2016 IL App (4th) 160508-U

NOS. 4-16-0508, 4-16-0509 cons.

FILED
December 16, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-16-0509)	)	No. 14JA34
KENNETH BATES, Sr., and NICOLE HALE,	)	
Respondent-Appellant.	)	
	)	
In re: R.B., a Minor,	)	No. 14JA35
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0508)	)	Honorable
NICOLE HALE and KENNETH BATES, Sr.,	)	Thomas E. Little,
Respondents-Appellants.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which terminated respondents' parental rights.

¶ 2 In November 2015, the State filed petitions to terminate the parental rights of respondents, Nicole Hale and Kenneth Bates, Sr., as to their children, R.B. (born March 21, 2012) (Macon County case No. 14-JA-35) and K.B. (born August 23, 2013) (Macon County case No. 14-JA-34). Following a June 2016 fitness hearing, the trial court found respondents unfit. At a July 2016 best-interest hearing, the court terminated respondents' parental rights.

¶ 3 Respondent mother appeals, arguing only that the trial court's best-interest determination was against the manifest weight of the evidence. Respondent father appeals, arguing

that the court's fitness and best-interest determinations were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 On February 27, 2014, the State filed separate petitions for adjudication of wardship, alleging that R.B. and K.B. were neglected minors in that they were (1) not receiving proper or necessary care (count I) and (2) living in an environment injurious to their welfare (count II) as defined by sections 2-3(1)(a) and 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a), (1)(b) (West 2014)). Each petition alleged further that respondents (1) had ongoing substance-abuse and domestic-violence issues and (2) were not providing R.B. and K.B. proper nourishment or medical care.

¶ 7 That same day, the trial court entered a shelter-care order, finding that an immediate and urgent necessity required the children's placement in shelter care. On April 22, 2014, the court entered an adjudicatory order, finding that R.B. and K.B. were neglected minors in that they lacked support, education, and remedial care as defined by section 2-3(1)(a) of the Juvenile Court Act. The court based its adjudicatory findings, in part, on the respondents' substance-abuse and domestic-violence issues. At a dispositional hearing conducted that same day, the court made R.B. and K.B. wards of the court and maintained the Department of Children and Family Services as their guardian.

¶ 8 B. The State's Petitions To Terminate Respondents' Parental Rights

¶ 9 In November 2015, the State filed separate petitions to terminate respondents' parental rights. Specifically, the State alleged that respondents were unfit within the meaning of section 1(D) of the Adoption Act in that respondents had failed to (1) maintain a reasonable de-

gree of interest, concern, or responsibility for the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis for the children's removal during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)). (As to the reasonable-progress allegation, the State listed three separate but successive nine-month periods that began on April 22, 2014.)

¶ 10 1. *The Fitness Hearing*

¶ 11 At the start of the June 2016 fitness hearing, the trial court accepted respondent mother's stipulation that she was an unfit parent as the State alleged in its November 2015 petition to terminate parental rights. Thereafter, the court considered the following evidence as to respondent father's fitness.

¶ 12 a. The State's Evidence

¶ 13 In January 2015, Mallory Bollinger, a foster-care supervisor employed by Lutheran Child and Family Services (Lutheran), assumed management of respondents' case from the previous caseworker, who was no longer employed by Lutheran. Bollinger provided the following testimony regarding respondent father.

¶ 14 On the evening of February 27, 2014, the date of the shelter-care hearing, police arrested respondent father for a domestic-violence incident with respondent mother. In May 2014, respondent father began serving a term of probation. Additional information regarding the terms of respondent father's probation were not available because respondent father would not sign a release permitting access to those details.

¶ 15 Respondent father's client-service-plan goals required him to complete tasks relat-

ed to (1) a substance-abuse assessment and recommended treatment, (2) a mental-health assessment and recommended counseling, (3) domestic-violence classes, (4) parental education, (5) suitable housing and employment, (6) cooperation with Lutheran requests, and (7) law-abiding behavior. Respondent father's overall progress in completing his client-service-plan goals was unsatisfactory because he failed to participate in substance-abuse and mental-health assessments. Although respondent father participated in an "Assertive Ways to Address Relationship Equality" (AWARE) assessment, he did not return for the recommended treatment. See https://www.lcfs.org/wp-content/uploads/2015/02/LCFSAWARE brochure.pdf (last visited November 9, 2016) (outlining the "Assertive Ways to Address Relationship Equality" program offered by Lutheran). Respondent father did not provide Lutheran documentation that he had stable housing or legal income.

