2022 IL App (4th) 220562-U

NO. 4-22-0562

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 29, 2022
Carla Bender
4th District Appellate
Court, IL

In re L.T., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	No. 19JA389
v.	)	
Rosario P.,	)	Honorable
Respondent-Appellant).	)	Francis M. Martinez,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cavanagh and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's fitness determination was not against the manifest weight of the evidence.

¶ 2 Respondent, Rosario P., appeals from the trial court's order finding him to be an unfit parent and terminating his parental rights as to his minor child, L.T. (born May 16, 2019). Respondent challenges only the court's fitness determination. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 2019, the State filed a petition for adjudication of wardship, alleging L.T. was neglected pursuant to section 2-3 of the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2018)). Specifically, the State alleged L.T. was in an injurious environment because L.T.'s

mother, Mariana T., who is not a party to this appeal, had a substance abuse problem and used cocaine and alcohol while pregnant with L.T.

¶ 5 On October 8, 2019, Mariana T. stipulated to the substance abuse allegation, and the trial court entered an order adjudicating L.T. neglected. On November 5, 2019, the trial court entered an order finding respondent unfit and making L.T. a ward of the court. Respondent appeared in court for the first time at a permanency review hearing held on September 23, 2021.

¶ 6 On January 27, 2022, the State filed a petition seeking a finding of unfitness and termination of respondent's parental rights. The State alleged respondent was unfit within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2020)) because he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to L.T.'s welfare (count I), (2) make reasonable efforts to correct the conditions that caused L.T. to be removed from care during any nine-month period between October 8, 2019, and January 8, 2022 (count II), and (3) make reasonable progress toward L.T.'s return during any nine-month period between October 8, 2019, and January 8, 2022 (count III).

¶ 7 In May 2022, the trial court conducted a fitness hearing. Respondent did not appear at the fitness hearing. Andrea Hernandez, a caseworker with Children's Home and Aid (CHA), was the only witness to testify. Hernandez testified she was assigned to L.T.'s case in late January 2022. Hernandez further testified that, based on her review of the previous caseworkers' notes, respondent was not "very involved" with the case because "most of the time he was incarcerated." According to Hernandez, respondent was incarcerated when the case was opened, and he was released in December 2019. Respondent was again incarcerated in late January 2020 and released in March or April 2021. Respondent did not have contact with L.T. "until after October," and he did not have any visits with LT. while he was incarcerated.

¶ 8 During her testimony, Hernandez identified several service plans, dated October 2019, March 2020, August 2020, February 2021, and August 2021. She testified parents are generally given a copy of the service plan and "we go through the service plan with the parents in detail." According to Hernandez, the objectives in respondent's service plan "include[d] cooperation [with CHA], consistent [*sic*] in attending parent/child visits, domestic violence services, and maintaining a drug and alcohol-free lifestyle." Respondent received a satisfactory grade for cooperating with CHA in the March 2020 service plan. However, Hernandez testified this was the only satisfactory grade he received throughout the duration of the case.

¶ 9 On cross-examination, the following relevant exchange occurred between Hernandez and respondent's counsel:

"Q. So at the time of his first incarceration, there were attempts to reach him regarding his case and services?

A. I am unsure.

Q. So you don't know if his service plan was ever gone over with him?

A. During that time, no.

* * *

Q. Now, moving on to the second *** incarceration, were there any attempts to set up visits between him and [L.T.]?

A. I am not sure—

Q. Okay

A. —as well.

Q. And then to go over the service plan?

A. I'm not sure."

Hernandez also testified on cross-examination that respondent made contact with CHA for the first time following his second release from incarceration "in July or August of 2021."

¶ 10 Following Hernandez's testimony, the service plans were admitted into evidence without objection. In relevant part, the March 2020 service plan indicates respondent met with the caseworker "on 01/03/2020 w[h]ere he informed worker he wanted to work towards reunification with his son and would cooperate with CH[ ]A." The service plan further indicates, "CH[ ]A has included [respondent] in the service plan, met with him, and told him what he needed to complete."

¶ 11 Ultimately, the trial court concluded the State had proven respondent unfit by clear and convincing evidence. The court reasoned as follows:

> "THE COURT: [Respondent] failed to participate in his child's life for an extended period of time. For the first two service plans that were admitted by the State, [respondent] did not, was not even graded because of his failure to participate for [*sic*] service plans that constituted *** Exhibits 4, 5, and 6. All his services were rated unsatisfactory. He was given a number of services. While [respondent] appears to have been a bit more involved recently due to the birth of a sibling that's not subject to this litigation, it's clear that for an extended period of time there was little or no engagement and, therefore, the State has proven all three counts by clear and convincing evidence."

¶ 12 On June 29, 2022, the trial court conducted a best interest hearing. Respondent appeared at the hearing and testified. At the conclusion of the hearing, the trial court found termination of respondent's parental rights to be in L.T.'s best interest.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Respondent argues the trial court erred in finding the State proved him unfit as alleged in each of the three counts in the petition to terminate parental rights. The State does not challenge respondent's assertion that the trial court erred in finding him unfit under count II for failing to make reasonable efforts to correct the conditions that led to L.T.'s removal. We therefore limit our analysis to respondent's arguments related to counts I and III—respectively, failure to maintain a reasonable degree of interest, concern, or responsibility as to L.T.'s welfare and failure to make reasonable progress toward L.T.'s return during any nine-month period between October 8, 2019, and January 8, 2022. With respect to both counts, respondent argues the trial court erred in finding him unfit because the State did not give him adequate time, *i.e.*, nine months, to complete the objectives in his service plan after he was notified of the objectives in the plan.

