2015 IL App (4th) 140792-U

NO. 4-14-0792

FILED
January 16, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: An. N. and Ad. N., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13JA22
KRISTY WINES,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found the trial court did not err in (1) finding respondent unfit and (2) terminating her parental rights.

¶ 2 In April 2013, the State filed a petition for adjudication of wardship with respect to An. N. and Ad. N., the minor children of respondent, Kristy Wines. In June 2013, the trial court made the minors wards of the court and placed guardianship with the Department of Children and Family Services (DCFS). In April 2014, the State filed a motion to terminate respondent's parental rights. In July 2014, the court found respondent unfit. In September 2014, the court found it in the minors' best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding her unfit and (2) terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2013, the State filed a petition for adjudication of wardship with respect to An. N., born in December 2000, and Ad. N., born in April 2003, the minor children of respondent and Aron Nash. The petition alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b)) (West 2012)) because their environment was injurious to their welfare when they resided with respondent in that she failed to protect the minors from the risk of sexual abuse and from becoming victims of sexual abuse. The trial court entered a temporary custody order, finding probable cause to believe the minors were neglected, abused, or dependent.

¶ 6 In May 2013, the trial court found the minors were neglected based on an injurious environment. In its June 2013 dispositional order, the court found respondent unfit to care for, protect, train, educate, or discipline the minor and the health, safety, and best interest of the minors would be jeopardized if they remained in respondent's custody. The court adjudged the minors neglected and made them wards of the court. The court placed guardianship of the minors with DCFS and placed custody of them with their father.

¶ 7 In April 2014, the State filed a motion to terminate respondent's parental rights. The petition alleged respondent was unfit because she failed to (1) make reasonable efforts to correct the conditions that were the basis for the minors' removal from her (count I) (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of the minors within the initial nine months of the adjudication of neglect or abuse (count II) (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (count III) (750 ILCS 50/1(D)(b) (West 2012)) .

¶ 8 In July 2014, the trial court held a hearing on the motion to terminate parental rights. Jeff Reynolds, a licensed clinical professional counselor and a licensed sex-offender

evaluator, testified he conducted a sex-offender risk assessment for respondent. He found her to be "somewhat reluctant to be open and honest on the testing." Reynolds stated he was aware of the sexual abuse of the minors perpetrated by respondent's paramour, Lyn Niemann. Reynolds asked her about "naked cuddle time," and respondent indicated one of the boys stayed on top of the covers with her, while the other minor got under the covers with Niemann. When asked about Niemann's tradition of decorating the Christmas tree naked, respondent stated she allowed it to happen. Respondent also told Reynolds about taking the boys to a nudist colony in Florida but stated it was Niemann's idea. When asked about an instance where she discovered Niemann with "a little boy," both of whom were naked, respondent stated Niemann had been suffering from a rash and was applying lotion to himself.

¶ 9 While Reynolds found respondent to be a low to moderate risk to reoffend, he was concerned she would find a partner "who was manipulative." He recommended she engage in sex-offender treatment to address her ability to take responsibility, to address her victimization issues, and to develop the skills necessary to enter and remain in a healthy romantic relationship.

¶ 10 Bettina Garner Earl, a child and family therapist, testified she began treating respondent in December 2013. She found respondent's attendance to be "mostly consistent." Garner Earl stated "initially progress was slow in relationship to the abuse situation" but respondent "did well with managing symptoms of depression." Garner Earl stated respondent claimed she had no actual knowledge of the abuse as it was happening. Respondent also reported having a prior relationship as friends with an individual who was a sex offender.

¶ 11 On cross-examination, Garner Earl testified she had been working with respondent on learning how sex offenders can use her to gain access to young victims, and Garner Earl believed respondent was making a reasonable and serious effort. While initially

slow in making progress, Garner Earl stated respondent had been showing progress recently. Garner Earl also stated respondent had been able to "manage her mood better" and had "been more open in accepting the perception that she did not protect her children."

¶ 12 Beth Barnes, a registered nurse, testified she conducted a parenting class with respondent. Barnes stated respondent "didn't miss a class" and participated, "but she didn't do her homework" because she did not have the time. Respondent started the class on February 3, 2014, and completed it on March 17, 2014.

