2017 IL App (4th) 160908-U

NO. 4-16-0908

FILED
May 3, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: B.D., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 13JA142
CHARLES DURBIN,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court concluded that the trial court's judgments finding respondent unfit as a parent and terminating respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In May 2016, the State filed a petition to terminate the parental rights of respondent, Charles Durbin, as to his daughter, B.D. (born July 23, 2010). Following an October 2016 fitness hearing, the trial court found respondent unfit. After a December 2016 best-interest hearing, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing the trial court's fitness determination was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

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

¶ 6 In September 2013, the State filed a petition for adjudication of wardship, alleging

that B.D. was abused and neglected pursuant to sections 2-3(1)(b), (2)(i), and (2)(ii) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b), (2)(i), (2)(ii) (West 2012)). Specifically, the petition alleged that respondent had a history of domestic violence and was being investigated for domestic violence that occurred in B.D.'s presence. The petition also alleged that respondent had been investigated for causing bruises on B.D. and for inadequate supervision. In addition, respondent was being investigated for impregnating his paramour, who was 17 years of age at the time the petition for adjudication was filed.

¶ 7 In March 2014, the trial court conducted a shelter-care hearing. Respondent stipulated that probable cause existed to believe that B.D. was abused and neglected and that an immediate and urgent necessity demanded that B.D. be placed in shelter care. The court entered an order placing B.D. in the temporary custody of the Department of Child and Family Services (DCFS).

¶ 8 Respondent did not appear at the April 2014 adjudicatory hearing. At that hearing, B.D.'s mother stipulated that B.D. was neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2012)). That accusation of neglect alleged that B.D. had unauthorized, unsupervised contact with respondent. In addition, when B.D. was taken into protective custody, the home she was living in was dirty and lacked running water. Further, B.D. was dirty and was not receiving her prescribed asthma medication. The trial court accepted the stipulation and entered an order finding B.D. neglected. At the dispositional hearing immediately thereafter, the court found that, for reasons other than financial circumstances alone, respondent was unfit and unable to care for, protect, train, educate, supervise, or discipline B.D. The court found further that it was in the best interest of B.D. that she be made a ward of the court. The court maintained custody with DCFS.

¶ 9 Later that month, respondent filed a motion to "vacate the Order of default," claiming that he mistakenly appeared for the adjudicatory hearing one day late. At a May 2014 hearing on respondent's motion to vacate, the trial court granted respondent's motion and vacated its adjudicatory and dispositional orders as to respondent. Respondent then stipulated that B.D. was neglected. The court accepted respondent's stipulation and found further that it was in the best interest of B.D. that she be made a ward of the court and that she be placed in the guardianship of DCFS.

¶ 10 B. The Petition To Terminate Parental Rights

¶ 11 In May 2016 the State filed a petition to terminate respondent's parental rights as to B.D. Specifically, the petition alleged that respondent (1) abandoned B.D. (750 ILCS 50/1(D)(a) (West 2014)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to B.D.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (3) deserted B.D. for more than three months (750 ILCS 50/1(D)(c) (West 2014)); (4) failed to make reasonable efforts to correct the conditions that were the basis for the removal of B.D. during a nine-month period (750 ILCS 50/1(D)(m)(i) (West 2014)); and (5) failed to make reasonable progress toward the return of B.D. during six different nine-month periods (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 12 1. *The October 2016 Fitness Hearing*

¶ 13 a. The State's Evidence

¶ 14 Patrice Murphy—a caseworker for Lutheran Child and Family Services (LCFS), a DCFS contractor—testified that between May 2015 and October 2015, she was respondent's caseworker. Respondent had a service plan that required him to take parenting classes, complete sexual-offender and mental-health assessments, get a job, and find housing. While Murphy was respondent's caseworker, respondent did not complete any of those service goals. Murphy re-

ferred respondent to Dick Winkler with DCFS to obtain a sex-offender assessment, but respondent never followed up. In July 2015, when Murphy asked respondent why he had not made any progress on his goals, respondent "just reported that he had not found a job or housing."

