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2014 IL App (4th) 140031-U

NO. 4-14-0031

FILED
May 5, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| In re: A.G., a Minor, | ) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Vermilion County |
| v. | ) | No. 12JA29 |
| WILLIAM WILLIAMS, SR., | ) | |
| Respondent-Appellant. | ) | Honorable |
| | ) | Claudia S. Anderson, |
| | ) | Judge Presiding. |

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held*: By finding respondent to be an "unfit person" within the meaning of sections 1(D)(b) and (D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (D)(m)(ii) (West 2012)), the trial court did not make a finding that was against the manifest weight of the evidence; nor did the court abuse its discretion or make a finding that was against the manifest weight of the evidence when it found that terminating respondent's parental rights would be in the child's best interest.

¶ 2 Respondent, William Williams, Sr., appeals from a judgment terminating his parental rights to A.G., born on May 15, 2012. He challenges the trial court's findings: not only the finding that he was an "unfit person" within the meaning of sections 1(D)(b) and (D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (D)(m)(ii) (West 2012)), but also the finding that it was in A.G.'s best interest to terminate respondent's parental rights. After reviewing the record, we conclude the court did not make a finding that was against the manifest weight of the

evidence when it found respondent to be an "unfit person" as defined in those sections of the Adoption Act. We further conclude that the court's decision to terminate respondent's parental rights was neither an abuse of discretion nor against the manifest weight of the evidence. Therefore, we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Petition for Adjudication of Wardship

¶ 5 On May 21, 2012, when A.G. was six days old, the State filed a petition to make him a ward of the court on the ground that he was a "neglected minor" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). Count I alleged his environment was injurious to his welfare in that his mother, Naya N. Golatte, abused alcohol and drugs. Count II alleged his environment was injurious in that his mother used drugs while she was pregnant with him.

¶ 6 B. Temporary Custody

¶ 7 On May 24, 2012, the trial court gave temporary custody of A.G. to the guardianship administrator of the Illinois Department of Children and Family Services.

¶ 8 C. A.G. Adjudged To Be Neglected and Made a Ward of the Court

¶ 9 In an adjudicatory hearing on September 14, 2012, the trial court found A.G. to be a "neglected minor" within the meaning of section 2-3(1)(b) (705 ILCS 405/2-3(1)(b) (West 2012) (environment injurious to the minor's welfare)) and section 2-3(1)(c) of the Juvenile Court Act (705 ILCS 405/2-3(1)(c) (West 2012) (newborn exposed to illicit drugs)). The court based this finding on the cocaine discovered in A.G.'s meconium, as well as Golatte's admission that she used illegal drugs while she was pregnant with A.G.

¶ 10 In a dispositional hearing on November 14, 2012, the trial court reiterated its finding of neglect and made A.G. a ward of the court.

¶ 11 D. The Petition To Terminate Parental Rights

¶ 12 On June 12, 2013, the State filed a petition to terminate the parental rights of both parents. The petition alleged that respondent was an "unfit person" for three reasons: (1) he had failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the minor's welfare (see 750 ILCS 50/1(D)(b) (West 2012)); (2) during a nine-month period after the adjudication of neglect, September 14, 2012, to June 14, 2013, he failed to make reasonable efforts to correct the conditions that had been the basis of removing the child (see 750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) during the same nine-month period, he failed to make reasonable progress toward the return of the child (see 750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 13 E. The Hearing on the Issue of Whether Respondent Was an "Unfit Person" (December 11, 2013)

¶ 14 On December 11, 2013, the trial court held an evidentiary hearing on the question of whether the parents were "unfit persons" as the State alleged in its petition to terminate their parental rights. We will summarize only the evidence relevant to respondent.

¶ 15 On June 29, 2012, Lutheran Social Services of Illinois (Lutheran) initiated a service plan for both parents. Two months later, on August 30, 2012, Lutheran made its first assessment of respondent's progress. At that time, Lutheran considered him to be "making reasonable efforts and progress to achieve custody and guardianship of his son, [A.G.]" A child welfare specialist, Katherine Duffin, wrote:

> "Mr. William Williams is participating in individual counseling with William Fraley of [Lutheran]. He completed a

> substance abuse assessment and was assessed to require no further treatment. Mr. Williams has been negative on all drug tests he has taken thus far; he has no[-]showed to one [of the] requested drops. Mr. Williams always appears compliant when requests are made. Mr. Williams has been referred to Family Life Skills for anger management and domestic violence. Mr. Williams has been assessed as not requiring parenting education due to the fact that he presently has custody of three of his children. Mr. Williams continues to have stable housing and presently receives disability benefits due to [a] car accident ***. Mr. Williams participates in two hour weekly visitation with [A.G.] and is loving and appropriate with him."

