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2014 IL App (3d) 140044-U

Order filed June 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> A.S., L.S. & G.S.	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit
(The People of the State of Illinois	)	Peoria County, Illinois
)	
Petitioner-Appellee,	)	Appeal Nos. 3-14-0044, 3-14-0045,
	)	3-14-0046
v.	)	Circuit Nos. 10-JA-219, 10-JA-220,
	)	11-JA-218
)	
Aaron S.,	)	Honorable
	)	Christopher L. Fredericksen and Kirk D.
	)	Schoenbein,
Respondent-Appellant).	)	Judges, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's finding that respondent father was unfit for failing to make reasonable progress toward the return of his children during a nine-month period was not against the manifest weight of the evidence where respondent failed to complete several court-ordered tasks.

¶ 2 Respondent is the father of L.S., A.S. and G.S. In October 2010, the court adjudicated L.S. and A.S. neglected minors. In August 2011, G.S was born. On December 21, 2011, G.S. was adjudicated a neglected minor. The State filed a petition for termination of respondent's

parental rights, alleging that respondent was unfit because he (1) failed to make reasonable progress toward the return of the children during the nine-month period of December 21, 2011, to September 21, 2012, and (2) is a depraved person. Following a hearing, the trial court found respondent unfit. Respondent appeals, arguing that the trial court erred in admitting certain evidence and finding him unfit. We affirm.

¶ 3 In August 2010, the State filed a petition alleging that L.S. and A.S. were neglected minors in that their environment was injurious to their welfare because (1) their parents were using methamphetamines in the home, (2) respondent had a criminal history that included convictions for drug possession, armed robbery, burglary, aggravated battery, theft, and resisting police, (3) respondent was in jail for violating probation, (4) their home was in “disarray with debris and clothing throughout the floors making it difficult to walk through,” and (5) their parents failed to complete drug drops ordered by the Department of Children and Family Services (DCFS). On October 25, 2010, the court ruled that the allegations of the petition had been proven and that L.S. and A.S. were neglected.

¶ 4 On November 22, 2010, the court found respondent unfit based on the allegations contained in the petition and “drug issues.” At that time, the court entered an order requiring respondent to perform various tasks to correct the conditions that led to the adjudication of the children, including performing random drug drops twice a month, participating in and successfully completing counseling, participating in and successfully completing a domestic violence class, obtaining and maintaining stable housing, visiting his children as scheduled, and promptly notifying DCFS of any change in his contact information.

¶ 5 On August 2, 2011, G.S. was born. One month later, the State filed a petition alleging that G.S. was neglected in that her environment was injurious to her welfare because (1) respondent had been previously found unfit and there was no subsequent finding of fitness, (2)

respondent had not completed services that would result in the return home of his other children or a finding of fitness, (3) respondent had a substance abuse problem, and (4) respondent had a criminal history, including convictions for armed robbery, burglary, aggravated battery, possession of a controlled substance, retail theft and resisting police. On December 21, 2011, the trial court found that G.S. was a neglected minor.

¶ 6 In January 2012, respondent posted a 14-minute video on YouTube, claiming that his children's caseworker, the caseworker's supervisor, and the judge on his case were "corrupt" because they "take good children from good homes and sell them." He also claimed that his children had been molested in their foster homes.

¶ 7 On February 15, 2012, the court ruled that respondent remained unfit due to "erratic behavior, drug usage" and his continuing relationship and cohabitation with the minors' mother, Nichole H. In March 2012, respondent filed a police report alleging that L.S. had been bitten by a dog in his foster home.

¶ 8 At a hearing on June 6, 2012, respondent was questioned about his YouTube video. He testified that he regretted some of the language used in the video but sincerely believed that the system is not working toward reunification of his family. He stated that based on his experience and "research from the internet" it was hard for him not to believe that judges and caseworkers are receiving extra money for taking people's children. The trial court ruled that respondent acted irrationally and in bad faith by making the YouTube video and alleging that abuse was occurring in his children's foster homes. The court made the following findings: (1) that respondent is trying to disrupt the minors' placements, (2) that respondent is "irrational and delusional" in his belief that the caseworkers and court are receiving kickbacks in this and other cases, (3) that photos of L.S.'s hand do not look like a dog bite, and (4) respondent is not fair, rational or acting in the best interest of his children in his attempts to keep moving the minors.

