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2012 IL App (3d) 110720-U

Order filed April 11, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> S.B., L.T., and D.P.)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors,)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	Appeal No. 3-11-0720
)	Circuit Nos. 06-JA-305, 08-JA-75
Petitioner-Appellee,)	08-JA-76
)	
v.)	
)	
APRIL T.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.

Justice Wright concurred in the judgment.

Justice McDade specially concurred.

ORDER

¶ 1 *Held:* The trial court's determination finding the respondent mother unfit by clear and convincing evidence was not against the manifest weight of the evidence. The trial court's determination, by a preponderance of the evidence, to terminate the respondent's parental rights was in the best interest of the minor was not against the manifest weight of the evidence.

¶ 2 On February 28, 2011, the State filed a "Petition for Termination of Parental Rights" on behalf of the minors, S.B., L.T., and D.P., seeking termination of parental rights of respondent April T. The minor, S.B., had been previously made a ward of the court as a result of an adjudication of neglect entered on June 11, 2007, and a dispositional order entered on July 10, 2007. The minors, L.T. and D.P., had been previously made wards of the court as a result of adjudication of neglect entered on August 12, 2008, and a dispositional order entered on September 23, 2008. After a hearing on the State's termination of parental rights petition, the court entered an order finding the respondent an unfit parent pursuant to section 50/1(D)(m)(iii) of the Adoption Act. 750 ILCS 50/1(D)(m)(iii) (West 2008). After a subsequent hearing, the court found it to be in the best interest of the minors to terminate the parental rights of the respondent. A formal order finding the respondent unfit and terminating her parental rights was entered on September 21, 2011. Respondent appeals the finding of unfitness and the termination of her parental rights as to her oldest child, L.T.

¶ 3 **BACKGROUND**

¶ 4 On December 22, 2006, a juvenile petition was filed against the respondent alleging that her minor child, S.B., was neglected due to an injurious environment. On April 4, 2008, identical juvenile petitions were filed against the respondent regarding her two other minor children, L.T. and D.P., each asserting that the minors were neglected due to an injurious environment.¹ On August 12, 2008, an adjudicatory hearing was held in the cases of L.T. and

¹ The juvenile petition regarding S.B. was adjudicated in separate proceedings until the two petitions were consolidated on August 10, 2009. Our discussion from this point will not address the hearings in the S.B. petition prior to consolidation.

D.P., at which both minors were found to be neglected on the basis that their guardian possessed cocaine and admitted to dealing cocaine while the two minors were left home alone. On September 23, 2008, a dispositional hearing was held at which the respondent was found to be unfit due to her incarceration. The minors were made wards of the court, and guardianship was placed with DCFS, with immediate placement. The respondent was ordered to participate in the same services that had previously been ordered in the S.B. matter (cooperate with DCFS and related agencies, find and maintain stable housing suitable for her and the children, obtain drug evaluation and treatment, perform two random drug testings per month, successfully complete parenting, domestic violence, and life skills training, and participate in supervised visitation. In addition, respondent was to make five tries per week to obtain employment, submit proof of her employment search, and attend AA meetings twice weekly).

¶ 5 On December 12, 2008, the initial permanency hearing was held on the L.T. and D.P. petition. The permanency review order stated that the respondent's efforts were "mixed at best *** no drug/alcohol evaluation; missed drug tests; missed 9 of 15 counseling sessions but [was] in life skills and [received] other services." On June 30, 2009, a subsequent permanency review hearing was held. The order indicated that the permanency goal and service plan had not been achieved and that the respondent had been admonished that her choice of a paramour was a problem due to the paramour's domestic violence convictions, one of which was a felony.

¶ 6 On December 22, 2009, a permanency review hearing was held in the cases of all three minors. The respondent was found to not be making reasonable efforts based upon a lack of AA attendance, no drug treatment, no drug drops since September 2009, and sporadic attendance at counseling. She was admonished by the judge that she needed to be in strict compliance with the

service plan and court orders. On June 16, 2010, another permanency review hearing was held, at which a finding was made that the respondent was not making reasonable efforts.

