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2014 IL App (3d) 140003-U
Consolidated with 140004-U

Order filed May 22, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

In re N.L. and M.L.,
Minors,
(The People of the State of Illinois,
Petitioner-Appellee,
v.
Emily L.,
Respondent-Appellant).

) Appeal from the Circuit Court
) of the 9th Judicial Circuit,
) McDonough County, Illinois,
)
)
)
) Appeal Nos. 3-14-0003 and 3-14-0004
) Circuit Nos. 11-JA-3 and 12-JA-1
)
)
) Honorable
) Patricia A. Walton,
) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Lytton and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The termination of a mother's parental rights was affirmed because the trial court's conclusion that a mother was unfit for failing to make reasonable progress toward the return of two of her children within nine months after their respective adjudications of neglect was not against the manifest weight of the evidence. Although the evidence showed some effort by the mother, it did not show that the mother's progress was of such a quality that the minors could be returned to her in the near future.

¶ 2 The trial court adjudged the minors, N.L. and M.L., to be neglected because of an environment injurious to their welfare due to the domestic violence between the respondent mother and her husband, the mother's prior finding of unfitness with no subsequent finding of fitness, and the husband's criminal history, under section 2-3 of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3 (West 2012)). At the dispositional hearing, the trial court found the mother, Emily L., to be unfit because she failed to make reasonable progress toward the return of the minors within nine months of the adjudications of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2012). After a best interest hearing, the mother's parental rights were terminated as to both minors. The mother appealed, arguing that the trial court committed reversible error by finding her unfit. We affirm.

¶ 3 **FACTS**

¶ 4 On February 3, 2011, the State filed a juvenile petition alleging that N.L., born January 31, 2011, was neglected due to an environment injurious to his welfare because of the mother's history of domestic violence with her husband, the mother's prior finding of unfitness without a subsequent finding of fitness, and the husband's history of criminal activity. N.L. was adjudicated neglected on March 24, 2011. A dispositional order with respect to N.L. was entered on April 26, 2011, wherein the mother was found to be unfit and ordered to: (1) cooperate with a psychological evaluation and follow all recommendations from that evaluation; (2) cooperate with domestic violence education classes and follow all recommendations; (3) cooperate with random urine screens; (4) cooperate with her client service plan and sign all necessary releases; (5) not use illegal

drugs or alcohol; and (6) visit at the discretion of the Department of Children and Family Services.

¶ 5 M.L. was born on December 29, 2011, and the State filed a juvenile petition on January 3, 2012, alleging that M.L. was also neglected due to an injurious environment because both parents had already been found unfit, neither had regained fitness, and neither had completed their services in the case involving N.L. M.L. was adjudicated neglected on January 4, 2012. A dispositional order was entered on February 16, 2012, wherein the mother was found to be unfit, and the trial court adopted the recommendations of the dispositional hearing report. Those recommendations, with respect to the mother, were: (1) cooperate with random urine screens; (2) cooperate with her client service plan and sign all necessary releases; (3) not abuse drugs or alcohol, (4) cooperate with marriage counseling; and (5) visit at the discretion of the Department of Children and Family Services or Lutheran Social Services of Illinois.

¶ 6 On March 4, 2013, the State filed petitions for the termination of the parental rights of the mother as to both minors. The petitions alleged that the mother was unfit because she failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare in that she frequently cancelled visits with the minors. The petitions also alleged that the mother was unfit because she failed to make reasonable progress toward the return of the minors within nine months after adjudication (March 24, 2011 to December 24, 2011 for N.L., January 14, 2012 to October 14, 2012, for M.L.) in that she did not believe she needed counseling, did not provide proper care for the minors during visits, frequently cancelled visits, had police contact during the pendency of the case, her husband sold illegal drugs, and her relationship with her husband

remained unstable. The State filed an amended petition for termination with regard to N.L on June 4, 2013, but the amendments only concerned N.L.'s father.

¶ 7 The hearing on the petitions commenced on June 17, 2013. The State called Andy Stodolkiewicz, an outpatient clinical therapist employed at North Central Behavioral Health Systems. Stodolkiewicz testified that the mother was one of his clients for individual counseling in the fall of 2011. He saw her for four to six months, and then discharged her from counseling because she did not request any more services and was not presenting a need or problem.