¶ 16 Respondent father did not maintain reasonable contact with his caseworker, but he would often ask to meet with his caseworker during his scheduled visitation periods with R.B. and K.B. As a result of respondent father's inconsistent visitations during October 2014, his weekly scheduled visitation period was reduced from two hours to an hour. In November 2014, police arrested respondent father because of "another domestic violence incident." Following a later hearing on the State's motion to revoke probation in a criminal case, the trial court sentenced respondent father to a term of imprisonment in the Department of Corrections, where he has remained throughout the instant case.

¶ 17 As a result of respondent father's imprisonment, a previous supervisor made a "critical decision" to suspend respondent father's visitation. Bollinger surmised that the supervisor took such action because respondent's history of domestic violence involving great bodily harm would likely result in prison visits that were short in duration without any physical contact.

Given the ages of R.B. and K.B. at that time, the supervisor determined that such visits would not be in the children's best interest. Respondent father failed to comply with any client-service-plan goals from April 2014 to November 2015.

¶ 18 Bollinger acknowledged that (1) she could not find a parenting class referral in respondent father's Lutheran file; (2) from May to November 2014, when respondent father was on probation, he attended the majority of his scheduled visits with R.B. and K.B. but missed at least 10 visits; (3) although respondent father's case began in February 2014, documentation showed that respondent received a copy of his client-service plan in November 2015; (4) since February 2014, five different caseworkers had been assigned to manage respondent father's case, which could have caused communication difficulties; (5) the first mention of the critical decision regarding the suspension of respondent father's visitation appeared in a June 2015 permanency review report signed by Bollinger; and (6) no documentation showed that Lutheran notified respondent father about the suspension of his weekly visits with R.B. and K.B. Bollinger noted that visitation logs and permanency review reports "regularly documented" conversations caseworkers had with respondent father about his client-service-plan goals.

¶ 19 b. Respondent's Evidence

¶ 20 Respondent father provided the following testimony.

¶ 21 In February 2014, respondent father was in jail, awaiting adjudication of a charge of domestic battery. In May 2014, respondent father pleaded guilty to that charge, and the trial court sentenced him to probation. Shortly thereafter, respondent father contacted Lutheran and visited with R.B. and K.B. During the six months that followed, respondent father attended all of his scheduled visits, except when his caseworker could not "bring the kids." In November 2015, respondent father received his initial client-service plan, which he noted was 21 months

after the instant case began. Later that month, police arrested respondent father for domestic battery. Lutheran did not inform respondent father about its decision to suspend scheduled visitations with R.B. and K.B.

¶ 22 During visits with R.B. and K.B., respondent father's caseworker would occasionally interrupt his visitation but never informed him about his client-service-plan goals. Respondent father admitted speaking with his caseworker on two separate occasions about his client-service plan, but on each occasion, the caseworker responded, " 'I'll get back to you.' " Respondent father also met with a Lutheran supervisor about his client-service plan, who referred respondent father back to his caseworker.

¶ 23 c. The Trial Court's Fitness Finding

¶ 24 Following the presentation of argument, the trial court found Bollinger's testimony credible and respondent father's testimony to be "incredible." Specifically, in addressing respondent father's testimony, the court added, "In other words, [the court] did not believe a word of what you said." Thereafter, the court adjudicated respondent father unfit as to all grounds alleged in the State's November 2015 petition to terminate his parental rights.

¶ 25 2. *The Best-Interest Hearing*

¶ 26 At a July 2016 best-interest hearing, the trial court considered the following evidence.

¶ 27 a. The State's Evidence

¶ 28 Bollinger testified that in November 2014, R.B. and K.B. were in an adoptive placement with a traditional two-parent foster family. Bollinger noted that R.B. and K.B. (1) were developing appropriately, (2) had no medical problems, (3) had bonded with their foster parents, and (4) were being appropriately cared for by their foster parents. The foster parents

were committed to adopting both of the children, and R.B. and K.B. had a sense of security with their foster parents. Bollinger believed that it was in the best interest of R.B. and K.B. to remain in their current adoptive placement.

¶ 29 Bollinger acknowledged that (1) respondent mother's sister expressed her willingness to serve as a foster parent to R.B. and K.B.; (2) an earlier issue involving the presence of another resident, which prevented respondent mother's sister from being a foster parent, had since been remedied; and (3) respondent father's sister expressed her willingness to serve as a foster parent to R.B. and K.B.