¶ 7 On February 28, 2011, the State filed a petition to terminate the respondent's parental rights to all three children, alleging that the respondent failed to make reasonable progress toward the return of the minors during the nine-month period from February 15, 2010, through November 15, 2010.

¶ 8 At the hearing, Sheila Jenkins, a caseworker for FamilyCore, testified that she was the respondent's caseworker from January 2007 until July 30, 2010. Jenkins testified that, during the period from February to July of 2010, the respondent lived with her brother and his girlfriend at 125 Braves Court in Peoria. Jenkins requested background information regarding these two individuals from the respondent; however, they never provided the requested information. Jenkins also sought permission from the respondent to view the residence. However, the respondent would not grant the caseworker permission to enter the apartment. Jenkins also testified that the claimant did not provide any job search logs or AA attendance sheets during this time frame. Jenkins further testified that the respondent attended most of her visits with children, and all the visits were satisfactory.

¶ 9 Jerry Fisher, another caseworker with FamilyCore, testified that he was the respondent's caseworker from June until October 2010. Fisher testified that the respondent did not provide AA attendance sheets or job search logs. Fisher also testified that, during the time period he served as the respondent's caseworker, she was living in an apartment near the Peoria Civic Center. Fisher further testified that in June 2010, the permanency goal had changed to substitute care pending termination of parental rights.

¶ 10 Jenna Rieker followed Fisher as the respondent's caseworker in October 2010. Rieker testified that the respondent had obtained an offer of employment but claimed that she was unable to report to work due to a leg injury. Rieker also testified that the respondent lived at 113 Braves Court with her brother and sister-in-law, but the respondent did not have a room of her own and slept on the floor.² Rieker also noted that the apartment would be unsuitable for the children due to a lack of separate bedrooms for the children. Rieker further testified that, during the relevant time period, respondent's visitation with her children was within acceptable parameters.

¶ 11 FamilyCore supervisor, Darcie Oliver, testified that, around June 20, 2010, the goal changed to substitute care pending termination of parental rights. Oliver testified that the change in permanency goal required that DCFS no longer pay for services for the respondent. However, Oliver opined that the claimant would continue to receive drug and alcohol assessment and treatment from a separate funding source.

¶ 12 Officer Kimberly Espe of the Peoria Police Department testified that she was dispatched to the respondent's resident at 1:20 a.m. on November 6, 2010, in response to a domestic disturbance. Officer Espe described the nature of the disturbance involving the respondent and her paramour, including the fact that the respondent reported being choked by her paramour. When the respondent refused to press charges against the individual, Office Espe subsequently pressed charges.

² The two different addresses on Braves Court contained in the record leads to some confusion as to whether the respondent lived at two or three places during the nine-month period.

¶ 13 The respondent testified that she had called the police when her paramour became violent and refused to leave after the respondent had requested her to do so.

¶ 14 The trial court determined that the State had proven that the respondent was unfit, by clear and convincing evidence, in that she had failed to make reasonable progress toward the return of the children during the nine-month period from February 15, 2010, through November 15, 2010.

¶ 15 The matter then proceeded to a best interest hearing. Respondent testified that she had a close bond with her children and that L.T. had expressed to her that she wanted to reunite with the respondent. The respondent asserted that L.T. had expressed thoughts of suicide if the respondent's parental rights were to be terminated. As far as continuing services such as drug drops and counseling, respondent maintained that she was unable to do so once DCFS had changed her permanency status.

¶ 16 A best interest report was presented to the court in which the caseworkers documented a lack of bonding and affection between the respondent and L.T. In addition, testimony from caseworkers indicated that, while she was currently receiving preadoption services, there was no current adoption placement for L.T., but the other two children were both in adoptive placement.

¶ 17 The court found, at the close of the hearing, that it was in the best interest of the children to terminate the respondent's parental rights and grant DCFS the power to consent to adoption. The respondent filed a timely appeal.

¶ 18 ANALYSIS

¶ 19 On appeal, the respondent first maintains that the trial court's determination that she was unfit is against the manifest weight of the evidence.

