2022 IL App (4th) 220592-U

NO. 4-22-0592

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 6, 2022
Carla Bender
4th District Appellate
Court, IL

In re B.C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	No. 19JA213
v.	)	
Jennifer G.,	)	Honorable
Respondent-Appellant).	)	Mary Linn Green,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court's determinations that respondent was an "unfit person" and it was in the minor's best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In May 2019, the State filed a petition for adjudication of abuse with respect to B.C. (born September 11, 2018), the minor child of respondent, Jennifer G. B.C.'s father, Ray C., is not a party to this appeal. The trial court placed B.C. in the temporary custody and guardianship of the Department of Children and Family Services (DCFS). In March 2022, the State filed a motion to terminate respondent's parental rights. The court found respondent unfit and determined it was in B.C.'s best interests to terminate respondent's parental rights. Respondent appeals, arguing the trial court erred in (1) finding her unfit and (2) determining it was in B.C.'s best interests to terminate respondent's parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Case Opening

¶ 5 On May 21, 2019, the State filed a petition under section 2-3(2)(i) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(i) (West 2018)), alleging B.C. was an abused minor in that a family member or other household member "inflicts, causes to be inflicted or allows to be inflicted upon [B.C.] physical injury, other than by accidental means, which causes disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function, in that abuse causes fractures other than by accidental means."

¶ 6 The allegations in the petition stemmed from a hotline report DCFS received regarding B.C. According to an indicated packet filed by DCFS, on May 15, 2019, respondent brought B.C. to the Mercy Health emergency department in Rockford, Illinois. Respondent claimed B.C., who was approximately eight months old, injured her leg when she " 'slid forward' " in the bathtub. B.C.'s legs were x-rayed, which revealed two fractures to her right femur and two fractures to her left femur. The reporter from the hotline call opined the fractures to the left femur appeared to be older than the fractures to the right femur and did not believe respondent's explanation for the injuries was plausible. Following a skeletal survey, it was revealed B.C. had a spiral oblique fracture to the midshaft of her right femur, a healing transverse fracture of the distal shaft on the right femur, and a nondisplaced spiral oblique fracture of the midshaft of the left femur. B.C. was admitted to Javon Bea Hospital, where Dr. Ray Davis performed a Medical Evaluation Response Initiative Team (MERIT) examination. Dr. Davis opined B.C.'s spiral fractures were caused by traumatic force. Respondent was not able to initially explain how B.C.'s injuries occurred, and B.C. was taken into protective custody on May 17, 2019.

¶ 7 The report further stated a detective from the Rockford police department interviewed Ray C. following B.C.'s admission to the hospital. During the interview, Ray C. admitted that on May 14, 2019, while changing B.C.'s diaper, he noticed B.C. had defecated, and he panicked. During his panic, Ray C. "twisted" B.C.'s leg. Ray C. admitted this had happened two or three times in the past. Ray C. was later charged with five counts of aggravated battery to a child in connection with B.C.'s injuries.

¶ 8 At a May 21, 2019, hearing, respondent and Ray C. waived their right to a shelter care hearing and stipulated there was probable cause for abuse. The trial court awarded temporary custody and guardianship to DCFS.

¶ 9 The trial court held an adjudicatory hearing October 7, 2019. On November 1, 2019, the court found the State met its burden of showing B.C. was an abused minor by a preponderance of the evidence and entered a written order stating the same. On the same date, respondent waived her right to a dispositional hearing, and the court entered a written dispositional order placing custody and guardianship of B.C. with the DCFS guardianship administrator. The court also ordered respondent to cooperate with DCFS, complete recommended services, and comply with all court orders.

¶ 10 Following a July 12, 2021, permanency hearing, the trial court found respondent had made reasonable efforts but not reasonable progress towards the goal of returning B.C. to respondent's care and changed the permanency goal to substitute care pending a determination on the termination of respondent's parental rights.

¶ 11 Between September 2021 and March 2022, the State filed (1) its first motion to terminate respondent's parental rights; (2) an amended motion for termination of respondent's parental rights, which was later dismissed with leave to file a second motion; and (3) a second

motion to terminate respondent's parental rights, which was also dismissed with leave to file a supplemental motion to terminate respondent's parental rights.

¶ 12 In February 2022, Ray C. pleaded guilty to one count of aggravated battery to a child in connection with B.C.'s injuries and was sentenced to six years in prison.

