2018 IL App (4th) 170683-U

NOS. 4-17-0683, 4-17-0684, 4-17-0685 cons.

FILED
January 23, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re D.C., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0683) Nicole Bowersock, Respondent-Appellant).	Appeal from Circuit Court of Logan County No. 15JA22
In re B.C., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0684) Nicole Bowersock, Respondent-Appellant).	No. 15JA23
In re C.C., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0685) Nicole Bowersock, Respondent-Appellant).	No. 15JA24 Honorable William G. Workman, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in terminating respondent's parental rights.

¶ 2 In November 2015, the State filed a petition for adjudication of wardship with

respect to D.C., B.C., and C.C., the minor children of respondent, Nicole Bowersock, and Codie Cheatham. In March 2016, the trial court made the minors wards of the court and placed guardianship with the Department of Children and Family Services (DCFS). In February 2017, the State filed petitions to terminate respondent's parental rights. The State filed amended petitions in May 2017. The court found respondent unfit and determined it was in the minors' best interests that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2015, the State filed a petition for adjudication of wardship with respect to D.C., born in 2008; B.C., born in 2013; and C.C., born in 2015, the minor children of respondent and Cheatham. The State alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West Supp. 2015)) because they were living in an injurious environment, as evidenced by (1) their mother's drug use and (2) their father's drug use. The State also alleged C.C. was neglected pursuant to section 2-3(1)(c) of the Juvenile Court Act (705 ILCS 405/2-3(1)(c) (West Supp. 2015)) because he was a newborn infant whose blood, urine, or meconium contained an amount of a controlled substance or a metabolite of a controlled substance.

¶ 6 At the shelter-care hearing, Erin Brown, a DCFS investigator, testified C.C. was born in October 2015 and tested positive for opiates. A prior investigation in August 2015 revealed respondent was pregnant and using heroin on a daily basis. Respondent's drug test came back positive for opiates and cocaine. Brown stated a safety plan was put into place, and it required respondent refrain from using drugs and seek treatment for substance abuse. Although

respondent was scheduled to undergo treatment for a second time on November 5, 2015, she failed to show up for an assessment and had not made any further attempts to get into a treatment program. While respondent was asked to test for controlled substances and claimed she had done so, Brown stated she did not provide a sample on November 5. During the pendency of the safety plan, the two older minors were staying with their 84-year-old great-grandmother, but she indicated she was unable to continue caring for them. Respondent and Cheatham did not appear at the hearing.

¶ 7 The trial court found probable cause for the filing of the petition based on respondent's drug use and the presence of drugs in C.C.'s system. The court also found respondent and Cheatham violated the terms of the safety plan. Finding an immediate and urgent necessity to remove the minors from the home, the court entered an order granting temporary custody to DCFS.

¶ 8 At the December 2015 first appearance, the trial court admonished Cheatham on the State's allegations. Respondent failed to appear. In February 2016, respondent admitted the minors' environment was injurious to their welfare due to her drug use, and the court found the minors were neglected.

¶ 9 In its March 2016 dispositional order, the trial court found respondent unfit to care for, protect, train, educate, supervise, or discipline the minors and placement with her would be contrary to the health, safety, and best interests of the minors because of respondent's lack of employment, substance abuse, mental-health issues, and lack of cooperation with DCFS. The court adjudged the minors neglected, made them wards of the court, and placed guardianship of the minors with DCFS. The court placed custody of D.C. and B.C. with DCFS and C.C. with Dawn Frye.

¶ 10 An August 2016 permanency report, authored by Katrina Adye of The Center for Youth and Family Solutions, stated respondent was unemployed and had not reported attending any job interviews or submitting applications. Respondent had not completed a substance-abuse assessment or a mental-health assessment. Respondent was incarcerated on June 29, 2016, and Adye spoke with her at the jail on July 21, 2016. Respondent had attended none of the requested drug screens. Adye indicated respondent did not return her calls on a regular basis and frequently arrived late for visits with her children. Respondent attended 17 of 21 possible visits with all three children and 8 of 17 possible visits with C.C. The report indicated Cheatham died on August 17, 2016.

¶ 11 Adye's January 2017 permanency report indicated respondent tested positive for benzodiazepines, cocaine, and opiates on September 29, 2016, and cocaine and cannabinoids on December 5, 2016. Respondent had not completed a mental-health assessment and had not followed through with attending or scheduling all services. Respondent was arrested on December 22, 2016, on charges of drug-induced homicide. She attended 21 of 22 visits during the reporting period, and she received 5 visits while in jail. Adye indicated respondent's attendance at visits had improved significantly and, when she chose to attend visits sober, she demonstrated good parenting skills. However, respondent had not made progress with her services.