¶ 15 Murphy testified further that during supervised visits with B.D., respondent needed a lot coaching and got mad at B.D. for minor infractions.

¶ 16 LCFS case aide Jennifer Mars attended supervised visits with respondent and B.D. and described respondent as a "little aggressive" toward B.D. Mars explained that respondent's interactions with B.D. improved after Mars advised him not be so aggressive. Respondent brought food and clothes for B.D. when he visited her. Other than the aggression, respondent's interactions with B.D. were appropriate.

¶ 17 Court-appointed special advocate Sandra Dunn testified that the two visits she observed between respondent and B.D. went well. Dunn explained that she did not attend more of respondent's visits because respondent "wasn't doing anything on his service plan," and Dunn therefore assumed that B.D. would not be placed with respondent, so sitting in on visits was unnecessary. During an "ACR" review of respondent's service plan in the spring of 2015, respondent's progress was unsatisfactory in all areas. When asked why he had not completed his service-plan goals, respondent answered that nobody had offered him a parenting class.

¶ 18 LCFS child welfare specialist Ashley Moffett testified that respondent failed to make any progress on his service plan from May 2014 through March 2016. Respondent blamed LCFS for his failing to complete his service-plan goals. When asked by Moffett why he had not achieved his service-plan goals, respondent "sa[id] previous caseworkers have lost stuff or have not relayed information, and it's the agency's fault according to him." When asked why he had not obtained a sex-offender assessment, respondent replied that he could not afford one. Moffett

testified that she thought respondent had been referred to Winkler to help pay for an assessment. Respondent told Moffett that he had not attended a parenting class because he was not allowed inside Webster-Cantrell Hall, where the classes took place, due to his status as a sex offender. Moffett was not aware of any other locations in Macon County that provided parenting classes. Moffett testified that respondent obtained a mental-health assessment in August 2014, but he was unsuccessfully discharged from the subsequent mental-health treatment program.

¶ 19 b. Respondent's Evidence

¶ 20 Respondent testified that he did not complete a sex-offender assessment because his caseworker never gave him a referral and he could not otherwise afford the class. Respondent explained that he had six different caseworkers over two years. As to failing to attend parenting classes, respondent testified that he was a sex offender and all the organizations that offered parenting classes had children around. Respondent did obtain a mental-health evaluation.

¶ 21 c. The Trial Court's Ruling

¶ 22 After hearing evidence, the trial court stated that it found Murphy's, Mars', and Moffett's testimony credible and found respondent's testimony incredible. The court reasoned that respondent "had service plans, he recognized that he received all of them, and he just didn't do what he was told to do." The court found that the State had proved by clear and convincing evidence that respondent was unfit under sections 1(D)(b), 1(D)(m)(i), and 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (D)(m)(i), (D)(m)(ii) (West 2014)).

¶ 23 2. *The December 2016 Best-Interest Hearing*

¶ 24 At the December 2016 best-interest hearing, Moffett testified that, since July 10, 2015, B.D. was living in an adoptive placement with a foster family. The foster family was a two-parent home with two other foster children. B.D. felt safe and secure in the home. The fami-

ly looked after B.D.'s medical needs, especially her asthma. The family had "tons" of friends. B.D. felt loved and got along well with the other foster children. She had bonded with her foster parents, whom she called "Mom" and "Dad." (Moffett noted that B.D. still referred to respondent as "Father.") B.D. was doing "fantastic" in school.

¶ 25 Moffett testified further that B.D.'s foster family was planning to move out-of-state in the near future, which Moffett testified would disrupt B.D.'s life. But Moffett noted that B.D. was excited about the move. Moffett testified further that removing B.D. from her foster family would be "highly disruptive." During visits with respondent, B.D. was neither excited nor upset. In Moffett's opinion, it was in B.D.'s best interest to remain in the foster home.