¶ 9 In December 2012, the State filed a petition for termination of parental rights against respondent. The petitions alleged that respondent is an unfit person in that he failed to make reasonable progress toward the return of L.S. and A.S. during the nine-month period of December 21, 2011, to September 21, 2012, and failed to make reasonable progress toward the return of G.S. within nine months after she was adjudicated a neglected minor on December 21, 2011. The petitions also alleged that respondent is unfit based on depravity.

¶ 10 At the hearing on the petitions, respondent's certified convictions were admitted, including his 1994 conviction of armed robbery, his 1998 conviction of burglary, his 2001 conviction of aggravated battery, his 2004 conviction of unlawfully possessing Vicodin, his 2005 conviction of intimidation, his 2006 conviction of possession of cocaine, his 2007 conviction of retail theft, his 2008 conviction of resisting a peace officer, and his 2012 convictions of possessing anhydrous ammonia with the intent to use it to manufacture methamphetamine and aggravated fleeing and eluding police.

¶ 11 Records from the Center for Prevention of Abuse showed that respondent began a domestic violence program on four separate occasions from December 2008 to August 2009, but was terminated each time due to lack of attendance. According to the records from the Antioch Group, respondent's counseling was terminated in November 2011, because he failed to attend scheduled appointments. Respondent resumed counseling with the Antioch Group in January 2012, and was supposed to attend weekly sessions. Respondent attended no sessions in January and only eight sessions from February to June 2012. He stopped attending counseling on June 4, 2012. Records from the Human Service Center showed that respondent completed outpatient substance abuse treatment on July 2, 2012. He did not continue group therapy after that, and his enrollment was ended on August 16, 2012, "due to lack of engagement."

¶ 12 Danny Walker testified that he was the children's caseworker from December 2011 until April 2012. During that time period, respondent missed "several" drug drops. He also completed drug drops that were positive for amphetamines, cocaine, hydrocodone and heroin, but Walker did not know the dates of those drops. Respondent told Walker that he did not have any current prescriptions for any of those substances and never provided any prescriptions to Walker. Respondent was receiving counseling at the Human Service Center but had not finished counseling by April 2012. Respondent's attendance at visits with his children was satisfactory from December 2011 to April 2012, but the visits "were not of good quality." Respondent had difficulty disciplining his children and giving them equal attention.

¶ 13 Maria McCrea supervised the caseworkers for respondent and his children during the relevant nine-month period. She testified that in August 2012, respondent stopped living with Nicole H. After he moved, respondent did not provide his caseworker with a current address and phone number for "a period of time."

¶ 14 Brett Michna, respondent's bond supervisor, testified that respondent completed 13 drug drops through the probation department between October 2010 and April 2013. None of the drops tested positive for illegal substances for which respondent did not have a prescription. During respondent's bond supervision, respondent did not commit any crimes.

¶ 15 On the second day of the hearing, the State stipulated that Walker was mistaken when he testified that respondent tested positive for heroin during the relevant nine-month period. Respondent then testified that he provided Walker with copies of prescriptions for medication he was taking, including Vicodin, Wellbutrin, Adderall, Xanax, Abilify, Trazodone and Pseudotriptan. Respondent said he began taking Vicodin in 2007, following a car accident but successfully weaned himself off of it. He completed outpatient substance abuse treatment during the nine-month period even though he did not believe that he had a substance abuse problem.

¶ 16 Jill Helms testified that she has been the caseworker for respondent and his children since June 2013. According to the information in the file, respondent missed a few drug drops from September to November 2012, and stopped the drops altogether in November 2012. To her knowledge, respondent had not participated in counseling since the summer of 2012. From August to October 2012, respondent did not attend any visits with his children. During that same time period, respondent's caseworker did not have a current address for respondent and had no way to contact him.

¶ 17 Derek Harwood, a Peoria police officer, testified that in May 2013, he responded to a 9-1-1 call reporting that a male was not breathing. At the scene, Harwood found respondent lying on the ground not breathing. After medics resuscitated him, respondent told Harwood that he had injected two bindles of heroin in his arm.

