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2014 IL App (3d) 130598

Order filed January 16, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> A.T., S.T., and W.T., Minors,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
(The People of the State of Illinois),)	Peoria County, Illinois,
)	
Petitioner-Appellee,)	
)	Appeal Nos. 3-13-0598, 0599, 0600
)	Circuit Nos. 09-JA-284, 10-JA-221
v.)	11-JA-301
)	
NANKA T.,)	Honorable
)	Mark E. Gillis,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Lytton and Justice Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's findings that the respondent was an unfit parent was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Nanka T., appeals from an order of the circuit court finding her to be an unfit parent of A.T. (born April 4, 2008), S.T. (born August 11, 2010), and W.T. (born December 24, 2011) and terminating her parental rights. Respondent contends that the trial court's finding that

she was unfit was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 On November 20, 2009, the State filed a petition alleging that A.T. was neglected in that his environment was injurious. The petition detailed six allegations against the respondent, including that the respondent: (1) had auditory hallucinations that led her to hold A.T. by the throat to quiet him; (2) had not maintained stable housing since August 2008; (3) was diagnosed with depressions with psychotic features; (4) had been admitted to a psychiatric inpatient facility but had failed to follow post-release treatment plans; (5) upon her release from hospitalization, took A.T. from his care givers to live with friends in a hotel; and (6) administered excessive corporal punishment to A.T. On August 12, 2010, the State filed a petition alleging that S.T. was neglected, incorporating the allegations in the A.T. petition as well as allegations that the respondent had not completed services in the prior proceeding and that she had additional mental health issues. On December 28, 2011, the State filed a petition alleging that W.T. was neglected incorporating the allegations raised in the two prior proceedings. In each petition the State sought that the minor be made a ward of the court with the Department of Children and Family Services (DCFS) appointed guardian.

¶ 5 Following separate proceedings, each minor was ordered placed in shelter care. The respondent was subsequently found to be dispositionally unfit as to each minor. Each minor was made a ward of the court and DCFS was appointed guardian. A plan was established requiring the respondent to demonstrate her fitness to parent each of the children which required that she: (1) obtain and maintain stable housing suitable for her and the three children; (2) obtain a high

school diploma or GED certificate; (3) obtain and maintain stable legal employment; (4) comply with treatment to stabilize her mental health issues; (5) seek and comply with anger management therapy; and (6) attend and cooperate with scheduled visitation.

¶ 6 On January 31, 2013, the State filed petitions for termination of the respondent's parental rights regarding each minor. The petitions regarding A.T. and S.T. alleged that the respondent failed to make reasonable progress toward the return home of the minors during any nine-month period after the initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(iii) (West 2010). The specified nine-month period was March 13, 2012, to December 13, 2012. The petition regarding W.T. alleged that the respondent failed to make progress toward the return home within nine-months of the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2010). The specified nine-month period was also March 13, 2012, to December 13, 2012.

¶ 7 On May 29, 2013, a combined hearing commenced on all three petitions. Richard Upchurch testified that he was a caseworker for Lutheran Social Services of Illinois (LSS) and that since October 24, 2011, he had been the caseworker for the respondent and the three minors. Upchurch testified that the respondent in May 2010 the respondent completed a drug and alcohol assessment with no treatment recommended, and that in June 2010 she completed a parenting class and a psychological evaluation. Upchurch further testified that as of March 13, 2012, the respondent was living with her mother and brother. This housing arrangement was not satisfactory, according to Upchurch, because the mother and brother each had serious drug and alcohol issues, and the brother had previously sexually assaulted the respondent. He also testified that the mother was a "toxic influence" on the respondent's life, that she had been hostile

toward LSS and its efforts to help her and that the mother continued to deny the respondent's statements that she had been sexually assaulted by her brother.

¶ 8 Upchurch further testified that when she was not living with her mother and brother, she stayed with friends. When Upchurch requested information about these friends, she either did not provide the information or the friends did not clear DCFS and criminal checks. Regarding one friend, the respondent knew he was a registered sex offender, but she did not see this as a problem. Upchurch also reported that for the period from March 13, 2012, to June 11, 2012, the respondent resided at the South Side Mission and that she had spent several nights in October and November 2012 in homeless shelter. In November 2012, the respondent moved into a studio apartment at the New Hope Apartments. Upchurch opined that the studio apartment was a safer and more stable living situation for the respondent, however, he also opined that it was not suitable for the children due to its small size. Upchurch acknowledged that the respondent thought she might be able to procure a larger apartment at New Hope.

¶ 9 Upchurch testified that during a meeting with LSS attended by the respondent and her mother, when she was told that W.T. might be returned to his father rather than to her, the respondent reacted violently. The mother, likewise, reacted violently. Subsequently, Upchurch instructed the respondent to take an anger management class. The respondent indicated that she had previously attended an anger management session, but stopped attending because the person sitting next to her in the class made her so angry that she left the class and never returned.

¶ 10 Upchurch testified that during visitation sessions with the children, the respondent had minimal interaction with the children. He also testified that during one visit the respondent repeatedly yelled angrily at A.T. when he referred to her as "Mommy Nanka" telling A.T. that he

had only one mommy and it was her. Upchurch also reported several instances of the respondent's inattentiveness toward the children during visitation sessions.

