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2014 IL App (3d) 140051-U

Order filed June 11, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> T.B., A.M.-B., and P.M.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minors	)	Rock Island County, Illinois.
)	
(The People of the State of Illinois,)	
	)	Appeal Nos. 3-14-0051, 3-14-0052,
Petitioner-Appellee,	)	and 3-14-0053
	)	Circuit Nos.10-JA-124, 10-JA-125,
v.	)	and 11-JA-17
)	
Holly B.,)	
	)	The Honorable
Respondent-Appellant).	)	Peter W. Church,
	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the circuit court's orders that found the respondent to be an unfit parent and that it was in the best interest of the minors to terminate the respondent's parental rights.
- ¶ 2 The circuit court entered orders finding the respondent to be an unfit parent and that it was in the best interest of the minors, T.B., A.M.-B., and P.M., to terminate the respondent's

parental rights. On appeal, the respondent argues that both of the circuit court's rulings were erroneous. We affirm.

¶ 3

FACTS

¶ 4

On June 4, 2010, juvenile petitions were filed that alleged T.B. (born September 6, 1999) and A.M.-B. (born August 29, 2001) were neglected by reason of an injurious environment. The petitions alleged, *inter alia*, that on March 31, 2010, A.M.-B. reported that her father had struck her on the leg, which left a mark. Attached to the petition was an agency report that included allegations of the father physically abusing the respondent, as well as crack cocaine use by the respondent. The respondent stipulated to the juvenile petition's allegation, and minors T.B. and A.M.-B. were adjudicated neglected on July 13, 2010.

¶ 5

On February 10, 2011, a juvenile petition was filed that alleged P.M. (born January 31, 2011) was neglected by reason of an injurious environment in that she was born with cocaine in her system. An agency report attached to the petition stated that the respondent had admitted to using crack cocaine for at least a couple months during the pregnancy. The respondent stipulated to the petition and P.M. was adjudicated neglected on March 22, 2011.

¶ 6

On May 17, 2011, the circuit court held a dispositional hearing. The court found that the respondent had been making reasonable efforts at reunification, but removal was still necessary because she continued to abuse illegal substances. Guardianship of the minors was placed with the Department of Children and Family Services (DCFS), and they were placed into licensed foster care. The respondent was assigned numerous tasks, including: (1) obtain a substance abuse evaluation and follow any associated recommendations; (2) participate in individual counseling; (3) obtain appropriate housing; and (4) participate in domestic violence counseling.

¶ 7 On October 26, 2012, Lutheran Social Services (LSS) filed a status alert report with the circuit court. This report noted that the three minors had been returned to the respondent in July 2012, but an incident on October 10, 2012, resulted in the minors being taken from the respondent and placed into relative foster care. On that date, the caseworker received a phone call from the owner of the trailer home in which the respondent and the minors had been staying. That individual told the caseworker that the respondent was addicted to drugs and was not taking proper care of the minors. Neighbors had apparently reported concerns of the minors not being appropriately supervised. On the same date, the caseworker met with the respondent at her parent's house, where she had moved with the minors. The respondent admitted to recent cocaine use and that she had been kicked out of the trailer home.

¶ 8 With regard to the nine-month period between October 10, 2012, and July 10, 2013, numerous reports for permanency review hearings were filed that detailed the respondent's progress on her tasks. Because she had completed her individual counseling and domestic violence counseling tasks in 2011, the respondent had five primary tasks during this nine-month period.¹ First, she was required to obtain adequate financial support. She was given unsatisfactory ratings on this task. She told her caseworkers that she was doing banquet set-ups and cleaning houses for cash, but, despite repeated requests by the agency, the respondent did not provide any proof of her alleged employment. Second, she was required to demonstrate appropriate parenting skills. She was given satisfactory ratings on this task, as she displayed appropriate parenting skills at the visits she attended. Third, she was required to obtain a

¹ In February 2013, the respondent was again referred for individual counseling due to her self-reported feelings of depression. The respondent completed that assessment; no follow-up treatment was recommended.

substance abuse evaluation and follow any recommendations. She was given unsatisfactory ratings on this task. She did not complete a substance abuse evaluation until February 18, 2013. The assessment recommended that she begin follow-up treatment with "Level 1" treatment to learn coping skills and to develop social supports. The respondent attended only one of these sessions and was later discharged from the program for her lack of attendance. Fourth, she was required to obtain adequate housing. She was given unsatisfactory marks on this task. She was living in the basement of her parents' house in Rock Island. Fifth, she was required to engage in visitation with the minors. She was given unsatisfactory marks on this task, as she attended a total of 11 of the 34 visits scheduled during that nine-month period.

¶ 9 Documents filed with the circuit court related to this nine-month period also noted that the respondent had numerous hospital visits in 2013, which eventually resulted in her having surgery in May 2013 for interstitial cystitis and painful bladder syndrome. She was given hydrocodone prescriptions several times during this period for her issues.