¶ 12 In February 2017, the State filed petitions to terminate respondent's parental rights. The petitions alleged respondent was unfit because she failed to make (1) reasonable efforts to correct the conditions that were the basis for the minors' removal (750 ILCS 50/1(D)(m)(i) (West 2016)) and (2) reasonable progress toward the minors' return to her within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 13 The State filed amended petitions to terminate respondent's parental rights in May 2017. Therein, the State alleged respondent was unfit because she failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal during any nine-month period after the adjudication, listing the applicable time periods as February 18, 2016, to November 18, 2016, and August 11, 2016, to May 11, 2017 (750 ILCS 50/1(D)(m)(i) (West 2016)). The State also alleged respondent was unfit because she failed to make reasonable progress toward the minors' return during any nine-month period after the adjudication, listing the applicable time periods as February 18, 2016, to November 18, 2016, and August 11, 2016, to May 11, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 14 In June 2017, the trial court conducted a hearing on the State's petitions. Called by the State, respondent testified she had been in custody since December 22, 2016. She stated C.C. was born with a clubfoot and heroin in his system. Respondent testified her February 2016 service plan required her to undergo mental-health and substance-abuse assessments and drug screens, obtain employment, and maintain housing. She was unable to satisfy any of those goals. On February 25, 2016, respondent pleaded guilty to driving while her license was revoked. She pleaded guilty to retail theft on July 25, 2016.

¶ 15 Caseworker Kristy Cosby testified she handled the minors' cases from November 18, 2015, to March 31, 2016. She stated respondent's service plan required her to complete a substance-abuse assessment, complete a mental-health assessment, obtain an income to provide for the minors, and obtain adequate housing. Respondent failed to complete substance-abuse and mental-health evaluations. She was also unemployed but had appropriate housing.

¶ 16 Katrina Adye testified she took over the case in April 2016. She stated respondent completed a substance-abuse assessment in October 2016 and inpatient treatment was

recommended. Respondent did not attend the treatment. Adye stated respondent missed more than 10 drug screens. Respondent had not obtained a mental-health assessment and never provided proof of any income. Respondent missed "at least five" scheduled visits because her car broke down or she was unable to make it on time. During some of the visits, Adye stated "there were times [respondent] seemed under the influence" and fell asleep.

¶ 17 Respondent testified she suffers from scoliosis, arthritis, and two herniated discs. On cross-examination, she stated she attended a detox program for heroin in October and December 2016. She was supposed to go straight from detox into inpatient treatment, but she did not.

¶ 18 The trial court found respondent unfit based on her failure to make reasonable efforts and reasonable progress. Thereafter, the court conducted the best-interests hearing. The best-interests report indicated respondent was arrested in December 2016 on charges of drug-induced homicide. D.C. lives with his paternal grandmother, "appears to be healthy," and enjoys living in the home. D.C. attends counseling to address his emotions, the death of his father, and his placement in foster care. B.C. also lives with his paternal grandmother and "appears to be well bonded with his foster parent." He attends counseling to address his negative behaviors, such as tantrums and trouble following directions. The caregiver has expressed a willingness to provide permanency for both D.C. and B.C.

¶ 19 C.C. lives with his paternal great-aunt and "appears to be doing well in the home." He receives services for feeding, occupational, developmental, and physical therapy. Born with a clubfoot, he sees an orthopedist every three months. His caregiver has voiced a willingness to provide permanency for C.C., and she ensures he has regular contact with his siblings.

¶ 20 Respondent testified she loves her children "unconditionally" and cared for them "like any mother would." On cross-examination, respondent admitted she had been unable to care for C.C. since he was taken into protective custody at birth. Since she was taken into police custody in December 2016, she had been unable to make any progress in her service plan goals or care for her children.

¶ 21 Desiree Lercher, respondent's friend, testified respondent "was always interacting with her kids" and took them to the pumpkin patch and parks. Amber Haak, respondent's friend, testified the children loved respondent. Sue Ellen Monks, respondent's mother, testified the children "wore the top-of-the-line clothes" and loved their mother. While her daughter needs help, Monks thought respondent should have "the opportunity to prove that she can be the mother she once was." Emily Monks, respondent's stepsister, testified respondent was a good mother and the children loved her. Jacob Cummings testified he has known respondent for approximately 15 years, and the minors "are just happy kids being with their mom." Evelyn Bowersock, respondent's grandmother, testified she and her husband adopted respondent when she was 15 months old. Respondent used to play with the minors, and Evelyn "always thought [respondent] was a good mother from the time she had her first child."