¶ 13 Dr. Jane Velez, a licensed clinical psychologist, testified she evaluated both minors. She opined An. N. suffered significant abuse, noting the testing regarding sexual discomfort was "through the roof" and the childhood abuse score was "extremely high." Ad. N. mentioned the "family tradition" of naked cuddle time. When asked whether the boys believed respondent knew about the abuse, Velez stated "they were all naked in bed with her boyfriend" so "she knew about it." As to An. N., Velez diagnosed him with borderline intellectual functioning, post-traumatic stress disorder (PTSD), depression and anxiety, and attention deficit hyperactivity disorder (ADHD). As to Ad. N., Velez diagnosed him with PTSD, ADHD, and features of oppositional defiant disorder.

¶ 14 Teri McKean, a licensed clinical social worker, testified she supervised the case involving Ad. N. and provided counseling to An. N. An. N. disclosed acts of regular sexual abuse, including oral, anal, fondling, and with objects. Ad. N. reported similar abuse. At the beginning of treatment, An. N. missed respondent and wanted to be with her. Although An. N. believed respondent did not know what was going on, McKean did not believe that was an accurate belief. McKean stated further counseling helped An. N. realize it "would be very hard for another adult living in the home to not notice." McKean stated Ad. N. also believed

respondent did not know of the abuse, which McKean found to be an incorrect belief. McKean testified to contact between respondent and the minors when the boys were trying to earn money shoveling snow. McKean stated this caused Ad. N. to regress, as he became hopeful he could have a relationship with respondent again. Within two weeks of the termination hearing, respondent's current boyfriend made contact with the boys in the neighborhood. The boyfriend told them people were lying about their mother, which McKean said caused the boys to regress in their treatment because they thought respondent was "doing a really good job and was really trying hard for them."

¶ 15 Keona Johnson, a case manager at the Center for Youth and Family Solutions, testified she was assigned to the minors' case in April 2013. She stated respondent did not cooperate in the beginning. Respondent stated she had been advised by her attorney not to attend the initial child and family team meeting. Johnson stated respondent contacted the boys' father and said she was going to throw away the minors' frog and clothes if he did not pick them up.

¶ 16 Michelle Paisley, a case manager with DCFS, testified she became involved in the case in July or August 2013. At that time, respondent lived in Thomasboro with James Shoulders, a registered sex offender, and his two young children. In August 2013, Paisley contacted respondent via letter but received no response. Paisley later made an unannounced visit to the home, but respondent would not allow her inside. After respondent mentioned she checked herself into the hospital, Paisley later mailed consent forms to respondent so Paisley could speak with the doctors and counselors. Because respondent did not return the signed consent forms until October 2013, Paisley could not make any referrals.

¶ 17 Paisley stated respondent later became involved with Ryan Williams, who lived near the minors' father. Paisley became aware respondent moved when a copy of a court report

came back as undeliverable. Respondent "eventually" provided information about Williams so a background check could be completed.

¶ 18 Danny Lee Wines, respondent's father, testified he spent a substantial amount of time at respondent's house. He was well-acquainted with Niemann, but he had no knowledge Niemann was abusing the minors. He never saw any adult or child nudity around the house. He had no doubt respondent could take care of the children.

¶ 19 Respondent testified she became aware of Niemann's abuse in March 2013. Since that time, respondent has undergone counseling and taken prescribed medication. She struggled with depression since the minors were removed but it had not impacted her ability to comply with the treatment plan. Respondent stated she did not know Shoulders was a sex offender when she was involved with him, but she no longer has any contact with him. Respondent testified she never saw Niemann molest her children. Also, An. N. and Ad. N. never told her about any inappropriate behavior by Niemann. Respondent admitted "naked cuddle time" was inappropriate.

¶ 20 Following closing arguments, the trial court found respondent unfit on all three counts. The court noted respondent's delay in beginning services demonstrated a lack of reasonable efforts and progress. In addressing respondent's claim that she knew nothing about the abuse of her children, the court stated, in part, as follows:

> "Reasonable inferences to be drawn from the evidence are such that the Court believes by clear and convincing evidence that the Respondent Mother knew. And the fact that to this day that she continues to deny that knowledge is further substantial and significant evidence that she has failed to make reasonable

progress and failed to demonstrate a reasonable degree of interest, responsibility, concern regarding the Respondent Minors."

¶ 21 In September 2014, the trial court conducted the best-interest hearing. The DCFS best-interest report indicated the minors lived together with their father. Both minors reported being comfortable and happy in the home. An. N. completed sexual-abuse therapy and has made "excellent progress." Ad. N. continued with sexual-abuse therapy and has made "significant progress."