¶ 13 The State filed a supplemental motion to terminate respondent's parental rights on March 21, 2022. The supplemental motion, which is the subject of this appeal, alleged respondent was an unfit parent in that she failed to: (1) maintain a reasonable degree of interest, concern, or responsibility as to B.C.'s welfare (750 ILCS 50/1(D)(b) (West 2020)) (count I); (2) protect B.C. from conditions within her environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2020)) (count II); and (3) make reasonable progress toward the return of B.C. during the nine-month periods of June 16, 2020, to March 16, 2021, and October 12, 2020, to July 12, 2021 (750 ILCS 50/1(D)(m)(ii) (West 2020)).

¶ 14 B. Fitness Hearing

¶ 15 On May 19, 2022, the case proceeded to a fitness hearing.

¶ 16 Krista Finner testified she was a child welfare specialist at DCFS and was assigned as B.C.'s caseworker in June 2020. The State then introduced the following exhibits, which were admitted without objection: (1) respondent's integrated assessment, dated July 22, 2019 (State's exhibit No. 1); (2) a service plan dated July 10, 2019 (State's exhibit No. 2); (3) a service plan dated November 20, 2019 (State's exhibit No. 3); (4) a service plan dated May 14, 2020 (State's exhibit No. 4); (5) a service plan dated October 30, 2020 (State's exhibit No. 5); and (6) a service plan dated April 21, 2021 (State's exhibit No. 6).

¶ 17 Finner testified B.C. came into care because she "was found to have four to five bone fractures in the care of her mother and father." According to the service plan, respondent

was tasked with completing parenting classes, attending mental health and counseling services, and cooperating with DCFS. In terms of respondent's progress towards reunification with B.C., DCFS was looking for "discussion and written statements regarding a safety plan, acknowledging or recognizing safety factors, [and] protective skills." Finner testified these factors were particularly important in this case because "in [B.C.]'s eight months of life at the time she had already had four to five major injuries," which was "very unusual and stated egregious in a MERIT exam." Although respondent was cooperative in that she consistently attended counseling, parenting classes, and visits with B.C., respondent "never acknowledged or discussed" the reasons B.C. came into care.

¶ 18 According to Finner, DCFS added several objectives to respondent's October 2020 service plan (People's exhibit No. 5), which included: (1) "take ownership of the injuries and concerns regarding various injuries to [B.C.]" as both arms and one leg all had fractures and (2) "show the ability to articulate the child's injuries were [the] result of abuse to caseworker and counselor." Finner testified the objectives were added because they were "the main concern." Respondent was never able to meet either objective.

¶ 19 Additionally, respondent was never able to provide an adequate safety plan as directed by DCFS. Although respondent created a document that she called a safety plan, it "was not what [DCFS was] looking for." DCFS expected respondent to provide "[s]omething specific to the incidents that occurred to [B.C.] Acknowledging each injury, what happened and how to avoid that and how to avoid any future incidents, how to keep a child safe. Something beyond just outlet plugs and baby gates."

¶ 20 On cross-examination by respondent's counsel, Finner agreed respondent had good communication with the caseworker throughout the case and successfully complied with

requests to undergo meaningful therapy and rehabilitation. When asked whether Finner received information from Clarity Counseling that respondent "accepted responsibility" for what happened to B.C., Finner replied that respondent "accepted responsibility *** for [B.C.'s] bathtub slip," but "[i]t didn't go much beyond that."

¶ 21 Finner acknowledged that both respondent and Ray C. were responsible for B.C.'s care during the period of time B.C. sustained her injuries and stated she did not know if respondent knew the mechanism of B.C.'s injuries. When asked how she could "expect [respondent] to have told [her] how the injuries happened and use that as a metric for determining whether she had made reasonable progress" if neither respondent nor the agency knew exactly how B.C.'s injuries occurred, Finner replied that she did not know. Finner admitted she did not know respondent's role in B.C.'s injuries. Other than respondent's failure to understand protective factors, Finner agreed "there was no other way that she failed to make reasonable progress."