¶ 16 According to the next assessment, however, which Lutheran performed on March 15, 2013, respondent had not maintained his reasonable efforts and progress. A child welfare specialist, Brittany Morgan (who was substituting for Duffin while she was on medical leave), wrote: "Mr. Williams was unsuccessfully discharged from counseling for irregular attendance. Mr. Williams was also discharged from Family Life Skills for irregular attendance. He missed three sessions in a row."

¶ 17 Fraley had been counseling respondent on ways he could manage his anger and handle the stress of child-rearing. Family Life Skills had been educating him on domestic violence. In May 2013, after Fraley and Family Life Skills discharged him for absenteeism, Lutheran re-referred him to Fraley for parenting classes and individual counseling and re-

referred him to The Youth and Family Resource Center for domestic violence classes. After the re-referrals, respondent never showed up for the counseling or the classes.

¶ 18 Evidently, these proposed services were relevant. Morgan wrote that respondent was under investigation for hitting one of his sons in the face with a belt and leaving marks (this was not A.G., but another son by a different mother). Duffin testified that in early February 2013 respondent was "indicated" for this incident. See 325 ILCS 5/7.12 (West 2012). Another caseworker at Lutheran, Brittany Lutz, testified that during the period when she was assigned to A.G.'s case (February 25, 2013, to the date of the hearing), respondent was incarcerated three times for domestic battery against Golatte. An assistant State's Attorney, Panorea Tsilimigras, asked Lutz:

> "A. And is he currently in jail for a domestic battery case?
>
> A. Yes.
>
> Q. And who is that against?
>
> A. Miss Golatte.
>
> Q. Okay. And is that aggravated battery that he's in currently for?
>
> A. Yes."

¶ 19 Lutz testified that the last time she spoke with respondent was on September 17, 2013, when he informed her that "he no longer wanted to participate in services and that *** he was no longer wanting to get his child back." Respondent told her this even though, during visitations, he had been "loving and caring towards [A.G.]," to quote the assessment of March 15, 2013.

¶ 20 The trial court found that respondent was "interested" in A.G., considering that he had attended visitation and had been "appropriate with [A.G.] when he saw him." The court found, however, by clear and convincing evidence, that respondent had "failed to demonstrate a reasonable degree of concern or responsibility" and that, during the nine-month period following the adjudication of neglect (September 14, 2012, to June 14, 2013), he failed to make reasonable progress toward the return of A.G.

¶ 21 F. The Best-Interest Hearing (January 2, 2014)

¶ 22 The trial court held a best-interest hearing on January 2, 2014. Lutz was the only witness to testify in this hearing. She testified that since July 26, 2012, A.G. had been living in a traditional foster home in Tuscola.

¶ 23 Lutz had visited the foster home. Her observations were as follows:

> "He's happy. He's eating. He is playing around, crawling, walking, interacting well with the other children in the home; very bonded with Ms. Weyrich and Mr. Weyrich."

Originally, A.G. "wasn't really walking," but physical therapy had "helped tremendously," and now he was "actually walking and climbing stairs."

¶ 24 An assistant State's Attorney, Bridget Schott, asked Lutz:

> "Q. And you said other children. How many other children in the home?
>
> A. Three other.
>
> Q. Are they biological children of the foster parents, or are there other children placed there?

A. Two of the children are biological, and [A.G.'s] brother also lives there.

Q. [A.G.'s] brother, has he been adopted by the parents, or just placed there?

A. He's already been adopted.

Q. Have you talked to the foster parents that if this case goes that way, would they be willing to adopt the child?

A. Yes.

Q. Do you have any reservations at all with the child being placed with these parents permanently?

A. No.

Q. Have there been any issues that have come up regarding the child or the parents, the foster parents?

A. No."

¶ 25 The guardian *ad litem*, Liya Hussman-Rogers, noted that the foster parents were present in court. She remarked:

"I've met them on numerous occasions. They appear at every court hearing. They are very dedicated. I've seen them with both of the siblings. I believe they are more than willing to provide long term permanency for the child to keep the siblings together in their home."

¶ 26 Parkhurst asked Lutz:

"Q. When [respondent] visited with [A.G.], did you observe how the two of them interacted?

A. Yes.

Q. How would you say [A.G.] responded to him?

A. It was reported that Mr. Williams was loving and caring towards [A.G.] and cared for his needs, changed his diapers, fed him when he was hungry. So, bonding was appropriate."