¶ 11 The respondent testified that she was involved in a group therapy program at New Hope and that she began anger management counseling on December 3, 2012. She also testified that she was in treatment with a psychiatrist and was taking prescribed medication for depression. She also testified that she had found employment cleaning a building in Morton, Illinois, working approximately 27 hours per week.

¶ 12 The State marked four exhibits which were admitted into evidence: Exhibit 2 being a certified DCFS indicated report concerning events occurring during the nine-month period; Exhibit 3 being a report concerning events occurring prior to the relevant nine-month period, introduced for background only; Exhibit 4 being certified medical and psychiatric records regarding the respondent; and Exhibit 5 being various caseworker reports.

¶ 13 On June 26, 2013, the trial court found by clear and convincing evidence that the respondent was unfit in that she failed to make reasonable progress toward the return of any of the children.

¶ 14 The matter proceeded to a best interest hearing at which the trial court held that the People proved by a preponderance of the evidence that it was in the best interest of each of the minors that the respondent's parental rights be terminated. On appeal, the respondent does not challenge the best interest determination but challenges the trial court's finding that she was unfit.

ANALYSIS

¶ 15 A showing of parental unfitness must be supported by clear and convincing evidence. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008). A finding of unfitness will stand if

supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2010); *In re Jacorey S.*, 2012 IL App (1st) 113427 ¶ 19. A trial court's determination that a parent is unfit will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). For a finding to be against the manifest weight of the evidence, the opposite conclusion must be clearly evident from the review of the evidence. *Id.* The standard of proof to be applied by the trial court in determining parental unfitness is whether the proposition has been proven by clear and convincing evidence. *Id.* On review, we must give the factual findings of the trial court great deference since it had the opportunity to view and evaluate the testimony of all witnesses. *In re K.H.*, 346 Ill. App. 3d 443, 456 (2004). Because each case concerning parental unfitness is *sui generis*, requiring a close analysis of its individual facts, factual comparisons to other cases are of little value. *Konstantinos H.*, 387 Ill. App. 3d at 203.

¶ 16 The respondent was found to be unfit due to her failure to make reasonable efforts or reasonable progress toward the return home of her children. 750 ILCS 50/1(D)(m)(ii) and (iii) (West 2010). Reasonable efforts and reasonable progress are separate and distinct grounds for finding a parent unfit under section 1(D)(m) of the Adoption Act. *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 21. Reasonable efforts are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *Id.* Reasonable progress, in contrast, 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 some measurable or demonstrable movement toward the goal of unification. *In re Y.B.*, 285 Ill. App. 3d 385, 392 (1996). The standard for measuring

a parent's progress is to consider compliance with the service plan and court directives in light of the conditions that lead to removal and any subsequent conditions that would prevent the court from returning custody to the parent. *Jacorey*, 2012 IL App (1st) 113427, ¶ 21.

¶ 17 Here, the record clearly established that the respondent had failed to comply with the requirements of her service plan sufficient to demonstrate movement toward unification with her children. With regard to the plan objective of maintaining safe and stable housing for the children, the record established that up until November 20, 2012, only three weeks prior to the end of the nine-month period, the respondent had no stable housing. Even after she obtained the studio at New Hope, that studio apartment was objectively unsuitable housing for the respondent and three children. The respondent's testimony that she had spoken with New Hope officials about obtaining a larger apartment notwithstanding, the record supports a determination that the respondent had failed to make reasonable progress toward obtaining safe and suitable housing during the relevant nine-month period.

¶ 18 Regarding the plan objective of obtaining suitable legal employment and obtaining a GED, the record established that the respondent had made no efforts toward obtaining a GED and had only obtained sporadic part-time employment. In addition, the record established that throughout the nine-month period the respondent continued to have serious difficulty with anger management, and her decision making skills remained poor, particularly in light of her association with a sex offender and others individuals who could not pass DCFS and criminal background checks.

¶ 19 The respondent maintains, however, that she had made some progress during the nine-month period and the trial court erred in failing to properly consider the progress that she did

make. She points out that she was "mostly compliant" with her mental health treatment. The record established that she was taking her prescribed medication and had reported an absence of suicidal thoughts. She also pointed out that she had returned to anger management classes. The record, however, established that she had only returned to anger management classes on December 3, 2012, only 12 days prior to the end of the relevant nine-month period. We also note that during the nine-month period there was evidence that the respondent continued to struggle with serious anger management issues. The record established that during that time period she yelled at her children during visitation, became extremely angry during a meeting with LSS personnel to the point of storming out of the meeting, and actually became overcome with anger during a previous attempt at anger management classes to the point of storming out of the class. The fact that she returned to anger management classes with 12 days left in the nine-month period did not establish that the respondent had overcome her anger issues.

¶ 20 There is no dispute that the respondent made some progress. However, the trial court's ultimate finding that the respondent had failed to make necessary progress during the relevant nine-month period was not against the manifest weight of the evidence. The respondent had not obtained safe and suitable housing, had not obtained a GED and therefore had not taken steps to obtain self-supporting employment, did not take steps toward anger management until shortly before the end of the nine-month period, and continued to make poor relationship choices and associate with individuals with criminal histories, including sex offenders such as her brother who had sexually assaulted her. Given the entire record, even with the respondent's limited efforts, it cannot be said that the trial court's finding that the respondent was unfit was against the manifest weight of the evidence.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 23 Affirmed.