¶ 26 Respondent testified that B.D. runs to him when he shows up for visits and hugs him and says she loves him when he leaves. B.D. never discussed her foster family with respondent. Respondent explained that his parents lived in Decatur and might work as a possible placement for B.D., but nobody had approached him or them about the possibility.

¶ 27 After hearing evidence, the trial court determined that it was in B.D.'s best interest to terminate respondent's parental rights. In reaching that determination, the court stated that it had considered the best-interest factors. The court also explained that it found Moffett's testimony credible.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Respondent argues that the trial court's findings that (1) he was an unfit parent and (2) it was in the best interest of B.D. to terminate his parental rights were against the manifest weight of the evidence. We disagree.

¶ 31 A. The Trial Court's Unfitness Finding

¶ 32 Respondent argues that the trial court's finding that he was an unfit parent was against the manifest weight of the evidence. We disagree and conclude that the evidence was sufficient to establish that respondent was unfit for failing to make reasonable progress under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 33 1. *Statutory Language and the Standard of Review*

¶ 34 At the time of the fitness hearing in this case, section 1(D)(m) of the Adoption Act provided, 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 ***:
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> * * *
>
> (m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent during any [nine]-month period after the adjudication of neglected or abused minor[.]" 750 ILCS 50/1(m)(ii) (West 2014).

¶ 35 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 return of the child' under section 1(D)(m) of the Adoption Act en-

> compasses 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."

¶ 36 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

> " 'Reasonable progress' *** exists when the [trial] court *** can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent ***." (Emphases in original.)

¶ 37 The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067-68, 808 N.E.2d 596, 605 (2004); *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 38 "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 ob-

serve the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604.

¶ 39 2. *This Case*

¶ 40 In this case, the testimony established that respondent failed to complete multiple service-plan goals, including participating in a sex-offender assessment, securing housing, and finding a job. "[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." *C.N.*, 196 Ill. 2d at 216, 752 N.E.2d at 1050. Respondent argues that his failure to complete his service-plan goals was not his fault, claiming, for example, that he lacked the financial ability to secure independent housing and to pay for a sex-offender assessment. But Murphy testified that she referred respondent to Winkler for sex-offender treatment. The trial court explicitly stated that it found Murphy's testimony more credible than respondent's. In addition, respondent did not complete his service goals of obtaining housing and becoming employed. Even if we agreed with respondent's argument that he was unable to attend parenting classes, the evidence supported the trial court's determination that respondent had not made reasonable progress over several distinct nine-month periods. The court's decision was not against the manifest weight of the evidence.

¶ 41 Having so concluded, we need not consider the trial court's other findings of parental fitness 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 fitness).

¶ 42 B. The Trial Court's Best-Interest Finding

¶ 43 Respondent argues that the trial court's finding that terminating his parental rights

was in the best interest of B.D. was against the manifest weight of the evidence. We disagree.

¶ 44 1. *Standard of Review*

¶ 45 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).

¶ 46 "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.*

¶ 47 2. *This Case*

¶ 48 Moffett testified that B.D. had been living with her foster family for approximately 1 1/2 years. In that time, she had bonded with her two foster parents and two foster siblings. B.D. felt safe and secure in the home and referred to her foster parents as “Mom” and “Dad.” The family had several friends and took care of B.D.’s medical needs. She was doing “fantastic” in school. Meanwhile, respondent still had not completed his service-plan goals. All the evidence pointed to B.D. thriving in her new placement, while respondent continued to struggle with the issues that resulted in the foster placement. Considering all the positive benefits B.D. was enjoying in her foster placement, the court’s decision to terminate respondent’s parental rights was not against the manifest weight of the evidence.

¶ 49 III. CONCLUSION

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

¶ 51 As part of our judgment, we award the State its $50 statutory assessment against respondent as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 52 Affirmed.