2017 IL App (4th) 170370-U

NOS. 4-17-0370, 4-17-0371 cons.

FILED
October 10, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.M., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0370) Tawni Hardesty, Respondent-Appellant).	)	Appeal from Circuit Court of Macon County No. 15JA14
In re: M.M., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0371) Brandon Meyers, Respondent-Appellant).	)	Honorable Thomas E. Little, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order terminating respondent parents' parental rights was not against the manifest weight of the evidence.

¶ 2 Respondents, Tawni Hardesty and Brandon Meyers, are the parents of the minor, M.M. They appealed separately after the trial court terminated their parental rights. They contend the court erred by (1) finding them unfit and (2) finding it was in M.M.'s best interest to terminate their parental rights. We consolidated the appeals and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 The minor, M.M., was born to respondent mother and respondent father on August 7, 2006. M.M. lived with his mother until sometime in 2013 or 2014 when it was decided M.M. would be better off living with his father because she was struggling with drugs. She said she "did not feel that [she] could give [M.M.] a proper home environment."

¶ 5 On January 18, 2015, when M.M. was eight years old, his paternal grandmother took him to the emergency room after he showed her evidence of injuries he had received from a beating by respondent father's girlfriend, Autumn Reid. Reid reportedly beat M.M. with a hanger until it broke after he lied about taking food from the refrigerator. According to M.M., this was not an isolated incident. The Illinois Department of Children and Family Services (DCFS) took M.M. and two other minors (Reid's children) living in the home into protective custody. All three were eventually placed with Nathanial Bledsoe, the father of one of the three.

¶ 6 The shelter-care report painted a devastating scene of the minors' home environment with respondent father and Reid. The home was reportedly infested with cockroaches and mice. Spoiled and rotting food was in the refrigerator. M.M. was balding in places on his head from untreated ringworm. He reported he was frequently beaten by Reid and respondent father with hangers, a belt, and extension cords. He was prohibited from interacting with the rest of the family because, according to Reid, he was always in trouble for lying. The last beating he suffered was because he lied about eating tacos out of the refrigerator. According to Reid, they had to ration food among the five household members, yet the investigators saw multiple packs of cigarettes and empty liquor bottles lying about. Neither adult could provide an explanation.

¶ 7 Based on these circumstances in respondent father's home, the State filed a five-count petition, alleging M.M. was a neglected and abused minor. Respondents were each

appointed counsel. On May 15, 2015, the trial court entered both an adjudicatory and a dispositional order upon finding each parent in default.

¶ 8 According to the record, on June 26, 2015, respondent mother was arrested during a visit with M.M. She was convicted of a methamphetamine-related charged and sentenced to three years in prison with a projected parole date of October 10, 2017. She had not participated in any recommended services prior to her incarceration. She had been referred to a mental-health assessment, individual counseling, a substance-abuse assessment, and a parenting course. She was also asked to obtain stable housing and income. Respondent father was homeless, sleeping on "different friends' couches nightly." He began a parenting class and counseling but was dropped from both for not attending.

¶ 9 On June 20, 2016, the State filed a petition to terminate respondents' parental rights. The charges against respondent mother alleged she was unfit for the following reasons: (1) she abandoned the minor (750 ILCS 50/1(D)(a) (West 2014)); (2) she failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); (3) she deserted the minor for more than three months prior to the unfitness proceeding (750 ILCS 50/1(D)(c) (West 2014)); (4) she failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014)); (5) she failed to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect, namely between May 15, 2015, and February 15, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (6) she failed to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect, namely between September 16, 2015, and June 16, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 10 The charges against respondent father alleged he was unfit for the following reasons: (1) he abandoned the minor (750 ILCS 50/1(D)(a) (West 2014)); (2) he deserted the minor for more than three months prior to the unfitness proceeding (750 ILCS 50/1(D)(c) (West 2014)); (3) he failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014)); (4) he failed to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect, namely between May 15, 2015, and February 15, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (5) he failed to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect, namely between September 16, 2015, and June 16, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 11 On October 24, 2016, the trial court conducted a fitness hearing. First to testify for the State was Willa Boles, the parenting instructor at Webster Cantrell Hall. She said respondent father began her parenting program in February 2015 and, after starting and stopping several times, he successfully completed the program in January 2016. Respondent mother was referred to the program but she had not participated.

