permissible to hold a best-interest hearing immediately after an unfitness hearing, provided there is a clear demarcation between the two hearings. *In re Timothy T.*, 343 Ill. App. 3d 1260, 1265-66 (2003).

¶ 57 Second, respondent contends that the best-interest hearing was flawed in that "no testimony was presented" therein and that "[t]he only evidence that was presented was that of the Report to the Court for Termination."

¶ 58 The trial court asked the parties:

> "THE COURT: Does anybody have any objection to me considering the contents of the best interest report?
>
> MR. FINNEY: No.
>
> MR. BERRY: No."

In the absence of any objection, the hearsay in the best-interest report was to be "given its natural probative effect." *People v. Akis*, 63 Ill. 2d 296, 299 (1976).

¶ 59 The State presented only the best-interest report as evidence, and respondent rested after presenting no evidence in the best-interest hearing. The trial court found it would be in the best interest of S.W. to terminate his parental rights. Because the record contains some evidence to support the finding, *i.e.*, evidence in the form of the best-interest report, we cannot say that the finding is against the manifest weight of the evidence. See *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009). We cannot say "the facts clearly demonstrate that the court should have reached the opposite result." *Id.* The State's best-interest report was unrebutted.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we affirm the trial court's judgment.

¶ 62 Affirmed.