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2021 IL App (3d) 210202-U

Order filed September 10, 2021

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2021

<i>In re</i> V.C.-P.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
a Minor)	Will County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-21-0202
)	Circuit No. 18-JA-169
v.)	
)	
J.C.,)	
)	
Respondent-Appellant).)	Honorable Paula A. Gomora,
)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Presiding Justice McDade, specially concurred.

ORDER

¶ 1 *Held:* The evidence supported the trial court's finding that respondent was unfit.

¶ 2 Respondent, J.C., appeals from an order finding her unfit and terminating her parental rights. She only challenges the trial court's finding that she was an unfit parent. We affirm.

I. BACKGROUND

¶ 4 On October 9, 2018, the State filed a petition for adjudication of wardship regarding the minor, V.C.-P. (born August 29, 2018). The petition alleged that J.C. was unfit due to her homelessness and that respondent tested positive for marijuana in her system when the minor was born. The trial court entered a finding of probable cause to believe the minor was neglected.

¶ 5 Ultimately, the trial court found that V.C.-P. was neglected.

¶ 6 On February 26, 2019, a report by the Illinois Department of Children and Family Services (DCFS) was filed. The report provided the following information. On August 29, 2018, respondent gave birth to V.C.-P. Respondent was homeless and had nowhere to take the newborn child. Respondent also tested positive for marijuana upon the birth of the minor. Respondent received a service plan, but respondent was not following the plan. Respondent was staying at the Daybreak Center Shelter until December 2018. She stated that she could no longer stay at the shelter but did not offer a reason why she could not stay. Before leaving the shelter, respondent failed two random drug tests by testing positive for marijuana. Respondent was referred to a substance abuse assessment, but she failed to attend the appointment. On January 16, 2019, DCFS transported respondent to Cornerstone Community Outreach Center where she could receive services. She received transportation and supervision for her visits with the minor, but respondent missed several of the visits. Respondent was referred to parenting classes, but she failed to follow through with the services.

¶ 7 On February 26, 2019, a service plan was filed, which provided the following. Respondent would cooperate with DCFS, sign releases, participate in an integrated assessment and follow recommendations, notify DCFS of any changes in address, phone number, and employment, participate in a substance abuse assessment and follow up with recommendations, and comply with random drug drops as requested.

¶ 8 On February 28, 2019, the trial court entered a dispositional order finding respondent unfit due to her homelessness and failure to complete services. The court found it was in the best interest of the minor to be made a ward of the court. The court ordered respondent to cooperate with DCFS, comply with the service plans, and correct the conditions that required the child to be in care.

¶ 9 On November 19, 2020, a new service plan was filed. The plan required respondent to do the following: (1) notify DCFS of any change in address; (2) participate in a substance abuse assessment and follow up with recommendations; (3) participate in a psychiatric evaluation and follow up with the recommendations; and (4) participate in individual therapy to address her emotional needs. The plan noted that respondent's progress on these points was unsatisfactory.

¶ 10 On January 26, 2021, the State filed a motion to terminate respondent's parental rights. The petition alleged that respondent was unfit for: (1) failing to maintain a reasonable degree of interest, concern, and responsibility as to the child's welfare; (2) failing to make reasonable efforts to correct the conditions, which were the basis for the removal of the child; and (3) failing to make reasonable progress toward the return of the child.

¶ 11 On May 7, 2021, a permanency hearing report was filed. The report indicated that on October 28, 2020, respondent was hospitalized due to being very manic and with intrusive behavior. At the hospital, she tested positive for marijuana. She was diagnosed with bipolar manic severe with psychosis. After discharge, she was to go to counseling, but failed to attend. For some time, respondent's whereabouts were unknown, but since December 28, 2020, respondent was in the Will County Adult Detention Center on charges for disorderly conduct, criminal trespass to land, and possession of a fraudulent identification card. In January 2020, respondent had a psychological evaluation, which diagnosed her with unspecified schizophrenia spectrum and psychotic disorder.