¶ 12 Deanna Willis, a foster-care supervisor at Webster Cantrell Hall, testified next. She said she had worked with the family since the beginning of the case. She had several family meetings with respondent mother and father. She said respondent father successfully completed two tasks: parenting and substance-abuse treatment at Heritage. However, he had not made any progress on obtaining stable housing or income. She observed a few visits between him and M.M., noting that sometimes respondent father would engage with the minor and sometimes "he might just sit there." Willis said respondent mother initially attended visits with M.M. but was arrested in June 2015 and has been incarcerated since that time. Prior to her arrest, she was

referred to Heritage for a substance-abuse assessment and treatment if necessary, and a parenting course. She completed the assessment, which recommended level one outpatient treatment, but she "never went through with parenting."

¶ 13 Shayla Hawkins, case manager for Webster Cantrell Hall, testified she met with respondent father once a month to check on his compliance with the case plan. Hawkins had not recently been able to meet with him at his residence because he lived with a friend who did not want anyone to come to his house. With no steady job, no income, and no way to evaluate his residence, Hawkins said she could not return M.M. to his care anytime in the near future. She had made multiple referrals for him to Youth Advocacy, an agency that would help him with employment and housing. Hawkins had observed some visits between M.M. and respondent father. Like Willis, Hawkins said "sometimes he is engaged and sometimes he's not." She said his attendance had been inconsistent as well. Due to his inconsistency, his visits with M.M. were reduced from once a week to once a month.

¶ 14 Hawkins visited respondent mother in prison and learned she had completed a parenting course and a substance-abuse course. Prior to her incarceration, respondent mother had not participated in any of her recommended tasks, which included individual counseling, parenting, a mental-health assessment, and obtaining stable housing and income. Upon her release, she would need to obtain housing and income, take the parenting examination, visit with M.M., and begin random drug testing. Hawkins testified neither parent was rated overall successful on their individual respective case plans.

¶ 15 Next to testify for the State was Brittaney Boyce, the Webster Cantrell Hall case aide for respondent father. Part of her duties was to take M.M. to visit with his father. She said visits went well. She attended 18 visits between November 2015 and September 2016.

Respondent father had four canceled visits and three no-shows during that time period. The State rested.

¶ 16 Respondent mother testified on her own behalf. She was currently incarcerated. She became aware of DCFS involvement "after the fact" in January 2015. She said by May 2015 she was involved in services. She had completed a substance-abuse assessment at Heritage and was attending visits. She said she did not follow through with recommended treatment but she had signed up for a parenting course. She said she did not participate in all services because she "had legal issues going on." She went to prison in October 2015 after being arrested in June 2015.

¶ 17 Respondent mother visited with M.M. while she was in prison with no issues. Her mother or sister would bring him for two-hour visits approximately once a week. She also participated in special child-related programs in prison, such as the three-day Mom and Me Camp and also Project Storybook. The Mom and Me Camp allowed the children of inmates to spend eight hours a day with their incarcerated mothers. With Project Storybook, the inmates read a book aloud. Their voices were recorded on compact discs and mailed to their children. Respondent mother also said she and M.M. have written letters to each other. She said M.M. seems to look forward to seeing her.

¶ 18 Respondent mother participated in three different parenting classes in prison. She also successfully completed 180 hours of a substance-abuse class. She said she would agree to participate in random drug screenings upon her release from prison. She was working on obtaining her general equivalency diploma. She introduced numerous certificates of completion for various programs in prison.

¶ 19 On cross-examination, she said she began services on November 12, 2015, when she got to the Decatur Correctional facility. She also said she was unaware of the issues occurring at respondent father's home and admitted she was unable to parent M.M. due to her use of methamphetamine.