¶ 10 LSS compiled a status alert report on July 12, 2013, which detailed recent developments with the case. The report stated that LSS referred the respondent for a substance abuse evaluation on June 13, 2013. The respondent stated she contacted that treatment center on July 3, which told her that they had not yet received the referral. However, the caseworker verified with the treatment center that they received the referral on June 13. Further, the respondent tested positive for benzodiazepines on June 19, which the respondent attributed to a Flexeril prescription she had been taking.² However, the caseworker discussed the matter with a drug counselor, who told the caseworker that Flexeril would not cause a positive test for benzodiazepines. On June 21, the caseworker received an anonymous call that the respondent

² Other documents indicated that she had also tested positive for opiates and benzodiazepines on April 1, 2013.

had been on a "crack binge." The caseworker called the respondent and requested a urinalysis that day, but the respondent did not comply.

¶ 11 On July 15, 2013, the State filed a petition to terminate the respondent's parental rights. In relevant part, the petition alleged that the respondent failed to make reasonable progress toward the return of the minors to her care during the nine-month period between October 10, 2012, and July 10, 2013.

¶ 12 On November 8, 2013, the circuit court held a fitness hearing on the termination petition at which several witnesses testified. The four caseworkers who each spent time on the minors' cases during the relevant nine-month period all testified in accord with the aforementioned permanency review hearing reports. Further testimony was elicited regarding the respondent's housing situation. Initially, when the respondent moved back in with her parents, she was living on the main floor with her parents. That floor was deemed inappropriate by the caseworker given the lack of room for the minors. The respondent later started living in the basement of the residence. None of the caseworkers had seen the basement such that no assessment was made regarding its suitability for the minors, although it was never considered an option by the caseworkers because the respondent reported that her sister was also living there (who had substance abuse issues) and because the respondent considered it to be a temporary living situation.

¶ 13 The respondent testified that her bladder condition had caused her pain and problems with urination, which prevented her from performing one of the drug drops requested of her and from working toward completing some of her required tasks. She restarted services after her surgery was performed in May 2013. She attributed her missed visitations to her phone not being on when the agency would call her or to her working in another town. She also stated that

the basement in which she was living was not suitable for children because it was not finished. She stated that the caseworkers never attempted to even consider her living situation as a placement option for the minors. She also felt that there were communication issues between her and the agency due to the number of caseworkers who had been on the case.

¶ 14 At the close of the hearing, with regard to the relevant nine-month period, the circuit court stated that the respondent had acknowledged that the basement in which she was living was not appropriate for the minors. The court also noted that the respondent had not completed her substance abuse treatment requirement and that, even if her surgery-related issues interfered, she had not made reasonable progress. Further, the court found that the State had not proven that the respondent's employment situation was unsatisfactory, given the nature of the paid-in-cash positions she reportedly had. The court also noted the respondent's missed visitations and found that the respondent had failed on that task. In relevant part, the court ultimately found that the State had met its burden of proving that the respondent was an unfit parent.

¶ 15 On January 3, 2014, the circuit court held a best-interest hearing. The court took into consideration the best-interest hearing report compiled by LSS on December 16, 2013. The report noted that the minors were taken again from the respondent's care in October 2012 due to her drug relapse. The minors were placed into relative foster care, but that foster home was not a permanency option. Pre-placement visits had been occurring with new foster parents at the time that the minors were removed from relative foster care in November 2013.³

³ The minors were removed from relative foster care because T.B. had alleged that her foster father had touched her inappropriately. The incident was investigated and later determined to be unfounded.

¶ 16 The report stated that the minors had been doing well in their new foster placement. They were forming a bond with the foster parents, whom P.M. called "mom" and "dad," and whom A.M.-B. had asked several times if she could call them "mom" and "dad." The foster parents also had an adopted daughter in the home. The caseworker also had observed the minors being affectionate with the foster parents. The report stated that the foster parents had demonstrated the ability to meet the emotional and physical needs of the minors, and that they wanted to adopt all three of the minors. The report also noted that T.B. and A.M.-B. had both told the caseworker on several occasions that they wanted to be adopted by the foster parents.

¶ 17 The report stated that T.B. was in eighth grade and was receiving special education services at her school. T.B. had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Mood Disorder, and Mild Mental Retardation. She was on medications for these conditions and was regularly seeing a counselor.

¶ 18 A.M.-B. was in sixth grade and was also receiving special education services at her school. A.M.-B. had been diagnosed with ADHD and Depressive Disorder. She was on medications for these conditions and was regularly seeing a counselor.

¶ 19 The report concluded that the minors needed permanence and that termination of the respondent's parental rights was in their best interest.

¶ 20 In addition to the introduction of the best-interest hearing report into evidence, several witnesses testified at the best-interest hearing. Among these witnesses was the current caseworker, who clarified that the minors had the pre-placement visits with the current foster parents for three to four weeks prior to their placement with those foster parents in late November 2013. She also stated that the foster parents were already licensed to adopt. She emphasized that P.M. had a strong bond with the foster parents and noted that the foster parents

had extended family in the area. She also stated that the minors spent the Christmas and New Year's holidays with the foster parents.