¶ 12 On May 7, 2021, the court held a hearing on the State's petition to terminate respondent's parental rights. The caseworker, Josefina Reyes-Garcia, testified. During the course of the case, Reyes-Garcia had conversations with respondent approximately 20 times. There were three periods of time when respondent failed to maintain contact with her, and respondent's whereabouts were unknown. During the time respondent was missing, she would not visit the minor. During the COVID pandemic, there was an opportunity for respondent to visit the minor by electronic means. Respondent did not attend all of her visits. After COVID restrictions were lifted, respondent was allowed to visit the minor in person, but she failed to attend all of those visits.

¶ 13 Reyes-Garcia testified that respondent remained homeless throughout the course of the proceedings. She did spend some time in shelters, but the only time respondent was not homeless was during her time in the Will County Adult Detention Center. Respondent remained in custody from December of 2020 up to the date of the termination hearing. Reyes-Garcia asked respondent where she would live upon release from the Will County Adult Detention Center, respondent responded, "the shelter" but did not specify which shelter.

¶ 14 As to respondent's drug use, Reyes-Garcia testified that respondent was asked to take six random drug tests, she failed at least two. Respondent missed other drug tests, but Reyes-Garcia did not know how many she had missed. Respondent never acknowledged she had a problem with marijuana; respondent never successfully completed an entire drug treatment program. Respondent's substance abuse evaluation recommended intensive outpatient treatment. Due to her lack of cooperation, she was referred to inpatient treatment. First, respondent went to Haymarket Center in Chicago. She stayed a month at Haymarket but did not complete the term because she had a psychotic breakdown and was psychiatrically hospitalized. After her release, she went to South Suburban where she completed the inpatient program. However, she did not successfully

complete the substance abuse treatment by failing to comply with the aftercare portion of treatment.

¶ 15 Reyes-Garcia also testified to respondent's history of mental illness. During the 2½ years the case was pending, respondent had been psychiatrically hospitalized four times. During the hospitalizations, she was treated for her mental illness but did not take care of her illness after being released. Respondent participated in a psychological evaluation with Dr. Kristin Krueger in January 2020. The evaluation was admitted into evidence and indicated that respondent was diagnosed with unspecified schizophrenia spectrum and other psychotic disorder. Respondent was required to address her mental illness but failed to do so. Krueger indicated that she did not believe respondent was able to care for the minor. According to Reyes-Garcia, respondent did not acknowledge that she had a mental illness.

¶ 16 Following the arguments of the parties, the trial court found respondent unfit. The court found that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. The court also found respondent failed to make reasonable efforts to correct the conditions, which were the basis of the removal of the minor. Finally, the court found respondent failed to make reasonable progress toward the return of the minor.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent contends that the State failed to meet its burden in proving her parental unfitness. The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). We will not reverse a trial court's finding of parental unfitness unless it was contrary to the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 19 Here, the trial court found that respondent: (1) failed to maintain a reasonable degree of interest, concern, and responsibility as to the minor’s welfare; (2) failed to make reasonable efforts to correct the conditions which were the basis for the removal of the minor; and (3) failed to make reasonable progress toward the return of the minor. Upon review, we find the evidence supports the court’s determination that respondent failed to make reasonable progress toward the return of the minor. Therefore, we need not address the court’s findings as to the other grounds for finding respondent unfit. See *In re D.D.*, 196 Ill. 2d 405, 422 (2001) (a finding of parental unfitness may be based on evidence sufficient to support any one statutory ground).

¶ 20 Reasonable progress “is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent.” *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). Reasonable progress requires, at a minimum, “measurable or demonstrable movement toward the goal of reunification.” *Id.* In determining whether a parent has made reasonable progress toward the return of the minor, courts are to consider evidence occurring only during the relevant nine-month time period in section 1(D)(m). See *In re D.L.*, 191 Ill. 2d 1, 10 (2000).

¶ 21 “The benchmark for measuring a parent’s progress 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 that gave rise to the removal of the child and other conditions which later become known and would prevent the court from returning custody of the child to the parent. [Citation.] Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future. [Citation.]” *In re Daphnie E.*, 368 Ill. App. 3d at 1067.