¶ 8 Diana Bledsoe, a child welfare specialist with Lutheran Social Services, testified that she was the caseworker from the beginning of this case, except for a period of time from March to October 2012 when another caseworker had the case. When the case began, the mother indicated that she and her husband had no current domestic violence issues, but they had some in the past. When the client service plan was evaluated in August 2011, the mother was evaluated as satisfactory with regards to her services because she was making some progress and attending treatment. The service plan filed on October 25, 2011, indicated that the mother had completed her individual counseling and was currently participating in marital counseling with her husband. The mother had been discharged from her domestic violence classes. However, the mother admitted to a domestic violence incident that occurred on October 4, 2011. According to Bledsoe, due to that incident and another, the mother was rated unsatisfactory in the February 2012 service plan. However, on cross-examination, Bledsoe corrected herself to say the other incident occurred while the mother's husband was in prison, which would have been later in 2012. Bledsoe testified that both parents were rated unsatisfactory for the latter part of

the time period of March to December 2011 because of the domestic violence incidents and because they did not seem to be getting anything from the services.

¶ 9 A former child welfare specialist for Lutheran Social Services, Tara Wilder, testified that she was the mother's caseworker from March to October, 2012. She testified that she believed that the mother had completed her portion of the service plan when Wilder reviewed it in September 2012, and the service plan filed October 5, 2012, indicates that the mother was making satisfactory progress as to all of her interventions. Wilder testified that she recalled that what the mother still needed to work on was to display proper parenting techniques during visits. The mother's visits with the minors were supervised, and were to remain that way until increased visits were successful. However, when the visits were increased in August 2012, the mother cancelled 5 of 12 visits between August 27 and September 19, 2012. According to the October 2012 permanency review report prepared by Wilder, the mother cancelled five visits and ended two early between July 3 and October 2, 2012.

¶ 10 In September or October 2012, Wilder received notification that the mother had police contact, which the mother initially denied. The mother later admitted the involvement, but claimed to be too intoxicated to remember. Wilder testified that it was mixed whether the mother displayed proper parenting skills, and the mother seemed to question herself a lot. The mother was unsure of herself while she was parenting, and Wilder questioned the mother's judgment. Wilder gave an example where the mother left N.L. outside unattended and went back in to gather M.L. The mother did not ask Wilder to watch N.L., but Wilder was outside. Wilder also testified that the mother treated N.L. differently than M.L., purportedly because N.L. was a product of rape. The mother did not inform Wilder that her husband might not be N.L.'s father until approximately

August 2012. The mother testified that she knew was a possibility that her husband was not N.L.'s father, but never notified the other potential father.

¶ 11 Wilder testified that the mother's progress from March to October 2012 was very slow. She based that conclusion on the fact that there was no progress toward returning the minors home, especially with the cancelled visits. According the Wilder, the mother was restored to fitness in April 2012, but changed back to unfit in September 2012. The mother was initially not very receptive to parenting advice, although she became more receptive in approximately November 2012.

¶ 12 Barbara Kane, a caseworker assistant at Lutheran Social Services, testified that she transported and supervised the visits between the mother and both minors since the case began. Kane recalled six cancelled visits in August and September 2012, and two more between January and July 2012. She also recalled two visits were ended early. The mother would call to cancel the visits, but Kane was already on her way with the minors on three occasions. Kane testified that the mother had made a lot of progress as far as learning how to play with the minors. In that way, her parenting skills had improved, and she displayed appropriate discipline towards the minors. Kane gave some examples of the mother's need for guidance when M.L. was an infant. She also gave two examples of where the mother asked if she could go outside to smoke, and Kane told her it was not a good idea with the minors, and the mother just left to smoke anyway. Kane also suggested on numerous occasions that the mother remove candles and glass from the coffee table, so that the minors could not reach the items, but the mother refused to do so. Kane also testified that the mother favored M.L. during the visits, and on one occasion, let N.L. cry and did not act as if she even noticed.

¶ 13 One of the mother's exhibits contained progress notes from counseling with Jasmine Sommer. The progress notes indicated that the mother and her husband were attending counseling, and were discussing issues relevant to the domestic violence in October 2011. Bledsoe testified that she received updates from Sommer, who indicated that the mother and her husband were making some progress in that they were hitting less when resolving their differences, but still yelling and screaming. Sommer discharged them when the husband went to prison in March 2012, although there was no final report.

¶ 14 Diane Mayfield, a victim services program director, testified that she counseled the mother for three months, beginning in March 2011, and domestic violence was definitely an issue that they discussed.