¶ 22 The report indicated respondent indicated she could not afford the mortgage on the house she shared with a roommate and planned on moving. She continued individual counseling and took medication for depression. The report concluded respondent lacked insight as to her role in the minors' abuse and had not made any progress in acknowledging accountability.

¶ 23 The trial court found it in the minors' best interest that respondent's parental rights be terminated. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. Unfitness Findings

¶ 26 Respondent argues the trial court erred in finding her unfit. We disagree.

¶ 27 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial

court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001).

¶ 28 1. *Reasonable Progress*

¶ 29 In the case *sub judice*, the trial court found respondent unfit, *inter alia*, for failing to make reasonable progress toward the return of the minors within the initial nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)). The initial nine-month period following the adjudication of abuse ended on February 28, 2014.

¶ 30 "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

> "[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, 752 N.E.2d 1030, 1050 (2001).

"The law does not afford a parent an unlimited period of time to make reasonable progress

toward regaining custody of the children." *In re Davonte L.*, 298 Ill. App. 3d 905, 921, 699 N.E.2d 1062, 1072 (1998). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006).

¶ 31 Here, the evidence indicated respondent failed to make reasonable progress. Respondent failed to stay in contact with the caseworkers during the months after the adjudication of neglect. She did not get around to providing consent forms until October 2013. Even though she eventually started counseling, she continued to claim she was unaware of Niemann's abuse, despite her knowledge of naked cuddle time and naked Christmas decorating, as well as finding Niemann naked with a boy while rubbing lotion on himself. Respondent also lived with a man who was a registered sex offender. She then moved on to another relationship with Williams, who made contact with the minors and told them people were lying about their mother. This evidence clearly shows respondent failed to make any demonstrable movement toward reunification with her children. Thus, the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence.

¶ 32 2. *Reasonable Degree of Interest, Concern, or Responsibility*

¶ 33 The trial court also found respondent unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. Before finding a parent unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)), the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). "Completion of service plan objectives can also be considered evidence of a parent's concern, interest, and responsibility." *Daphnie E.*, 368 Ill. App. 3d at 1065, 859 N.E.2d at 135.

¶ 34 "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202. Moreover, "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." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004).

¶ 35 Here, the evidence indicated respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare as shown by the delay she exhibited in signing consents and engaging in counseling. Respondent had inappropriate contact with the minors, as did her boyfriend. These instances caused both minors to regress in their treatment, as it caused them to have false hope in reunification and gave them an incorrect belief that respondent was "doing a really good job and was really trying hard for them." Together with respondent's continued lack of accountability as to the abuse inflicted on her children, the inappropriate contact failed to show a reasonable degree of interest, concern, and responsibility as to the minors' welfare. Thus, the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because the grounds of unfitness are independent, we need not address the reasonable-efforts ground. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds of unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds.").

¶ 36 B. Best-Interest Findings

¶ 37 Respondent also argues the trial court's decision to terminate her parental rights was against the manifest weight of the evidence. We disagree.

¶ 38 "Courts will not lightly terminate parental rights because of the fundamental

importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). 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 2012). 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.

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 39 A trial court's finding that 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 in cases "where the opposite conclusion is

clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 40 The DCFS best-interest report indicated the minors were comfortable and happy living with their father. An. N. had accomplished his treatment goals and had made excellent progress. Ad. N. was close to completing counseling and had made significant progress.

¶ 41 The DCFS report also noted respondent's "history of unable, dysfunctional relationships combine to increase the chance that she could enter into another problematic relationship that would increase her risk to sexually offend to keep her partner happy with her." The report stated respondent continued to deny knowledge of Niemann's sex abuse of the minors and noted Reynolds' recommendation that respondent should be prohibited from having contact with anyone under the age of 18. Given her lack of insight and failure to acknowledge any accountability, the report concluded respondent "is not able to be in the caretaker role of any child."

¶ 42 The best-interest report by the court-appointed special advocate indicated An. N. and Ad. N. have "begun to heal from the extreme abuse" they suffered while in respondent's care. The report concluded it was in the minors' best interest "to continue to heal, develop, and grow without the reminder of past abuse and neglect" that contact with their mother might trigger.

¶ 43 The trial court found the minors were in a safe environment and had progressed in their healing. Considering the evidence and the best interest of the minors, most importantly their physical safety and welfare, as well as their continued mental well-being, we find the court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 44 III. CONCLUSION

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

¶ 46 Affirmed.