¶ 16 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). *In re D.D.*, 196 Ill. 2d 405 (2001). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500 (2011).

¶ 17 A. Failure to Maintain a Reasonable Degree of Interest, Concern, or Responsibility

¶ 18 On appeal, respondent argues "the State failed to prove that [respondent] failed to make reasonable efforts or progress to support a finding of unfitness under counts 1 and 3." However, count I deals with neither reasonable progress nor reasonable efforts. Instead, the State alleged in count I of the petition to terminate parental rights that respondent was unfit because he "failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare." Nowhere in respondent's appellant's brief does he argue that the trial court erred in finding the State proved he was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to L.T.'s welfare. As a result, any such argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued [in the appellant's brief] are forfeited and shall not be raised in the reply brief.").

¶ 19 Forfeiture aside, respondent argues for the first time in his reply brief that the trial court's finding was against the manifest weight of the evidence because he testified at the best interest hearing that "he asked about L.T. a lot" and, "[g]iven [his] circumstances, it is unclear how he could have shown more concern or responsibility after he was released [from jail]." We reject defendant's argument because the testimony he points to was introduced at the best interest hearing, not the fitness hearing, and is therefore irrelevant to the trial court's fitness determination. See, *e.g.*, *In re C.M.*, 305 Ill. App. 3d 154, 165 (1999) (stating that a trial court's "findings in an adjudicatory hearing on a petition to terminate parental rights must be based only upon the evidence presented during that hearing").

¶ 20 Furthermore, the evidence presented at the fitness hearing supports the trial court's finding. "In determining whether a parent has shown a reasonable degree of interest, concern or responsibility for a child's welfare, courts consider a parent's efforts to visit and

maintain contact with the child, as well as other indicia of interest, such as inquiries into the child's welfare." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). Here, Hernandez, L.T.'s caseworker, testified respondent was incarcerated until March or April 2021, but he did not contact CHA until "July or August of 2021" and did not have any contact with L.T. until "after October." Thus, the State presented unrebutted evidence that respondent failed to make any effort to contact L.T. or even inquire into his welfare for over eight months. Accordingly, we conclude respondent is unable to demonstrate the trial court erred in finding him unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to L.T.'s welfare.

¶ 21 B. Failure to Make Reasonable Progress

¶ 22 Respondent also argues the trial court erred in finding him unfit for failing to make reasonable progress toward L.T.'s return during any nine-month period between October 8, 2019, and January 8, 2022. Specifically, he contends the State failed to prove he was aware of the objectives in his service plan prior to September 23, 2021—the date he first appeared in court—and, because only four months elapsed between September 2021 and the January 2022 filing of the petition to terminate parental rights, he was not given adequate time, *i.e.*, nine months, to make reasonable progress.

¶ 23 Although we may affirm the trial court's fitness determination based on our finding above, we will nonetheless address respondent's additional argument. See, *e.g.*, *In re Gwynne P.*, 215 Ill. 2d at 349 ("A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.").

¶ 24 Under the Adoption Act, an unfit parent includes, in relevant part, any parent who fails to make reasonable progress toward his or her child's return during any nine-month period

following the neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2020). In addressing section 1(D)(m) of the Adoption Act, the supreme court has stated as follows:

> "[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, (2001).

This court has described reasonable progress as "an 'objective standard,' " which exists "when '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.' " (Emphasis in original.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, (1991)).

¶ 25 Here, Hernandez testified the objectives in respondent's service plan "include[d] cooperation [with CHA], consistent [*sic*] in attending parent/child visits, domestic violence services, and maintaining a drug and alcohol-free lifestyle." Except for March 2020, where respondent received a satisfactory grade for cooperating with CHA, respondent's compliance with the objectives was graded as unsatisfactory for each of the service plans admitted at the fitness hearing. We acknowledge respondent was incarcerated for most of the time identified in the petition to terminate parental rights. However, as the supreme court has noted, incarceration "does not toll the nine-month period ***." *In re J.L.*, 236 Ill. 2d at 341; see also *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89 ("Time in prison is included in the nine-month period during which

reasonable progress must be made."). Accordingly, because respondent satisfactorily complied with only a single objective in his service plan between early 2020 and January 2022, we reject his contention the trial court's finding was against the manifest weight of the evidence.

¶ 26 Although respondent argues on appeal the State failed to prove he had notice of the service plan prior to September 2021, and therefore failed to provide him with adequate time to comply with the objectives therein, he failed to raise this objection in the trial court and therefore forfeited the contention. See, *e.g.*, *In re April C.*, 326 Ill. App. 3d 225, 242 (2001) ("Where a party fails to make an appropriate objection in the court below, he or she has failed to preserve the question for review and the issue is [forfeited]."). Moreover, the record appears to rebut his contention. The March 2020 service plan, which the trial court admitted into evidence without objection, indicates CHA "included [respondent] in the service plan, met with him, and told him what he needed to complete." Therefore, we reject his argument.

¶ 27 III. CONCLUSION

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

¶ 29 Affirmed.