¶ 22 Called by the guardian *ad litem*, Tina Frye testified D.C. and B.C. had lived with her since August 2016. The minors see C.C. "once a week or once every two weeks." She indicated her desire to adopt D.C. and B.C. Dawn Frye, C.C.'s foster parent, testified he came into her home when he was less than three weeks old and she was willing to adopt him.

¶ 23 The trial court found it in the minors' best interests that respondent's parental rights be terminated. Respondent filed a motion for rehearing, arguing the court's termination of her parental rights was against the manifest weight of the evidence and not in the best interests of

the children. She claimed she should have been given the opportunity to complete her service plan and the sheriff of Logan County should have made arrangements to allow her to complete the plan. The court denied the motion. Respondent appealed, and this court consolidated the cases.

¶ 24 II. ANALYSIS

¶ 25 A. Unfitness Findings

¶ 26 Respondent argues the trial court's findings of unfitness were against the manifest weight of the evidence. 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 N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.' " *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

¶ 28 In this case, the trial court found respondent unfit for failing to make reasonable progress toward the return of the minors to her during any nine-month period after the adjudication. The State specified the nine-month periods to be February 18, 2016, to November

18, 2016, and August 11, 2016, to May 11, 2017.

¶ 29 "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). A parent's "incarceration can impede progress toward the goal of reunification," and "[t]ime spent in prison is included in the nine-month period during which reasonable progress must be made." *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 21, 83 N.E.3d 1196.

¶ 30 In the case *sub judice*, the minors were removed from respondent's care due to her drug use, and C.C. was born with heroin in his system. The evidence indicated respondent

missed over 10 drug screens during the relevant time periods. While she obtained a substance-abuse assessment in October 2016, she did not follow through with the recommended inpatient treatment. Although she went to detox twice between February 2016 and December 2016, she relapsed during that time period and tested positive for benzodiazepines, cocaine, and opiates. She also failed to obtain a mental-health assessment, believing she did not need mental-health services. She failed to obtain employment and did not report any attempts to attend interviews or complete job applications. She was arrested in December 2016 and had not completed any services while in jail. Although respondent contends she was not afforded the opportunity to avail herself of her service plan while in jail, she also acknowledged she never asked about services while incarcerated. We note any claim that respondent's "personal circumstances prevented her from making reasonable progress is irrelevant to the 'objective standard.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89, 19 N.E.3d 227 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 31 While respondent may have shown some progress on matters relating to signing consents or contacting the caseworker at some stage in the proceedings, by the end, she was determined to have shown no progress on any meaningful goals. To that end, the evidence indicates respondent failed to demonstrate she made reasonable progress toward the goal of reunification during the applicable time periods on matters that were the reason the children were taken from her in the first place. Moreover, respondent's progress, if any, was not of such quality that the minors could be returned to her in the near future. Accordingly, 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 remaining ground as to reasonable efforts. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003)

("As the grounds for 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.").

¶ 32 B. Best-Interests Finding

¶ 33 Respondent argues the trial court's finding that it was in the minors' best interests that her parental rights be terminated was against the manifest weight of the evidence. We disagree.

¶ 34 "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 interests, 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 2016). 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 2016).

¶ 35 A trial court's finding that termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 36 The best-interests report indicated D.C. lives with Tina Frye, "appears to be healthy," and enjoys living in the home. He does well in school, "has lots of friends, and receives passing grades." He attends counseling to address his emotions, the death of his father, and his placement in foster care. B.C. also lives with Tina and "appears to be well bonded with his foster parent." He attends counseling to address his negative behaviors, such as tantrums and trouble following directions. He enjoys school "and has made a lot of friends." Tina has expressed a willingness to provide permanency for D.C. and B.C.

¶ 37 C.C. lives with his paternal great-aunt, Dawn Frye, and he "appears to be doing well in the home." He receives services for feeding, occupational, developmental, and physical therapy. He sees an orthopedist every three months for his clubfoot. Dawn has voiced a willingness to provide permanency for C.C. and ensure he has regular contact with his siblings.

¶ 38 At the best-interests hearing, Tina indicated her willingness to adopt to D.C. and B.C. and Dawn was willing to adopt C.C. The trial court found the minors were "thriving in their current placement."

¶ 39 The evidence indicates the minors are doing well in their current placements and their caregivers are willing to provide them with the permanency they need and deserve. Respondent, however, has been unable to parent the minors due to her heroin addiction and her time spent in custody. Moreover, her failure to obtain substance-abuse treatment, not to mention her pending charge of drug-induced homicide, readily indicates she will be unable to parent the children in the near future. Considering the evidence and the best interests of the minors, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

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

¶ 42 Affirmed.