¶ 18 At the conclusion of the hearing, the trial court found that despite Walker's "faulty" recollection of events and "lacking" memory, the State proved by clear and convincing evidence that respondent did not make reasonable progress during the relevant nine-month period. The court explained that respondent "wasn't doing any of the services that he had been directed by the court to do including his counseling" and was not taking responsibility for his actions. The court also ruled that the State proved by clear and convincing evidence that respondent was depraved based on his 16-year criminal history that included armed robbery, aggravated battery, acts of violence and three drug offenses. The court found that respondent had not been rehabilitated despite Michna's testimony that respondent had 13 clean drug drops from October 2010 to April 2013, in light of Harwood's testimony that respondent admitted using heroin in May 2013.

¶ 19 I. Admission of Evidence

¶ 20 Respondent first argues that the trial court erred in admitting and considering testimony from Walker and Helms regarding his positive and/or missed drug drops.

¶ 21 An erroneous evidentiary ruling requires reversal only where the error played a substantial part in the verdict. *In re J.Y.*, 2011 IL App (3d) 100727, ¶ 15. An error in the exclusion or admission of evidence is harmless if there has been no prejudice or if the evidence has not materially affected the outcome of the trial. *In re April C.*, 326 Ill. App. 3d 245, 261-62 (2001).

¶ 22 Here, the trial court allowed respondent's caseworkers to testify that respondent missed several drug drops and had drug drops that tested positive for certain substances. The court also allowed respondent's bond supervisor to testify that none of the drug drops respondent completed while on bond were positive for any substances for which respondent did not have a prescription. All of that testimony was hearsay. See *In re A.J.*, 296 Ill. App. 3d 903, 916-17 (1998) (testimony that respondent's drug tests came back positive was hearsay).

¶ 23 Nevertheless, the trial court's error in admitting the evidence was harmless. In reaching its conclusion that respondent failed to make reasonable progress toward the return of his children during the relevant nine-month period, the trial court never mentioned respondent's missed or positive drug drops. Instead, the court focused on respondent's failure to complete services, such as counseling.

¶ 24 Moreover, the court did not find Walker's testimony regarding respondent's drug drops credible, describing Walker's memory as "lacking" and finding that Walker had a "faulty" recollection of events. Since the court did not rely on the caseworkers' testimony regarding respondent's drug drops in finding respondent unfit, the court's admission of such testimony was harmless.

¶ 25 II. Unfitness

¶ 26 A trial court’s finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). The trial court’s finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record. *Id.*

¶ 27 Where the State alleges more than one ground for unfitness, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness. *In re Adoption of K.B.D.*, 2012 IL App (1st) 121558, ¶ 197.

¶ 28 A

¶ 29 Respondent argues that the trial court’s order finding him unfit for failure to make reasonable progress toward the return of his children from December 21, 2011 to September 21, 2012, was against the manifest weight of the evidence.

¶ 30 Section 1(D)(m) of the Adoption Act provides that a parent is unfit for failing “(ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor ***, or (iii) 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)(ii)-(iii) (West 2012). The section further states that “ ‘failure to make reasonable progress toward the return of the child to the parent’ includes (I) the parent’s failure to *** correct the conditions that brought the child into care within 9 months after the adjudication *** and (II) the parent’s failure to *** correct the conditions that brought the child into care during any 9-month period after the end of the initial 9-month period following the adjudication.” 750 ILCS 50/1(D)(m) (West 2012).

¶ 31 Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent. *Daphnie E.*, 368 Ill. App. 3d at 1067. “ ‘Reasonable progress’ requires, at a minimum, measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child.” *In re M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991). “[T]he benchmark for measuring a parent’s ‘progress toward the return of the child’ under section 1(D)(m) of the 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 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). 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. *Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 32 Here, the trial court found that respondent failed to make reasonable progress toward the return of A.S., L.S. and G.S. from December 21, 2011 to September 21, 2012. During that period, respondent successfully completed outpatient substance abuse treatment. However, despite being ordered by the court to do so, he failed to (1) regularly attend counseling, (2) consistently visit with his children, or (3) provide a current address and phone number to his caseworker. The evidence showed that respondent attended no counseling sessions in December 2011 or January 2012, and attended sessions only sporadically from February to June 2012. On June 4, 2012, respondent discontinued counseling altogether. Respondent also failed to visit with his children for two months of the relevant nine-month period. Finally, respondent failed to notify his caseworker of his new address and phone number after he moved in August 2012, making his caseworker unable to reach him for at least one month of the relevant nine-month period.

