2022 IL App (4th) 220223-U

NOS. 4-22-0223, 4-22-0224, 4-22-0225, 4-22-0226 cons.



IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 15, 2022
Carla Bender
4th District Appellate
Court, IL

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| *In re* K.A., a Minor | ) | Appeal from the |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Adams County |
| Petitioner-Appellee, | ) | No. 19JA103 |
| v. (No. 4-22-0223) | ) | |
| Bryan A., | ) | |
| Respondent-Appellant). | ) | |
| ---------- | ) | |
| *In re* E.A., a Minor | ) | No. 19JA104 |
| | ) | |
| (The People of the State of Illinois, | ) | |
| Petitioner-Appellee, | ) | |
| v. (No. 4-22-0224) | ) | |
| Bryan A., | ) | |
| Respondent-Appellant). | ) | |
| ---------- | ) | |
| *In re* R.A., a Minor | ) | No.19JA105 |
| | ) | |
| (The People of the State of Illinois, | ) | |
| Petitioner-Appellee, | ) | |
| v. (No. 4-22-0225) | ) | |
| Bryan A., | ) | |
| Respondent-Appellant). | ) | |
| ---------- | ) | |
| *In re* A.A., a Minor | ) | No. 20JA76 |
| | ) | |
| (The People of the State of Illinois, | ) | |
| Petitioner-Appellee, | ) | |
| v. (No. 4-22-0226) | ) | Honorable |
| Bryan A., | ) | John C. Wooleyhan, |
| Respondent-Appellant). | ) | Judge Presiding. |

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed the trial court's judgments, concluding (1) the trial court's unfitness finding was not against the manifest weight of the evidence and (2) respondent did not receive ineffective assistance during the fitness portion of the hearing on the State's motions to terminate parental rights.

¶ 2 Respondent father, Bryan A., appeals from the trial court's judgments terminating his parental rights to K.A. (born April 20, 2007), E.A. (born January 22, 2016), R.A. (born September 11, 2017), and A.A. (born September 4, 2020). On appeal, respondent argues (1) his counsel provided ineffective assistance during the fitness portion of the hearing on the State's motions to terminate parental rights and (2) the trial court's unfitness finding is against the manifest weight of the evidence. For the reasons that follow, we affirm the trial court's judgments.

¶ 3 I. BACKGROUND

¶ 4 The parental rights of the minors' mother, K.C., were also terminated during the proceedings below. She is not a party to this appeal.

¶ 5 A. Adjudications of Neglected

¶ 6 In December 2019, the State filed petitions for adjudications of wardship, alleging K.A., E.A., and R.A. were neglected in that they were subject to an environment injurious to their welfare because of their parents' substance abuse and criminal activity. That same month, the trial court entered orders granting temporary custody to the Department of Children and Family Services (DCFS).

¶ 7 In September 2020, the State filed a petition for adjudication of wardship, alleging A.A. was neglected in that he was subject to an environment injurious to his welfare because of his parents' ongoing substance abuse and lack of progress with recommended services. That same month, the trial court entered an order granting temporary custody to DCFS.

¶ 8 In October 2020, the trial court entered adjudicatory orders finding the minors to

be neglected based upon the reasons alleged in the State's petitions for adjudications of wardship.

¶ 9 In December 2020, the trial court entered dispositional orders adjudicating the minors wards of the court and placing guardianship and custody with DCFS.

¶ 10 B. Motions to Terminate Parental Rights

¶ 11 In August 2021, the State filed motions to terminate parental rights to the minors. The State alleged respondent was an unfit parent in that he (1) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from his care within a nine-month period following the minors' adjudications of neglected (750 ILCS 50/1(D)(m)(i) (West 2020)), namely October 20, 2020, to July 19, 2021; and (2) failed to make reasonable progress toward the return of the minors to his care within a nine-month period following the minors' adjudications (750 ILCS 50/1(D)(m)(ii) (West 2020)), again namely October 20, 2020, to July 19, 2021. The State further alleged it was in the minors' best interests to terminate respondent's parental rights and appoint DCFS as guardian with the power to consent to adoption.

¶ 12 C. Hearing on the State's Motions to Terminate Parental Rights

¶ 13 In February 2022, the trial court conducted a hearing on the State's motions to terminate parental rights. Respondent appeared at the hearing with counsel.