¶ 22 On cross-examination by the guardian *ad litem,* the following colloquy then ensued:

> "Q. Now, in this particular case there were multiple injuries over the course of eight months, correct?
>
> A. Correct.
>
> Q. In multiple planes of the body?
>
> A. Correct.
>
> Q. So is it fair to conclude that if [respondent] knows that she didn't cause it, if she believed she wasn't the cause of the breaks and the spiral fractures and the injury to [B.C.]'s tonsils when she was 48 days old, if she knew that she didn't

cause it, that being protective would lead her to be skeptical and suspicious about what actually had happened?

A. Correct.

Q. And throughout the almost, I think two—over two years of therapy, two years of parenting classes, there was no progress toward being suspicious or skeptical about any—of any explanation; isn't that correct?

A. Correct.

Q. And if [respondent] knew that she didn't cause it, then the only other person to suspect as being the cause of multiple injuries over a period of eight months was the other caregiver, correct?

A. Correct.

Q. And if she stayed with the other caregiver despite a healthy suspicion that something had happened by the other caregiver, if she stayed with that person then that would fly in the opposite direction of being a protective parent?

A. Correct.

Q. Meaning she wasn't very protective?

A. Correct.

Q. Okay. Parenting classes. Now, if you're in parenting classes you learn a lot about child development, you learn a lot about how to head off behaviors before they become an issue; isn't that correct?

A. That's correct.

* * *

Q. So it's reasonable to believe that [respondent] was getting in her parenting classes some information about how injuries occur?

A. Yes.

* * *

Q. And a protective parent who has a healthy amount of skepticism and suspicion and concern for a child's well-being would, after learning about some of these things, would think back on over the eight months and knowing that there were multiple breaks and multiple injuries dating back to 48 days, that something had happened other than a slip in the bathtub?

A. Correct.

Q. That's what the agency was concerned about, correct?

A. Correct.

Q. That's—that exact thing is why the agency could not increase visitation?

A. Correct."

¶ 23 The fitness hearing was then continued to June 14, 2022. At the beginning of the hearing, a number of exhibits were admitted, including, *inter alia*, (1) a certified copy of Ray C.'s plea of guilty to aggravated battery to a child (People's exhibit No. 11) and (2) a judgment of conviction showing Ray C. was sentenced to six years in prison pursuant to the guilty plea (People's exhibit No. 12). The hearing was continued again to June 30, 2022. At the beginning of the hearing, the following exhibits were admitted with no objection: (1) respondent's visitation records (Respondent's exhibit No. 1) and (2) respondent's counseling records from Clarity Counseling (Respondent's exhibit No. 2).

¶ 24 Following arguments, the trial court stated it had considered all of the evidence and found the State had proven by clear and convincing evidence that respondent was unfit on all three counts. The court emphasized the seriousness of B.C.'s injuries, including the fact they were in various states of healing, and that "[i]t would be impossible for any somewhat attentive mother to not notice the[m]." The court specifically noted respondent was tasked with "discussion of safety factors and protective skills [for B.C.] who had such major injuries at such a young age," and that respondent "never acknowledged the injuries or discussed them." Although respondent completed parenting classes, attended visits with B.C., and generally cooperated with DCFS, she "only accepted responsibility for the bathtub slip and her poor choices in relationships."

¶ 25 C. Best Interest Hearing

¶ 26 Following the determination of unfitness, the case proceeded to a best interest hearing on the same date.

¶ 27 1. *Krista Finner*

¶ 28 Krista Finner testified she had been B.C.'s caseworker since June 2020. Since May 2019, B.C. had resided with Ryan and Samantha B. in a traditional foster placement. Finner had observed B.C. with her foster parents, noting B.C. "goes to them for love/acceptance, when she gets excited about something, when she's upset—pretty much for everything." B.C. attended preschool, where she was doing "wonderful." B.C. was a healthy three-year-old with no developmental delays, and her foster parents attended to all of B.C.'s medical needs. Finner had "[n]o concerns" regarding the foster parents' ability to continue caring for B.C.'s needs and provide for her basic necessities. B.C. referred to her foster parents as "mom" and "dad" and had

a “cheery” and “energetic” disposition. The foster parents had expressed an interest in adopting B.C., and Finner believed they could provide a stable home where she could thrive.

¶ 29 On cross-examination, Finner agreed that during visits, there was “a sense that [respondent] valued [B.C.]” and that there was an attachment between the two. When asked whether the foster parents had preserved any religious or cultural ties for B.C., Finner noted they were learning Spanish and teaching it to B.C. The foster parents also expressed a willingness to maintain communication between B.C. and respondent. Finner believed B.C.’s sense of community, home life, and security was with the foster parents, as she had resided with them for two and a half years.