¶ 20 Respondent father testified on his own behalf. He said he was participating in the Youth Advocate program wherein he received assistance with securing employment. He said he was employed until February or March 2016 working at various restaurants. He was currently living with a friend. He said he completed the parenting course and the substance-abuse assessment at Heritage. He said he missed some visits with M.M. because he "[j]ust [had] other obligations at the time." He said, during that time, he was in college, working, and enrolled in a life skills class for another court case, which, he claimed, "conflicted with a lot of things and [was] why [he] had to leave parenting class for a month." He said he eventually successfully completed the parenting course. He also said he "definitely" enjoyed visits with M.M.

¶ 21 After considering the evidence and recommendations of counsel, the trial court found the State proved by clear and convincing evidence that (1) respondent father was unfit for (a) failing to make reasonable efforts to correct the conditions that were the basis for the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014)); (b) failing to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect, namely between May 15, 2015, and February 15, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (c) failing to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect, namely between September 16, 2015, and June 16, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (2) respondent mother was unfit for (a) failing to make reasonable progress toward the return of the minor during any nine-month

period following the adjudication of neglect, namely between May 15, 2015, and February 15, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (b) failing to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect, namely between September 16, 2015, and June 16, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 22 On November 21, 2016, the caseworker filed a best-interest report which indicated respondent mother remained incarcerated with a projected parole date of July 2017. Although she had participated in some services in prison, she had made no progress toward the return of M.M. The caseworker recommended termination of respondent mother's parental rights. Respondent father had completed a parenting course and was not again recommended to mental-health services. However, he did not have stable income or housing. The caseworker was prohibited from making home visits with him because the owner of the home did not want anyone in his home. Respondent father had made no progress toward the return of M.M., so the caseworker recommended termination of respondent father's parental rights as well.

¶ 23 According to the report, M.M., age 10, was a "happy[-]go[-]lucky boy for the most part." He was removed from Bledsoe's home because it was found unsuitable as "extremely unclean." At the time, he was placed in relative foster care with his uncle Jason White and "at this time[, he was] trying to adjust."

¶ 24 On May 10, 2017, the trial court conducted the best-interest hearing. The caseworker Shayla Hawkins testified M.M. was then in his sixth placement. For the past month, he had lived with his aunt, Autumn Billings, and was content but said he really missed living with his uncle, Jason White. M.M. had to be removed from White's home because White was arrested for firing a weapon at his place of employment. Although Billings is not related to M.M.

by blood, she is White's estranged wife. M.M. had not had any behavioral issues while with Billings and was doing well in school. Hawkins said, in her opinion, respondent father was not interested in regaining custody of M.M. based on the fact he had not called her once to inquire about M.M. He had not participated in visits since at least December 2016.

¶ 25 However, Hawkins said respondent father "ha[d] [done] all his services." She said he found a home and a job but, according to her, he did not seem interested in getting M.M. back. She said neither parent would be a reasonable placement for M.M. in the near future. She said Billings is willing to provide M.M. long-term placement and was considering whether to adopt. M.M. told Hawkins he was happy with Billings and was willing to follow her rules. He interacted well with friends at school and often had them over to visit. He had not changed schools during his multiple placements, so he had been able to maintain consistency in that respect.

¶ 26 Hawkins said she had asked M.M. how visits went with his parents. She said his reaction differs but he was generally "nonchalant like he doesn't want to answer the questions sometimes or just doesn't care to talk about it." Hawkins said she was in the process of securing an individual counselor for him. In Hawkins's opinion, it would be in M.M.'s best interest if respondents' parental rights were terminated.

¶ 27 Hawkins testified respondent mother was recently released from prison. She knew M.M. visited her in prison but Hawkins was never present for those visits. When referring to M.M.'s visits with respondent father, it was Hawkins' opinion there was not "much of a bond."