¶ 14 At the commencement of the fitness portion of the hearing, the State moved for judicial notice of the case file:

> "I would first of all ask the Court to take judicial notice of the entire case file including the reasons that led to the removal of the children from the custody of the parents and the adjudication of the children as wards of the court. Would also ask the Court to take judicial

> notice of all prior reports previously filed with the court including but not limited to the integrated assessment that was submitted to court on March 2nd, 2020, and the permanency hearing reports dated May 4th, 2021 and August 3rd, 2021."

The trial court, over no objection, granted the State's motion.

¶ 15 In addition, the State moved for the admission of certified copies of the minors' birth certificates, as well as a certified copy of records from a criminal matter involving respondent. The trial court, over no objections, granted the State's motions. With respect to the criminal matter involving respondent, the records showed (1) on February 2, 2021, respondent was charged with having committed unlawful possession of methamphetamine and resisting a peace officer on or about February 1, 2021; and (2) on December 1, 2021, defendant pleaded guilty to both criminal offenses and was sentenced to probation.

¶ 16 After its initial motions, the State elicited testimony, over no objections, from a case supervisor. The supervisor testified she "began supervising the caseworker assigned to [the] case" around October 2020. The supervisor became "familiar" with the minors and their parents through her involvement in the case.

¶ 17 The supervisor testified briefly about the circumstances leading up to her involvement. An intact case was opened due to concerns with substance abuse, domestic violence, and financial instability. An integrated assessment was completed around October 2019, an assessment which the supervisor became "familiar" with after becoming involved in the case. Because the parents did not make any progress with their substance abuse during the intact case, the minors were taken into DCFS custody.

¶ 18 The supervisor testified about service plans which were created and evaluated in

this case. The supervisor explained the service plans set forth recommended services and goals based upon the results from the integrated assessment. With respect to respondent, the recommended services and goals related to substance abuse, mental health, parenting and visitation, stable living, and cooperation. Respondent's progress on the services and goals was evaluated every six months. The State presented the supervisor with three service plans, all of which the supervisor indicated she recognized. The first service plan presented to the supervisor was approved on October 20, 2020. The second service plan presented to the supervisor evaluated respondent's progress as of December 16, 2020. Respondent's progress was rated unsatisfactory on all of the recommend services and goals. The last service plan presented to the supervisor evaluated respondent's progress as of June 18, 2021. Respondent's progress was rated unsatisfactory on all of the recommend services and goals. The State moved for the admission of the three service plans. The trial court, over no objection, granted the State's motion.

¶ 19 The remaining testimony from the supervisor concerned certain events which transpired between October 2020 and July 2021. Initially, upon being asked if she was aware "to your knowledge" of respondent's residence in October 2020, the supervisor testified, "Welcome Inn" in Quincy.

¶ 20 The State then asked about a series of events occurring in December 2020. The supervisor testified respondent submitted to a drug screen prior to a scheduled visitation that month, which resulted in a "non-negative for methamphetamine, THC, and amphetamines." As a result, respondent was not allowed to visit with the minors, which caused respondent to become "irate." The supervisor explained:

> "He stepped into our visitation worker's personal space and was cursing at her. He then was told to calm down. Initially, he did, but

> that behavior continued. He proceeded to walk out the hallway banging on the walls and left the building."

Respondent's behavior led to the police being called. A few days after this incident, the supervisor scheduled a meeting with respondent. Respondent did not appear. The supervisor made the decision at that point to suspend visitation until respondent engaged in substance-abuse and mental-health treatment. The supervisor then lost contact with respondent.

¶ 21 The State asked whether the supervisor had done a "diligent search" for respondent in January 2021, to which the supervisor responded in the affirmative. The State then presented the supervisor with an exhibit, which the supervisor described as "a diligent search completed on January 18th of 2021 by the caseworker at the time." The State asked if the supervisor was able to locate respondent through a diligent search, to which the supervisor responded, "[W]e were not able to locate him." The State moved for the admission of the exhibit. The trial court, over no objection, granted the State's motion.

¶ 22 The supervisor became aware of respondent's location in February 2021. When asked how she became aware of respondent's location, the supervisor testified, "Became aware through—I believe he was located on the inmate listing in the Adams County Jail." She then met with respondent in April 2021, after he had been released from his incarceration for inpatient substance-abuse treatment. During that meeting, respondent reported he had been having issues with alcohol abuse, specifically that he had "been hitting the bottle hard."

¶ 23 The supervisor testified respondent had not had any visitations with the minors since December 2020.