¶ 30 b. Respondents' Evidence

¶ 31 Respondent mother testified that she resides at the Logan County Correctional Center, where she completed "one parenting class" and was awaiting services pertaining to domestic violence and drug treatment. Respondent mother confirmed that her sister expressed an interest in caring for R.B. and K.B.

¶ 32 Respondent father testified that he resides at Lawrence Correctional Center, where he was awaiting services pertaining to anger management and parenting. Respondent father testified further that his sister is a licensed foster care provider who contacted Lutheran in an attempt to have R.B. and K.B. placed in her care.

¶ 33 c. The Trial Court's Best-Interest Finding

¶ 34 Following argument, the trial court found that the State had satisfied its burden of showing, by a preponderance of the evidence, that it was in the best interest of R.B. and K.B. to terminate respondents' parental rights.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 A. The Trial Court's Fitness Determination

¶ 38 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 39 Section 1(D)(m)(ii) of the Adoption Act provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:
>
> * * *
>
> (m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under section 2-3 of the [Juvenile Court Act]." 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 40 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

> "[T]he benchmark for measuring a parent's 'progress toward the re-

> turn 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."

¶ 41 "[R]easonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Id.* "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004).

¶ 42 2. *Respondent Father's Fitness Claim*

¶ 43 Respondent father argues that the trial court's fitness determinations were against the manifest weight of the evidence. Specifically, respondent father contends, in pertinent part, that because Lutheran failed to provide him a timely client-service plan, he was unaware of what services he had to complete. Thus, his lack of reasonable progress should not be used as a basis to terminate his parental rights. We disagree.

¶ 44 In this case, the evidence presented by the State at the June 2016 fitness hearing showed that respondent father failed to make reasonable progress toward his client-service-plan goals such that R.B. and K.B. could have been returned to his custody in the near future. In par-

ticular, respondent father did not perform the initial steps of accomplishing assessments regarding substance abuse and mental health to identify any deficiencies respondent father would have to address before regaining custody of R.B. and K.B. Even when respondent father did complete an initial AWARE assessment, he did not comply with the recommended treatment.

¶ 45 We reject respondent father's contention that because Lutheran failed to provide him a timely client-service plan, he did not know what services he had to complete. The trial court considered testimony from Bollinger that Lutheran caseworkers had regularly documented conversations they had with respondent father about his client-service-plan goals, which the court found credible. The court also considered and rejected as unbelievable respondent father's claim that during the 19 months that followed the court's April 2014 adjudicatory order, he was unaware of what parental attributes he had to demonstrate to regain custody of his children.

¶ 46 Mindful of the importance that the Adoption Act places on a minor's interest in permanency and stability, we note that at the June 2016 fitness hearing, respondent father was not in a better position to provide such permanency and stability than when R.B. and K.B. were adjudicated neglected 19 month earlier. See *In re Brandon A.*, 395 Ill. App. 3d 224, 238, 916 N.E.2d 890, 902-03 (2009) (noting that the Adoption Act recognizes a child's interest in a permanent and stable home environment with a positive, caring role model).

¶ 47 Accordingly, we conclude that the trial court's judgment—that is, that respondent father did not make *reasonable* progress within the meaning of section 1(D)(m)(ii) of the Adoption Act—was supported by clear and convincing evidence.

¶ 48 Having so concluded, we need not consider the trial court's other findings of parental unfitness against respondent. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground,

we need not consider other findings of parental unfitness).

¶ 49 B. The Trial Court's Best-Interest Determination

¶ 50 1. *Standard of Review*

¶ 51 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 52 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 53 2. *Respondents' Best-Interest Claims*

¶ 54 Respondents argue that the trial court's best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 55 In this case, the evidence presented at the best-interest hearing showed that R.B. and K.B. (1) were in an adoptive placement with a traditional two-parent foster family, (2) were developing appropriately, (3) had no medical problems, (4) had bonded with their foster parents, (5) were being appropriately cared for by their foster parents, and (6) had a sense of security with their foster parents. In addition, Bollinger believed that it was in the best interest of R.B. and K.B. to remain in their current adoptive placement.

¶ 56 Respondents, on the other hand, were not reasonably capable of caring for R.B.

and K.B. in the foreseeable future, given that they were incarcerated and had yet to successfully address their parental deficiencies.

¶ 57 Based upon the evidence presented, we agree with the trial court's finding that the evidence favored termination of respondents' parental rights.

¶ 58 III. CONCLUSION

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

¶ 60 Affirmed.