¶ 20 Parental rights may be involuntarily terminated where: (1) the State proves, by clear and convincing evidence, that a parent is unfit pursuant to grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008) and; (2) the trial court finds that termination is in the child's best interest. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). On review, the trial court's fitness determination will not be disturbed unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009). A court's fitness determination is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Id.*

¶ 21 Pursuant to the Adoption Act, a parent is unfit if he or she "failed to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(iii) (West 2008). Failure to make reasonable progress includes "the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during" the relevant 9-month period. 750 ILCS 50/1(D)(m) (West 2008). Here, the State alleged that the respondent was an unfit parent because she failed to make reasonable progress toward the children's return during the 9-month period February 15, 2010, through November 15, 2010.

¶ 22 The evidence presented showed that the respondent had failed to comply with several components of her service plan or address any of the conditions that brought the children into care. The evidence was clear and convincing that the respondent had failed to find and maintain stable housing. The respondent lived at two or possibly three locations during the nine-month period at issue, would not provide information about her brother and his girlfriend with whom she was living at one of the locations, to her caseworker. The respondent was sleeping on the

floor at one location, and there was insufficient space for the children. Moreover, by the end of the relevant nine-month period, the respondent was living with a paramour in an abusive environment. The record established that the respondent had been specifically admonished by the court in June 2009 to disassociate from that individual in view of previous convictions for domestic violence, including one felony conviction.

¶ 23 In addition, the record clearly established that the respondent had failed to comply with the drug screening and counseling components of her plan. During the period from June 10, 2010, through November 30, 2010, the respondent may have attended only one of her recommended weekly drug counseling sessions. The record also established that the respondent did not provide any specimens for drug testing during the relevant nine-month period, and she tested positive for alcohol consumption once during that period. The respondent maintained that she was unable to attend drug counseling and provide specimens for testing after June 10, 2010, when her permanency goal was changed by DCFS. Her testimony was, however, contradicted by Oliver, who testified credibly that the change in permanency status would not have affected the respondent's access to drug counseling and treatment. In addition, the change of her status on June 10, 2010, would have no bearing on her failure to attend counseling or provide specimens during the first five months of the relevant nine-month period. Also, the record clearly established that the respondent had failed to comply with the component of her plan requiring regular attendance at AA meetings.

¶ 24 At issue is whether the respondent has made reasonable progress toward returning her children to her home. "Reasonable progress" is to be measured objectively in light of all relevant circumstances which would prevent a court from returning custody of the child to the parent. *In*

re C.N., 196 Ill. 2d 181, 217 (20010). The determination as to reasonable progress is 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). Given the record in the instant matter, we cannot say that the trial court's determination that the respondent was unfit was against the manifest weight of the evidence. None of the issues which had caused the respondent to lose custody of her children, as described in the service plan applicable to all three children, were resolved during the relevant nine-month period. Thus, no reasonable person could conclude that the respondent had made reasonable progress toward the return of her children, and the record was clear and convincing that the respondent was unfit.

¶ 25 The respondent next maintains that the trial court erred in terminating her parental rights to L.T. At the best interest stage of these proceedings, the parent's rights must yield to the best interest of the child. *In re L.W.*, 383 Ill. App. 3d 1011, 1024 (2008). The decision to terminate parental rights in the best interest of the child must be supported by the preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 365 (2004). When reviewing the trial court's determination that it is in the best interest of the child to terminate parental rights, we will not overturn the trial court's determination unless it is against the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 26 Here, as we have previously noted, the respondent only challenges the trial court's determination to terminate her parental rights as to L.T. The respondent maintains that the trial court failed to properly consider the statutory factors required to support a determination to

terminate parental rights and further failed to consider L.T.'s express desire to reunite with the respondent. The respondent points particularly to her testimony that L.T. expressed to her thoughts of suicide if reunification with the respondent was not possible.

¶ 27 The statutory factors to be considered by the trial court prior to termination of parental rights include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural and religious background; (4) the child's sense of attachment, including love, security, familiarity, continuity of relationships with parent figures; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. *In re B.B.*, 386 Ill. App. 3d at 698; 705 ILCS 405/1-3(4.04) (West 2008). However, in issuing a decision, the trial court is not required to expressly address each of the statutory factors (*In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006)), nor does the trial court need to articulate any specific rationale in support of its determination. *In re Jaron Z*, 348 Ill. App. 3d 239, 262-63 (2004).