¶ 28 Jefferson Hunt, the court-appointed child advocate, also testified on behalf of the State. He said M.M. had a very strong connection with White and was hoping to be adopted by

him, but he liked living with Billings. He said he had his own room, he helped with chores, and his grades were improving at school. The State rested.

¶ 29 Respondent mother presented no evidence. Respondent father testified on his own behalf. He said, contrary to Hawkins's testimony, he visited with M.M. last month for two hours at Webster Cantrell Hall in the presence of the case aide. He said his visit in January and February fell on holidays and the building was closed both days. He said he was working full-time as a cook at International House of Pancakes (IHOP) and also had a YouTube channel from which he earns approximately $400-500 per month. He had his own home. He said he loves M.M. and wants M.M. to live with him.

¶ 30 After considering the evidence and arguments of counsel, the trial court mentioned this was "a very difficult case." The court was troubled that M.M. was currently in his sixth placement and was now with his "aunt by marriage." The court recounted Hawkins's testimony that M.M. seemed to be doing well in his current placement but he had only been there for a few weeks. He liked to visit with respondent mother but was "nonchalant about his relationship with the father." M.M.'s current placement was possibly a long-term placement, but "there, at least in [the court's] mind, are a lot of questions about whether or not that will work out to, in fact, be the case." The court noted Hawkins's testimony "that both parents are just kind of nonchalant about their relationship with the child." The court also noted Hunt's testimony that M.M. "talks only about his uncle not about his mother and father." Through respondent father's testimony, the court noted it "didn't get a sense of much of a bond there, attachment. *** [it] didn't sense that there was a great deal of bond." The court also noted Hunt's testimony that M.M.'s teachers and principal wanted him to remain at his present school.

¶ 31 The trial court also noted the best-interest factors, finding "not much evidence" to support them. The court stated: "I just don't find much support in the evidence that this child has bonded to his parents, and given the fact that this is his sixth placement, I didn't really hear any evidence that he's strongly bonded to his aunt by marriage." With regard to the permanence factor, the court stated:

> "And although I don't feel completely comfortable that this is a long-term placement for this child, his sixth placement with the aunt, I also find that at the same time that I don't think there's a realistic possibility at this point based on the evidence that I heard that this child could ever be returned to the mother or the father. I just don't see a bond there.
>
> And I don't think the evidence supports that there's much of a bond, if any, between the mother and the father. The additional factors, the risks attached to substitute care preferences the person's available to care for the child I think are pretty neutral factors. The evidence here at least the factors and the evidence I'm hearing, I believe that the State has proven by a preponderance of the evidence that it is in the child's best interest that the parental rights of the mother and father be terminated."

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Both respondents argue the trial court's finding of parental unfitness was against the manifest weight of the evidence. More specifically, respondent father contends the court erred finding him unfit for failing to (1) make reasonable efforts to correct the conditions that were the basis for M.M.'s removal from his care (see 750 ILCS 50/1(D)(m)(i) (West 2014)), and

(2) make reasonable progress toward the return of M.M. within nine months after the adjudication of neglect and abuse (750 ILCS 50/1(D)(m)(ii) (West 2014)). Respondent mother contends the court erred in finding her unfit for failing to make reasonable progress toward the return of M.M. within nine months after the adjudication of neglect and abuse (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 35 If the trial court finds the State had carried its burdens of proof as to parental fitness, we do not reweigh the evidence, but instead, we decide whether those findings are against the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 998 (2004). A finding of unfitness is against the manifest weight of the evidence only if it is "clearly apparent" that the State failed to prove, by clear and convincing evidence, that the respondent was an unfit person. *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 427 (2007).

¶ 36 A. Reasonable Efforts

¶ 37 Under the Adoption Act, a parent is considered unfit if he or she fails to make a reasonable effort to correct the conditions that led to the child's removal 750 ILCS 50/1(D)(m)(i) (West 2014). "Reasonable effort" is a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal. *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000). The focus is on the amount of effort reasonable for the particular parent involved. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001).