¶ 24 On cross-examination, respondent's counsel asked if respondent had completed inpatient treatment after he was released from his incarceration, to which the supervisor responded

in the affirmative. The supervisor then volunteered that respondent did not, however, follow up with recommended outpatient treatment after his discharge from inpatient treatment.

¶ 25 Respondent's counsel also inquired about the service plans. He elicited testimony that the service plans contained subtasks of the recommended services and goals which were independently evaluated. Respondent's counsel asked the supervisor about various subtasks on the second service plan which was presented to her and confirmed that respondent rated satisfactory on those subtasks, including (1) providing consents for release of information; (2) completing a substance-abuse assessment; (3) notifying his landlord of any unsafe structural conditions; (4) maintaining adequate plumbing, water, and toilet facilities; (5) keeping all medications, cleaning supplies, and other harmful products safely stored; (6) completing a parenting class; (7) not having unapproved individuals present during visitations; (8) not appearing under the influence of drugs during visitations; and (9) not discussing case issues during visitation. Counsel further, after indicating he would not elicit specific testimony from the supervisor about respondent's progress on the various subtasks of the third service plan, confirmed with the supervisor that respondent had rated satisfactory on some of the subtasks in the third service plan.

¶ 26 On redirect examination, the supervisor confirmed she had received written notice indicating respondent had not followed through with outpatient treatment after completing inpatient treatment. The State then presented the supervisor with an exhibit, which the supervisor described as a "progress report" from the facility where respondent had been receiving treatment. The State moved for the admission of the exhibit. The trial court, over no objection, granted the State's motion.

¶ 27 On recross-examination, respondent's counsel confirmed with the supervisor that respondent had completed inpatient services.

¶ 28 Following this testimony, the State rested its case. Respondent did not present any evidence. During arguments, respondent's counsel highlighted the evidence showing respondent's completion of inpatient substance-abuse treatment and his satisfactory progress on certain subtasks in the service plans. The trial court, after considering the evidence and arguments presented, found respondent was an unfit parent as alleged in the State's motions to terminate parental rights. The court then, after conducting the best-interests portion of the hearing, found it would be in the minors' best interests to terminate respondent's parental rights. The court entered written orders terminating respondent's parental rights to each minor.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On appeal, respondent argues (1) his counsel provided ineffective assistance during the fitness portion of the hearing on the State's motions to terminate parental rights and (2) the trial court's unfitness finding is against the manifest weight of the evidence. The State disagrees with each of respondent's arguments.

¶ 32 A. Sufficiency of the Evidence

¶ 33 We begin with respondent's challenge to the sufficiency of the evidence. Respondent argues the trial court's unfitness finding is against the manifest weight of the evidence.

¶ 34 In a proceeding to terminate parental rights, the State must prove parental unfitness by clear and convincing evidence. *In re N.G.*, 2018 IL 121939, ¶ 28, 115 N.E.3d 102. A trial court's finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* ¶ 29. A finding is against the manifest weight of the evidence "only where the opposite conclusion is clearly apparent." *Id.*

¶ 35 The trial court found respondent was an unfit parent as defined in section

1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2020)). Section 1(D)(m)(ii) provides, in part, a parent will be considered an "unfit person" if he or she fails "to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected." *Id.*

¶ 36 "Reasonable progress" has been defined as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001). This is an objective standard. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227. The benchmark for measuring a parent's progress toward reunification "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." *C.N.*, 196 Ill. 2d at 216-17. In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007).

¶ 37 In this case, the relevant time period was October 20, 2020, to July 19, 2021. During that period, the evidence, as highlighted by respondent on appeal, showed respondent successfully completed inpatient substance-abuse treatment. However, the evidence also showed respondent (1) tested "non-negative" on a drug screen for "methamphetamine, THC, and amphetamines"; (2) became "irate" after he was told he could not attend a visitation with the minors due to his non-negative drug screen; (3) did not attend a scheduled meeting to discuss visitations; (4) had visitations suspended; (5) did not have contact for several months; (6) committed the criminal offenses of unlawful possession of methamphetamine and resisting a peace officer; and (7) did not follow up with recommended outpatient substance abuse treatment. Respondent's actions,

particularly in light of the fact the minors came into care in part because of substance abuse issues, directly hindered progress toward any reunification with the minors. Given the information gleaned from the evidence presented, we find the trial court's unfitness finding based on respondent's failure to make reasonable progress is not against the manifest weight of the evidence.

¶ 38 As only one ground for a finding of unfitness is necessary to uphold the trial court's judgments, we need not review the other ground for the court's unfitness finding. *In re Z.M.*, 2019 IL App (3d) 180424, ¶ 70, 131 N.E.3d 1122.