¶ 15 The trial court found the mother unfit for failure to make reasonable progress toward the return of the minors within the relevant nine-month time periods. Specifically, with regard to N.L. and the time period from March 24 – December 24, 2011, the trial court found that the mother was involved in two domestic violence incidents, she denied that there were issues that needed to be addressed during counseling despite those incidents, visitation remained supervised, and there was no likelihood the minor could have been returned to the household. With regard to M.L., and the time period of January 14 – October 14, 2012, the trial court found that the mother lied about her relationship with N.L.'s father, lied about police contacts, lied about the use of illegal drugs and alcohol, denied the need for marriage counseling despite ongoing issues, ongoing domestic violence issues, missed visits, and her inability to appropriately parent M.L. and his sibling during visits. After a best interests hearing, the trial court terminated the mother's parental rights as to both minors. Although the mother's notice of appeal

indicated that she was appealing the termination, she only argues in her brief that the findings of unfitness were against the manifest weight of the evidence.

¶ 16

ANALYSIS

¶ 17

The termination of parental rights involves a two-step process. The trial court must first determine whether the parent is unfit. 705 ILCS 405/2-29(2), (4) (West 2012); 750 ILCS 50/1D (West 2012). If the parent is unfit, the trial court then determines whether it is in the child's best interest that the parent's rights be terminated. 705 ILCS 405/2-29(2) (West 2012). One of the grounds upon which a parent may be found unfit is if the parent fails to make reasonable progress toward return of the child within nine months after neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2012). A parent fails to make reasonable progress when she fails to substantially fulfill her obligations under a service plan and correct the conditions that brought the child into care. 750 ILCS 50/1(D)(m)(ii) (West 2012).

¶ 18

Reasonable efforts and reasonable progress are two different grounds for finding a parent unfit in section 1(D)(m) of the Adoption Act. 750 ILCS 50/1(D)(m)(ii) (West 2012). Reasonable efforts relate to the goal of correcting the conditions that caused the removal of the child from the parent, and are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066 (2006). Reasonable progress, on the other hand, 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 at 1067. At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. *In re C.N.*, 196 Ill. 2d 181, 211 (2001). A parent has made reasonable progress when the court can conclude that the parent's

progress in complying with directives given for the return of the child is of such quality that the court will be able to order the child returned to the parent in the near future. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 19 In determining fitness, the focus is on the parent in question. *In re M.B.*, 332 Ill. App. 3d 996 (2002). The State must prove a parent's unfitness by clear and convincing evidence. *In re D.D.*, 196 Ill. 2d 405 (2001). A trial court's finding of unfitness will be overturned only if it is against the manifest weight of the evidence. *D.D.*, 196 2d at 417. A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 20 Here, the trial court found the mother unfit for failing to make reasonable progress with respect to N.L. from March 24 to December 24, 2011, based on the fact that the mother was involved in two domestic violence incidents, she denied that there were issues that needed to be addressed during counseling despite those incidents, visitation remained supervised, and there was no likelihood the minor could have been returned to the household. Although the testimony indicates that the second domestic violence incident actually occurred after the relevant time period, the mother acknowledges the domestic violence that occurred on October 4, 2011. Also, although the evidence showed that the mother engaged in counseling, Bledsoe testified that the mother was not implementing what she learned in the counseling sessions. The mother's visitation with N.L. was initially unsupervised, but was changed to supervised during the relevant nine-month period and remained that way. Based on the objective standard by which reasonable progress is measured, with respect to N.L., we find that the trial court's conclusion that the mother was unfit for failing to make failing to make reasonable

progress with respect to N.L. from March 24 to December 24, 2011, was not against the manifest weight of the evidence.

¶ 21 With regard to M.L., and the time period of January 14 – October 14, 2012, the trial court found the mother unfit because she lied about her relationship with N.L.’s father, lied about police contacts, lied about the use of illegal drugs and alcohol, denied the need for marriage counseling despite ongoing issues, she had ongoing domestic violence issues, she missed visits, and she showed an inability to appropriately parent the minors during visits. The evidence shows that the mother did make some progress during the early part of this time period, resulting in her dispositional fitness being restored in April 2012, but she was again found unfit at the permanency review hearing on October 1, 2012. The evidence showed that the mother’s supervised visits were increased, but she responded by immediately cancelling five out of twelve visits and ending two other visits early. The mother had made some progress in her parenting skills, but still not enough progress for her visits to even be unsupervised. She also became intoxicated in September or October 2012 and had police contact, and initially denied it to her caseworker. Based on all the evidence, we find that the mother’s progress was not of such a quality that M.L. could be returned to her in the near future, so the trial court’s conclusion that the mother was unfit was not against the manifest weight of the evidence.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of McDonough County is affirmed.

¶ 24 Affirmed.