¶ 30 2. *Samantha*

¶ 31 Samantha B. testified she was B.C.’s foster parent. The household consisted of Samantha, her husband Ryan, her two sons, and B.C. According to Samantha, her two sons considered B.C. to be their little sister and were very protective of her. Samantha testified she “definitely” wanted B.C. to continue her relationship with respondent.

¶ 32 When B.C. first arrived at Samantha’s home, she was in a full-body cast. Despite bringing B.C. into a new environment following her hospital stay, she “adjusted rather quickly.” B.C. “healed quickly and well” and was now “a typical three-year-old.” B.C. was beloved by everyone in the community, and Samantha and Ryan hoped to adopt her.

¶ 33 Following arguments, the trial court found it was in B.C.’s best interest to set the permanency goal to adoption. Specifically, the trial court stated, “[C]oming out of the egregiousness of the injuries that this little girl suffered, she, in her best interest, has found stability, reliability, safety and love; and I cannot imagine what pulling her out of that situation would do to her in her best interest.”

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, respondent argues the trial court erred in both (1) finding her unfit and (2) determining it was in B.C.'s best interest to terminate respondent's parental rights.

¶ 37 A. Unfitness Finding

¶ 38 Involuntary termination of parental rights under the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2020)) is a two-step process. *In re J.H.*, 2020 IL App (4th) 200150, ¶ 67. The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2020)). *J.H.*, 2020 IL App (4th) 200150, ¶ 67. "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." *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003). We will not disturb a finding of unfitness unless it is against the manifest weight of the evidence. *J.H.*, 2020 IL App (4th) 200150, ¶ 68. "A finding is against the manifest weight of the evidence only if the evidence clearly calls for the opposite finding [citation], such that no reasonable person could arrive at the circuit court's finding on the basis of the evidence in the record." (Internal quotation marks omitted.) *J.H.*, 2020 IL App (4th) 200150, ¶ 68. "This court pays great deference to a trial court's fitness finding because of [that court's] superior opportunity to observe the witnesses and evaluate their credibility." (Internal quotation marks omitted.) *In re O.B.*, 2022 IL App (4th) 220419, ¶ 29.

¶ 39 Grounds for unfitness include the failure of a parent "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 of 1987 [(705 ILCS

405/2-3 (West 2020))].” 750 ILCS 50/11(D)(m)(ii) (West 2020). This court has held that “ ‘reasonable progress’ within section 1(D)(m) of the Act requires, at a minimum, measurable or demonstrable movement toward the goal of the return of the child.” *In re L.L.S.*, 218 Ill. App. 3d 444, 460-61 (1991) (citing *In re Allen*, 172 Ill. App. 3d 950, 956 (1988)). This court has further explained “reasonable progress” as follows:

> “ ‘Reasonable progress’ is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality 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 in order to regain custody of the child.” (Emphases in original.) *L.L.S.*, 218 Ill. App. 3d at 461.

¶ 40 In determining a parent’s unfitness based on a lack of reasonable progress, the court may only consider evidence from the relevant time period. *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046 (2007) (citing *In re D.F.*, 208 Ill. 2d 223, 237-38 (2003)). Courts are limited to the period alleged in the motion to terminate parental rights “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. The motion to terminate parental rights in this case alleged two nine-month periods, namely, June 16, 2020, to March 16, 2021, and October 12, 2020, to July 12, 2021. We will address the second nine-month period.

¶ 41 On appeal, respondent argues the trial court's determination she was unfit based on a failure to make reasonable progress was against the manifest weight of the evidence. Specifically, respondent argues there was no evidence she knew how the abuse of B.C. occurred, and therefore "her failure to reveal those facts cannot constitute failure to make reasonable efforts." She further argues the assertion she lacked protective skills was rebutted by the fact she provided B.C. with appropriate care each time she had knowledge that B.C. needed medical attention.

