NOTICE
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2020 IL App (4th) 200030-U

NO. 4-20-0030

FILED
May 18, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re N.E., Z.K., and M.E., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 18JA52
v.	)	
Emily E.,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The circuit court's finding respondent was unfit under section 1(D)(m)(ii) of the Adoption Act was not against the manifest weight of the evidence.

¶ 2 In August 2019, the State filed a motion for the termination of the parental rights of respondent, Emily E., as to her minor children, N.E. (born in August 2012), Z.K. (born in January 2016), and M.E. (born in January 2018). After a November 2019 hearing, the Champaign County circuit court found respondent unfit. In January 2020, the court held a best-interests hearing and concluded it was in the minor children's best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding her unfit. We affirm.

¶ 4 I. BACKGROUND

¶ 5 N.E.'s putative father is Darious L., and Z.K.'s and M.E.'s putative father is Curtis K. The putative fathers are not parties to this appeal. In June 2018, the State filed a three-count petition for the adjudication of wardship, alleging the minor children 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 2018)), in that their environment was injurious to their welfare when they resided with (1) respondent because said environment exposed the minor children to substance abuse and (2) respondent or Curtis because said environment exposed the minor children to domestic violence. The petition also asserted M.E. was neglected under section 2-3(1)(c) of the Juvenile Court Act (705 ILCS 405/2-3(1)(c) (West 2018)) because she was a newborn infant whose blood, urine, or meconium contained any amount of a controlled substance or a metabolite of a controlled substance. At an August 2018 hearing, the circuit court accepted respondent's admission and stipulation the minor children were neglected based on an injurious environment when they resided with respondent or Curtis because said environment exposed the minor children to domestic violence. The court dismissed the other two counts of the wardship petition.

¶ 6 In November 2018, the circuit court entered a dispositional order finding respondent was unfit and unable to care for, protect, train, or discipline the minor children. The court's order noted respondent had a longstanding and severe substance abuse problem that created a danger to the minor children's home environment. It also noted respondent was unable to maintain a stable residence and could not safely manage all of the minor children together. The court also found both of the putative fathers were unfit, unable, and unwilling to care for the minor children. The court made the minor children wards of the court and appointed the Department of Children and Family Services as the minor children's guardian and custodian.

¶ 7 In August 2019, the State filed a motion to terminate respondent's parental rights to the minor children. The motion asserted respondent was unfit because she failed to make reasonable progress toward the minor children's return during any nine-month period after the neglect adjudication, specifically November 29, 2018, to August 29, 2019 (750 ILCS 50/1(D)(m)(ii) (West 2018)).

¶ 8 On November 1, 2019, the circuit court held the fitness hearing. The State presented the testimony of (1) Kaja Switalska, an addiction counselor at Rosecrance and (2) Ruby Clark, the case manager. The State also presented an October 29, 2019, client progress report from Grace Mitchell with Family Advocacy in Champaign County, which indicated respondent had successfully completed a parenting program. Additionally, the State presented a report from Debbie Nelson with Cognition Works, indicating respondent had been enrolled in domestic violence treatment twice and had poor attendance both times. Respondent's treatment was terminated in March and September 2019. Respondent testified on her own behalf and presented the testimony of her mother, Angela E., and her sister, Michelle E.

¶ 9 Switalska testified respondent was a client of hers. She started working with respondent on June 10, 2019. Respondent was in an intensive outpatient therapy group. The therapy group met three times a week for three hours each time. Out of 39 scheduled groups, respondent attended only 11 of them. In July or August 2019, Switalska had a talk with respondent about her attendance, and respondent stated she was going to improve her attendance. Switalska further testified respondent did not participate even when she did attend. According to Switalska, respondent sat back and did not really interact. Due to her lack of attendance, respondent did not make any progress in the therapy. Respondent was discharged on September 20, 2019. Last, Switalska testified respondent was still in need of substance abuse treatment

when she was discharged.

¶ 10 Clark testified she was the case manager for the minor children's case from June 2018 until April 2019 and then again became the case manager in July 2019. She referred respondent for the following services: (1) a mental health assessment, (2) a substance abuse assessment, (3) domestic violence counseling, and (4) parenting classes. Clark testified respondent was inconsistent in staying in communication with her. Sometimes, respondent did a great job of communicating, and sometimes, she would not hear from respondent for an extended period of time. Regarding domestic counseling, respondent reported she did not like the counseling, did not believe she needed to be there, and did not like the group facilitators. As to substance abuse treatment, respondent would report she was going. However, when Clark would follow up with the counselor, she would learn respondent was not attending. Clark would then ask respondent why she was not attending, and respondent would report she was tired, working, or had a transportation issue, even though Clark had provided respondent with a bus pass and showed her applications on her cellular telephone for using the bus system. Respondent also had to do drug screens weekly. When she missed drug screens, she would give the same reasons as she did for not attending therapy. As to positive screens, respondent would only admit using marijuana. Respondent explained the cocaine and amphetamines must have latched onto the marijuana. Respondent did receive another referral for substance abuse treatment in April 2019.