¶ 38 According to his case plan, respondent father was to obtain employment and suitable housing in order to regain the care and custody of M.M. He did neither until March 2017. At that point, with the help from Youth Advocate, to which he was first referred a year prior, he secured his own home. Prior to 2017, for approximately one year, respondent father lived with a friend who would not allow the caseworker to come to his house. Prior to living with

the friend, respondent father lived with his girlfriend—the woman who had regularly "whooped" M.M.

¶ 39 Further, for most of the case, respondent father was unemployed. As of March 2017, he was reportedly working at IHOP. Until the caseworker was comfortable with respondent father's living environment and his potential to financially support his child, there was no hope of returning M.M. For two years, respondent father did not make a subjective reasonable effort to correct the conditions noted by DCFS. Although he successfully participated in a parenting course, he failed to make a reasonable effort to secure the remaining tasks required of him. The caseworker Hawkins was of the opinion that respondent father was not interested in participating in services, which may explain why for two years he failed to put forth an effort to obtain employment and housing. His failure to do so supports the trial court's finding of unfitness.

¶ 40 Only one ground of unfitness needs to be proved by clear and convincing evidence in order to find a parent unfit. *J.A.*, 316 Ill. App. 3d at 564. With that said, we affirm the trial court's finding of unfitness as to respondent father.

¶ 41 B. Reasonable Progress

¶ 42 The Adoption Act also provides that a parent is considered unfit if he or she fails to make reasonable progress toward the child's return home within nine months of the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2014). In *In re C.N.*, 196 Ill. 2d 181, 216-17 (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 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."

¶ 43 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (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.)

¶ 44 In this case, the State alleged the relevant time period for one count was from May 15, 2015, to February 15, 2016. Respondent mother was incarcerated in June 2015. At the beginning of the case, in January 2015, respondent mother was referred to individual counseling, a parenting course, a substance-abuse assessment, and a mental health assessment. She was also required to obtain suitable housing and income. Prior to her incarceration, she had only completed the substance-abuse assessment, after which she was referred to level one outpatient treatment. She did not do anything further with regard to these tasks and attended only some visits with M.M. When asked why she had made little to no progress prior to June 2015, respondent mother stated she had "legal issues going on."

¶ 45 The trial court noted and commended respondent for the numerous programs and classes in which she had participated in prison after November 2015. However, as the court also

noted, respondent mother was in an artificial environment providing no real-world experience with no real-world stimuli. She was undoubtedly clean and sober in prison but, as the court noted, it was unknown "how she's going to do on the issue of sobriety until she's released." "Time in prison is included in the nine-month period during which reasonable progress must be made." *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89. Although respondent participated in certain classes and programs in prison beginning in November 2015, she had made no progress on her service plan by the end of the relevant nine-month period in February 2016. We affirm the trial court's finding of unfitness as to respondent mother.

¶ 46 C. Best Interest Determination

¶ 47 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 (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 (2005).

¶ 48 "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. 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. *Jay H.*, 395 Ill. App. 3d at 1071

¶ 49 The trial court recognized that a particular difficulty arose in this case because M.M. did not seem to have a bond with any adult except with his uncle Jason White, who could not provide a safe environment for M.M. The minor was in his sixth placement in two years and had only been in that home for a matter of weeks. M.M. seemed happy in this home with

Billings, as his behavior seemed to improve in that short time frame. Billings was considered a potential long-term placement, though she had not committed to adopting M.M.

¶ 50 The trial court based its best-interest finding not necessarily on the statutory factors, since very few applied, but on the facts that (1) M.M. seemed content and well-behaved in Billings' home, and (2) she was willing to provide him long-term placement. The court encouraged the caseworker to schedule M.M. for individual counseling and believed that counseling, coupled with consistency in his home life, would benefit M.M. a great deal. Based upon the evidence presented, the court found it was in M.M.'s best interest to terminate respondents' parental rights. We affirm the court's decision and conclude that the court's best interest finding was not against the manifest weight of the evidence.

¶ 51 III. CONCLUSION

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

¶ 53 Affirmed.