¶ 42 Here, the trial court's finding respondent failed to make reasonable progress towards reunification with B.C. was not against the manifest weight of the evidence. Even accepting respondent's assertion she did not know exactly how B.C.'s injuries occurred, that was not the issue that prevented respondent from making progress towards reunification. Rather, respondent failed to ever acknowledge that any abuse occurred at all or the extent and seriousness of B.C.'s injuries. Respondent refused to address that B.C.'s injuries could not be explained by one minor slip in the bathtub. DCFS found this refusal to be such a hinderance to her progress that in October 2020, it specifically added "the ability to articulate that the child's injuries were [the] result of abuse" as a goal in her service plan. DCFS was not asking for respondent to admit culpability as a direct perpetrator of B.C.'s injuries—it wanted respondent to understand that B.C.'s injuries could not have been the result of a mere accident so that she could recognize signs of abuse.

¶ 43 According to Finner's testimony, respondent never developed the protective skills necessary to have B.C. in her care. Although respondent was otherwise compliant with her service plan, respondent's ability to recognize and address signs of abuse was at the heart of the reason B.C. was brought into care. Finner testified that despite respondent's completion of

parenting classes and counseling, she still lacked any skepticism or suspicion that anything other than a bathtub slip had occurred. The record shows that in B.C.'s eight months with respondent and Ray C., she suffered multiple serious fractures in both legs and her left arm. Even accepting respondent's assertion she responded with appropriate care each time B.C. had a medical issue, it does not negate the fact respondent never fully addressed the reality that B.C. had been abused—even after Ray C. admitted to and was criminally charged with injuring B.C. Deferring to the trial court's finding that Finner was credible (see *O.B.*, 2022 IL App (4th) 220419, ¶ 29), its determination respondent failed to make reasonable progress towards reunification with B.C. was not against the manifest weight of the evidence.

¶ 44 Since we have upheld the trial court's determination respondent met the statutory definition of an "unfit person" on the basis of her failure to make reasonable progress (750 ILCS 50/1(D)(m)(ii) (West 2020)) during the nine-month period of October 12, 2020, to July 12, 2021, we do not address the other nine-month period and the other grounds for the unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 45 B. Termination of Respondent's Parental Rights

¶ 46 Respondent next challenges the trial court's determination it was in B.C.'s best interest that respondent's parental rights be terminated. Specifically, respondent argues the State failed to show the best interest factors weighed in favor of termination by a preponderance of the evidence. The State argues the trial court did not err in determining it was in B.C.'s best interest that respondent's parental rights be terminated. We agree with the State.

¶ 47 "If the trial court finds the parent to be unfit, the court then determines whether it is in the best interests of the minor that parental rights be terminated." *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In evaluating a child's best interests, the trial court considers the following factors:

"(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2020).

¶ 48 This court will not overturn a finding that termination of parental rights was in the child's best interest unless it was against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. As stated above, "[a] finding is against the manifest weight of the evidence only if the evidence clearly calls for the opposite finding [citation], such that no reasonable person could arrive at the circuit court's finding on the basis of the evidence in the record." (Internal quotation marks omitted.) *J.H.*, 2020 IL App (4th) 200150, ¶ 68.

¶ 49 Here, the trial court's finding that termination of respondent's parental rights was in B.C.'s best interest was not against the manifest weight of the evidence. Respondent contends it would not be disruptive to return B.C. to respondent once she is able to care for B.C. because she is only three years old. However, the record shows B.C. had been in her foster parents' care for the majority of her short life and was thriving in that home. All of B.C.'s needs were being met, and she had a loving relationship with her foster parents and brothers. B.C. referred to her foster parents as "mom" and "dad" and had a cheerful and energetic disposition. After recovering from her early life injuries, B.C. did not have any special medical needs and was a "typical three-year-old." B.C. was excelling in preschool and was already beloved by her community. B.C.'s foster parents were willing to provide her with permanency through adoption, and Finner had no doubts about their ability to provide B.C. with a loving home. B.C.'s sense of community, home life, and security was with the foster parents. Although B.C. had a bond with respondent, who was in the best position to teach B.C. Spanish and about her cultural heritage, B.C.'s foster parents were learning Spanish and teaching it to B.C. Based on the evidence presented, the trial court concluded it was in B.C.'s best interest that respondent's parental rights be terminated. In light of the best interest factors and evidence presented at the hearing, we cannot say the opposite conclusion is readily apparent.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, consistent with Illinois Supreme Court Rule 23(b) (eff. Jan. 1, 2021), we affirm the trial court's judgment.

¶ 52 Affirmed.