¶ 28 Here, the record supports, by a preponderance of the evidence, the trial court's determination to terminate the respondent's parental rights as being in the best interest of L.T. First, the trial judge stated that he had relied on a best interest report prepared approximately two weeks prior to the hearing by caseworker Rieker. In the report, it was noted that, while L.T. was bonded to the respondent, L.T. was beginning to realize that the respondent was not doing what was required to reunite the family. The report noted that the "bond is slowly fading" as the respondent's visits with L.T. were only once per month. The report further noted that the respondent had not been consistent in her visits with L.T., noting that the respondent had missed

some visits without explanation. The report noted that, prior to the August visit, the respondent had not visited with L.T. in three months. The report also noted that the quality of the visits were poor, with little signs of affection and no physical contact. The recommendation of the best interest report was that it was in the best interest of L.T. that the respondent's parental rights be terminated. This report supported the trial court's finding that L.T.'s sense of attachment, including love, security, familiarity, and continuity of relationships with the respondent was lacking.

¶ 29 Additionally, we note that the record supports a finding that L.T.'s need for permanence would be best served by termination of the respondent's parental rights. The trial court's conclusion that the respondent was unfit due to her lack of progress toward return of her children and the fact that L.T. was receiving preadoption services support that conclusion.

¶ 30 The respondent asserts that the trial court failed to consider the fact that L.T. might be suicidal over the possible termination of the respondent's parental rights. The record does not indicate the extent to which the trial court consider this factor. However, the only evidence in the record addressing this contention is the respondent's testimony. There is no indication that L.T. shared these thoughts or concern in counseling, nor is there any indication that the respondent reported L.T.'s alleged suicidal thoughts to anyone. As the State noted in its brief, if, in fact, L.T. told the respondent of suicidal thoughts, and the respondent did not report this conversation immediately to her caseworkers, it showed an extreme lack of concern for L.T.'s welfare.

¶ 31 Overall, the record reflected that the respondent had failed to progress toward return of her children, failed to avail herself of services necessary to achieve that goal, failed to maintain a consistent relationship with L.T. through regular visitation, and failed to bond with L.T. during

the infrequent visits. Based on this evidence, the court's decision to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 32

CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 34 Affirmed.

¶ 35 JUSTICE McDADE, specially concurring:

¶ 36 I concur in the decision to affirm the findings of the trial court that (1) the respondent was unfit for failing to make reasonable progress during the period of February 15, 2010, through November 15, 2010, toward the return of her children and (2) it was in the best interests of the children to terminate respondent's parental rights.

¶ 37 I write separately to express a couple of concerns. First, the mother's caseworker from January 2007 until July 30, 2010 – which included five months of the designated nine-month period – reported that respondent attended most of the scheduled visits with her children and all of them were satisfactory. Her caseworker from July to October 2010, the next three months, expressed some complaints about respondent but the nature of the visits with her children were not included. The final caseworker, serving for the last one month of the nine-month period, testified that during the relevant period, respondent's visitation with her children was within acceptable parameters. Despite this, in the best interest report the caseworkers reported a lack of bonding and affection particularly between respondent and L.T.

¶ 38 Second, the mother testified that L.T. wanted to return home and that she (L.T.) had considered suicide if respondent's parental rights were terminated. I find no indication of follow-up with L.T. by the trial court in the wake of the mother's claims. Given the mixed

reports by the caseworkers (which seem to give no attention to the natural tension that so often exists between 15-year-old girls and their mothers) and respondent's testimony about her daughter's suicidal ideation, this seems to be a situation where a personal interview between L.T. and the trial judge would be advisable. The absence of an identified adoptive family for L.T. exacerbates the concern and seems to me to make such an interview imperative.

¶ 39 Finally, it appears that placement of L.T. with respondent is clearly not ideal and may actually present some risks to the child. I cannot, therefore, reasonably conclude that the trial court's decision is improper. Nonetheless, my *preference* in this case would be remand and a new order by the trial court exploring and evidencing some balancing of the court's expressed concerns with the mental, emotional and physical risks ostensibly communicated by L.T. to her mother.