¶ 39 B. Counsel's Performance

¶ 40 Next, we consider respondent's challenge to his counsel's performance. Respondent argues his counsel provided ineffective assistance during the fitness portion of the hearing on the State's motions to terminate parental rights. Specifically, respondent complains about his counsel's failure to object to the State's (1) motion for judicial notice of the case file, (2) motion for the admission of the service plans, and (3) elicitation of testimony about him testing nonnegative on a drug screen, him becoming irate after not being able to attend a visitation, his lack of contact, the caseworker conducting a diligent search, him being located on an inmate list, and his progress on the service plans.

¶ 41 In a proceeding to terminate parental rights, a parent has a statutory, as opposed to constitutional, right to counsel. *In re Br. M.*, 2021 IL 125969, ¶ 41, 182 N.E.3d 693 (citing 705 ILCS 405/1-5(1) (West 2016)). Included within the statutory right to counsel is, by implication, a right to effective assistance. *Id*. ¶ 42.

¶ 42 Our courts, as acknowledged by respondent, routinely apply the rubric set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), when evaluating a claim of ineffective assistance in a proceeding to terminate parental rights. See, *e.g.*, *Br. M.*, 2021 IL 125969, ¶ 43;

*In re A.P.-M.*, 2018 IL App (4th) 180208, ¶¶ 37-44, 110 N.E.3d 1126. Under the *Strickland* rubric, a parent, to establish a claim of ineffective assistance, must show (1) counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *In re M.F.*, 326 Ill. App. 3d 1110, 1119, 762 N.E.2d 701, 709 (2002). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *In re A.R.*, 295 Ill. App. 3d 527, 531, 693 N.E.2d 869, 873 (1998). A parent's "[f]ailure to satisfy either prong [under the *Strickland* rubric] precludes a finding of ineffective assistance of counsel." *A.P.-M.*, 2018 IL App (4th) 180208, ¶ 41.

¶ 43 While respondent asks this court to evaluate his claim of ineffective assistance under the *Strickland* rubric, he also briefly suggests, citing *United States v. Cronic*, 466 U.S. 648 (1984), that this court can use an alternative rubric to evaluate his claim, a rubric that has been applied in criminal cases that does not require a criminal defendant to make a showing of prejudice if the defendant's counsel entirely fails to subject the State's case to meaningful adversarial testing. We reject respondent's suggestion. In *In re C.C.*, 368 Ill. App. 3d 744, 748, 859 N.E.2d 170, 172 (2006), this court specifically considered and rejected the position that the rubric cited by respondent may be invoked by a parent in a termination proceeding. Absent any argument suggesting *C.C.* should be reconsidered, we stand by our holding in that case.

¶ 44 Applying the rubric set forth in *Strickland*, our review need not proceed any further than the prejudice prong. Respondent has not shown there is a reasonable probability the result of the hearing would have been different had his counsel made the suggested objections. First, respondent contends the service plans and the testimony were objectionable in that they lacked a sufficient foundation and/or constituted hearsay. Had the suggested objections been made, we find

the State may very well have elicited additional testimony from the supervisor to avoid the exclusion of the complained-of service plans and testimony, particularly given the fact the service plans and testimony concerned, or related to, events which transpired while the supervisor was assigned to the case. See, *e.g.*, *In re Z.J.*, 2020 IL App (2d) 190824, ¶¶ 53-61, 168 N.E.3d 210 (discussing ways in which the State may lay a proper foundation for the admission of a service plan). Therefore, even if the service plans or testimony were objectionable, respondent has not shown the State, if given the opportunity, could not alleviate any evidentiary issues with additional testimony from the supervisor to avoid the exclusion of the evidence. Second, respondent contends the notice of the case file was objectionable in that it was improper pursuant to *In re J.G.*, 298 Ill. App. 3d 617, 699 N.E.2d 167 (1998). Even if the requested notice was objectionable, we find there was overwhelming other evidence of respondent's unfitness to meet the State's burden of proof. Specifically, we highlight the evidence showing respondent committed the criminal offenses of unlawful possession of methamphetamine and resisting a peace officer during the relevant nine-month period. Absent a showing that there is a reasonable probability the result of the hearing would have been different, we conclude respondent did not receive ineffective assistance of counsel.

¶ 45 III. CONCLUSION

¶ 46 We affirm the trial court's judgments.

¶ 47 Affirmed.