¶ 21 The respondent testified that she was pregnant and was due March 8, 2014. She was not working and she was living with her parents in Rock Island. She stated that she had completed "Level 1" substance abuse treatment, and she emphasized that all three of her children had strong bonds with her.

¶ 22 At the close of the hearing, the circuit court stated that he considered the statutory best-interest factors in reaching a decision. The court noted the strong bond that T.B. and A.M.-B. had with the respondent, but emphasized the need for permanence—especially for P.M. The court found that it would not be in the minors' best interest to split them and that permanence for P.M. should not be held up while the respondent was given additional chances at reunification. The court alluded to the length of the juvenile cases and ultimately found that it was in the minors' best interest to terminate the respondent's parental rights.

¶ 23 The respondent appealed.

¶ 24 ANALYSIS

¶ 25 First, the respondent argues that the circuit court erred when it found her to be an unfit parent.

¶ 26 It is the State's burden to prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2010); 750 ILCS 50/1(D) (West 2010); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Only one statutory ground is required to prove parental unfitness. 750 ILCS 50/1(D) (West 2010); *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003). One such ground is the "[f]ailure by a parent *** (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under

Section 2-3 of the Juvenile Court Act of 1987 ***." 750 ILCS 50/1(D)(m)(iii) (West 2010). A failure to make reasonable progress can include "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 ***." 750 ILCS 50/1(D)(m)(iii)(II) (West 2010). On review, we will not overturn the circuit court's unfitness decision unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). An unfitness decision is contrary to the manifest weight of the evidence when "the opposite conclusion is clearly apparent." *Id.*

¶ 27 Our review of the record in this case reveals no error in the circuit court's unfitness determination. During the nine-month period between October 10, 2012, and July 10, 2013, the respondent's primary tasks included: (1) obtaining adequate financial support; (2) demonstrating appropriate parenting skills; (3) obtaining adequate housing; (4) obtaining a substance abuse evaluation and following any associated recommendations; and (5) engaging in visitation with the minors. We acknowledge that the respondent displayed appropriate parenting skills, that the circuit court found that the State failed to prove that the respondent's employment situation was unsatisfactory despite her chronic failures to obtain some type of employment verification, and that the caseworkers never assessed whether the respondent's living situation was appropriate. However, with regard to the housing task, we, like the circuit court, acknowledge that even the respondent stated that the unfinished basement was not appropriate for placement of the minors.

¶ 28 Of greater importance than those first three tasks were the respondent's tasks related to substance abuse and visitation. The respondent's issues with substance abuse were paramount to preventing reunification, and it is clear from the record that the respondent did not make reasonable progress on her task related to substance abuse. While the respondent did in fact finally obtain a substance abuse evaluation in February 2013, she only attended one of the

recommended treatment sessions and was discharged from that program for lack of attendance. Further, with regard to visitation, the respondent attended just 11 of the 34 visits scheduled during the relevant nine-month period. There was no error in the circuit court's finding that the respondent failed to make reasonable progress on either one of these tasks. Under these circumstances, we cannot say that the manifest weight of the evidence clearly warranted a finding of fitness. Accordingly, we hold that the circuit court did not err when it found the respondent to be an unfit parent.

¶ 29 Second, the respondent argues that the circuit court erred when it found it was in the minors' best interest to terminate her parental rights.

¶ 30 At the best-interest hearing, the circuit court must determine whether it is in the best interest of the children to terminate parental rights (705 ILCS 405/2-29(2) (West 2010)). Section 1-3(4.05) of the Juvenile Court Act of 1987 states:

"Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

- (iii) the child's sense of familiarity;
- (iv) continuity of affection for the child;
- (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2010).

¶ 31 "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). On review, we will not disturb the circuit court's best-interest ruling unless it was contrary to the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 32 Our review of the record in this case reveals no error in the circuit court's best-interest determination. It is true that the respondent had a strong bond with T.B. and A.M.-B. However, the existence of that bond is but one of many factors that a court must consider when arriving at a best-interest decision. See 705 ILCS 405/1-3(4.05) (West 2010). Significantly, this case began back in 2010. In May 2011, the minors had been placed into foster care. While they had only been in their current foster placement since late November 2013, the minors had been visiting with those foster parents for three to four weeks prior to that placement. The evidence showed

that the minors were bonding with the foster parents, especially P.M., and that the minors were affectionate with the foster parents. The foster parents were meeting the minors' basic needs, including the significant emotional needs of T.B. and A.M.-B., given their respective diagnoses. The foster parents already had an adopted daughter, they were already licensed to adopt, and they wanted to adopt all three of the minors. Considering all of the evidence presented at the hearing in light of the statutory factors, we cannot say that the circuit court's ruling was contrary to the manifest weight of the evidence. Accordingly, we hold that the circuit court did not err when it found that it was in the minors' best interest to terminate the respondent's parental rights.

¶ 33

CONCLUSION

¶ 34

The judgment of the circuit court of Rock Island County is affirmed.

¶ 35

Affirmed.