¶ 11 Clark further testified respondent had two-hour weekly visits with the minor children. Clark never recommended an increase in visitation because of respondent's positive drug screens and her visits did not go well. She supervised a quarter of respondent's visits. Respondent struggled with demonstrating age appropriate discipline and spending equal time with each child. As to discipline, Clark explained respondent smacked Z.K. in the mouth on two

separate occasions for spitting or cursing. Respondent did not like to use timeout when Z.K. misbehaved. Respondent also yanked M.E.'s arm on one occasion. Clark also testified respondent was not receptive to feedback during visits. Clark explained respondent would indicate she did not have to listen to Clark or Clark could not tell respondent what to do with the minor children. While Clark was the caseworker, respondent only completed parenting classes. Clark was never able to plan for the minor children's return to respondent.

¶ 12 Angela testified respondent told her she would make progress in her substance abuse treatment program and then things would get changed around requiring her to restart every time. Angela also testified she had seen positive changes in respondent. Respondent was working, living with Angela, and helping to pay the bills and clean the house. According to Angela, respondent seemed more stable. If the minor children were returned to respondent, Angela was willing to let the minor children also live with her.

¶ 13 Michelle testified she had observed some of respondent's visits before July 13, 2018, with the minor children, and the visits went well. Respondent never abused the kids. Michelle also testified respondent seemed more stable now.

¶ 14 Respondent testified the caseworker for the minor children had changed numerous times during the life of the case. She also testified she had benefitted from substance abuse treatment. However, she did not find the domestic violence program beneficial. Respondent believed the things discussed did not pertain to domestic violence. Respondent admitted missing drug screens due to work, bus schedules, and life in general. She also admitted being frustrated with visits because of the minor children wanting to do different things. Respondent denied smacking Z.K. in the mouth. Respondent testified she had put her hand to Z.K.'s mouth to prevent him from spitting on her. Additionally, respondent testified she was currently employed

and had tried to maintain employment throughout the case. In respondent's opinion, she had grown as a parent during the life of the case.

¶ 15 After hearing the parties' and the guardian *ad litem*'s arguments, the circuit court found respondent unfit as alleged in the State's termination motion. The court noted respondent did not seem to understand domestic violence was an issue that needed to be resolved. Respondent did not come close to successfully completing domestic violence treatment. The court also found respondent had not made much progress at all in substance abuse treatment. Additionally, the court recognized respondent had completed a parenting class but noted it would have been more beneficial to respondent to have completed the class when it was first made available to her.

¶ 16 On January 3, 2020, the circuit court held the best-interests hearing. The evidence consisted of best-interest reports by the case manager and the Court Appointed Special Advocates, both of which concluded termination of respondent's parental rights was in the minor children's best interests. After hearing the parties' and the guardian *ad litem*'s arguments, the circuit court found it was in the minor children's best interests to terminate respondent's parental rights. On January 8, 2020, the court entered a written order terminating respondent's parental rights to the minor children. The court also terminated the parental rights of the putative fathers.

¶ 17 On January 15, 2020, respondent filed a notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 307(a)(6) (eff. Nov. 1, 2017).

¶ 18 II. ANALYSIS

¶ 19 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2018)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor children's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). In this case, respondent challenges only the circuit court's unfitness finding.

¶ 20 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding unless it is contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 21 The basis for the circuit court's unfitness finding was section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2018)), which provides a parent may be declared unfit if he or she fails "to make reasonable progress toward the return of the child[ren] 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." Illinois courts have defined "reasonable progress" as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.)

In re Reiny S., 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[T]he benchmark for measuring a parent's "progress toward the return of the child[ren]" 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[ren], and in light of other conditions which later became known and which would prevent the court from returning custody of the child[ren] to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child[ren] returned to parental custody. The court will be able to order the child[ren] 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 in order to regain custody of the child[ren]." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). We have also emphasized " 'reasonable progress' is an 'objective standard.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387).

¶ 22 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are

limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the petition alleged the relevant nine-month period was November 29, 2018, to August 29, 2019.

¶ 23 Despite having referrals for all of the required services during the relevant nine-month period, respondent did not successfully complete a service. Her completion of parenting classes was on September 25, 2019. Even considering her completion of the parenting class, her failure to complete the other services and other relevant facts demonstrate the minor children were nowhere close to being returned to respondent during the relevant nine-month period. The evidence showed respondent had been discharged from both domestic violence treatment and substance abuse treatment due to absenteeism. Additionally, the evidence showed respondent did not even understand what domestic violence was. As to substance abuse, respondent was still in need of treatment, as she continued to have positive drug screens during the relevant nine-month period and had not really engaged even when she did attend group therapy sessions. Moreover, the caseworker had concerns about respondent's ability to parent because respondent had difficulties with caring for all three children and had smacked one of the children on the mouth on two separate occasions. Respondent's supervised visits were never increased due to the positive drug screens and difficulties during visits. Here, the State's evidence was sufficient to prove by clear and convincing evidence respondent failed to make reasonable progress towards the return of the minor children during the relevant nine-month period.

¶ 24 Accordingly, we find the circuit court's finding respondent was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act was not against the manifest weight of the evidence.

Additionally, we note respondent does not challenge the court's best-interests finding, and thus we do not address it.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 27 Affirmed.