Where a minor is no closer to being returned to a parent's custody than at the time of removal from custody, reasonable progress has not been made. *In re D.J.S.*, 308 Ill. App. 3d 291, 295 (1999).

¶ 22 In this case, the evidence supports a finding that respondent failed to make reasonable progress toward correcting the conditions that led to the minor's removal from respondent's custody. The service plan required respondent to: (1) notify DCFS of any change in address; (2) participate in a substance abuse assessment and follow up with recommendations; (3) participate in a psychiatric evaluation and follow up with the recommendations; and (4) participate in individual therapy to address her emotional needs. Respondent remained homeless throughout the proceedings. She did spend some time in a shelter but was asked to leave the shelter for behavioral issues. She was then incarcerated from December of 2020 through the date of the termination hearing. Although she stated she would stay at a shelter when she was released from the Will County Adult Detention Center, she never explained where she would live. As result, she still lacked any appropriate housing to support the return of the minor. Respondent also failed to successfully complete drug abuse and mental health treatment. While respondent did participate in substance abuse and mental health treatment, she only had success when others were caring for her. On her own, respondent failed to complete any treatment for these issues. Under these circumstances, respondent made no measurable or demonstrable movement toward the goal of reunification.

¶ 23 Respondent makes no argument challenging the actual grounds of the trial court's findings. Instead, respondent contends the trial court erred because it found her unfit on grounds not alleged by the State in its petition to terminate parental rights. According to respondent, the court found her unfit based on her mental illness and her history of substance abuse, which respondent suggests are independent grounds for finding unfitness and not alleged in the State's petition to terminate.

This argument was not raised below and is, therefore, forfeited. See *In the Matter of Chance H.*, 2019 IL App (1st) 180053, ¶ 45. Forfeiture aside, this argument is meritless. It ignores the actual grounds the trial court relied on when it found her unfit. As noted above, the court found respondent failed to make reasonable progress toward the return of the minor. Although respondent's drug use and mental health problems are part of the reason the court found her unfit, they are not the sole reason she was found unfit. It was respondent's failure to comply with the service plan, which required her to participate in *services* for mental illness and drug use.

¶ 24 In her reply brief on appeal, respondent suggests that the court failed to make any findings as to “whether [respondent] understood the gravity of the situation if she failed to comply with the service plan. Additionally, the trial court did not consider whether [respondent] was able to make reasonable efforts to correct the conditions or reasonable progress towards the return of her daughter given her mental illness and her detention.” We reject this argument. To begin with, respondent cites to no case law to support her argument. There is also no evidence in the record that respondent failed to understand the “gravity of the situation.” And there is no evidence that respondent's mental illness prevented her from making reasonable progress. In any event, reasonable progress is an objective standard. *In re Daphnie E.*, 368 Ill. App. 3d at 1067. The fact that respondent has a mental illness is not relevant when measuring reasonable progress. Instead, progress is measured by her compliance with the service plan, which required her to participate in mental health and substance abuse services. Respondent failed to satisfactorily complete these services. Under an objective standard, respondent made no “measurable or demonstrable movement toward the goal of reunification.” *Id.*

¶ 25 In closing, we note the trial court also terminated respondent's parental rights. Respondent does not challenge this on appeal. As a result, any argument regarding this finding is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (points not argued are forfeited).

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 28 Affirmed.

¶ 29 PRESIDING JUSTICE McDADE, specially concurring:

¶ 30 I concur in the Order being issued in this case; it is abundantly clear that this child cannot be safely entrusted to respondent's care.

¶ 31 I write separately to wonder, purely ancillary to this appeal, what happens with this mother now that the State has successfully removed the child to a place of safety and stability? Does DCFS, having involved itself in her life and having learned of her mental health issues, refer her to another agency for evaluation and treatment for her own benefit? Or does she just remain on the street, homeless and no better able to take care of herself than she was of her child? With her baby removed from her care and her parental rights terminated, does the State's interest shift to *her* well-being, or does its interest just die until she does actual harm to herself or another or commits a crime? What is *her* prognosis for the future?