¶ 27 At the conclusion of the best-interest hearing, the trial court found: "The State has proved by more than a preponderance that it's in the best interest of the minor that the parental rights of the parents, named as well as unknown, be and are hereby terminated."

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. The Finding That Respondent Was an "Unfit Person"

¶ 31 Section 2-29(2) of the Juvenile Court Act of 1987 provides:

"If a petition or motion alleges and the court finds that it is in the best interest of the minor that parental rights be terminated and the petition or motion requests that a guardian of the person be appointed and authorized to consent to the adoption of the minor, the court, *** after finding, based upon clear and convincing evidence, that a parent is an unfit person as defined in Section 1 of the Adoption Act [(750 ILCS 50/1 (West 2012))], may terminate parental rights." 705 ILCS 405/2-29(2) (West 2012).

¶ 32 Again, the trial court found, by clear and convincing evidence, that respondent met two of the definitions of an "unfit person" in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). First, the court found he had failed to demonstrate a reasonable degree of concern or responsibility as to A.G.'s welfare. See 750 ILCS 50/1(D)(b) (West 2012). (The court did not find he had failed to maintain a reasonable degree of "interest." *Id*. See *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010) ("Because the language of section 1(D)(b) of the Adoption Act is in the disjunctive, any of the three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest or concern or responsibility as to the child's welfare.").) Second, the court found that, during a nine-month period after the adjudication of neglect, September 14, 2012, to June 14, 2013, he failed to make reasonable progress toward the return of A.G. See 750 ILCS 50/1(D)(m)(ii) (West 2012).

¶ 33 We ask whether those findings are against the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1114 (2002). This is a deferential standard of review. A finding is against the manifest weight of the evidence only if it is "unreasonable, arbitrary, and not based on the evidence presented." *In re S.R.*, 326 Ill. App. 3d 356, 360-61 (2001).

¶ 34 Respondent argues that, for the following reasons, the trial court made a finding that was against the manifest weight of the evidence when it found him to be an "unfit person":

> "In this case, William participated in counseling, (R. C119), and complied with the Department's requests. (R. C119). William maintained a stable residence, (R. C135), income, (R. C135), and participated in a substance abuse assessment where no further services were recommended. (R. C139.) William

> struggled to attend counseling appointments due to his health. (R. C139; Transcript, May 30, 2013, pp. 37-8). William had negative drug screens. (R. C159). His client service plans were rated satisfactory. (Transcript, December 11, 2013, p. 29)."

¶ 35 It is true that respondent was cooperative—except when it came to showing up consistently for classes and counseling sessions. Duffin testified he "was cooperative with [her]"; "his issues with services were just simply attendance." To be sure, respondent had some items on the positive side of the ledger: he generally was cooperative with his caseworkers (except for attendance), he had an income, he had a stable residence, and he abstained from illegal drugs. But the question is not whether one can identify some good qualities. Rather, the question is whether the record contains evidence arguably supporting the trial court's finding that respondent is an "unfit person" within the meaning of section 1(D)(b) (750 ILCS 50/1(D)(b) (West 2012)) and section 1(D)(m)(ii) (West 2012)) of the Adoption Act.

¶ 36 The answer is yes. Arguably, if a father tells a caseworker he no longer wants the child and if the father is chronically absent from services, even after re-referrals, he is maintaining a less than "reasonable degree of *** concern or responsibility as to the child's welfare" (750 ILCS 50/1(D)(b) (West 2012)). See *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000) ("[T]he failure to comply with the directives of a service plan with the stated goal of returning a child home is tantamount to objectively unreasonable interest, concern, or responsibility as to the child's welfare.").

¶ 37 And arguably, if a father has a problem with anger to the point that he strikes a child's face with a belt and repeatedly is taken to jail for domestic violence, a trial court cannot

conscientiously place a child in that father's custody until something has been done to manage the anger. See *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001) ("[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which 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*." (Emphasis added.)). Individual counseling and classes on parenting and domestic violence would appear to be logical remedial measures. During the nine-month period after the adjudication of neglect, respondent was dropped from counseling and dropped from the classes because he failed to show up.

¶ 38 Respondent blames his absenteeism on health problems. It is unclear, though, that his health problems would be relevant to the *objective* standard of reasonable progress. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991) (" 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody." (Emphasis in original.)). In any event, we have only respondent's testimony that he was absent from services because he was sick, and considering that he failed to comply with his caseworker's request for written corroboration, the trial court did not have to believe him. An assistant public defender, Rebecca Parkhurst, asked respondent:

> "Q. You have had some issues with attendance in some of your classes. What's going on with you health wise?

A. Well, I had got sick, caught pneumonia, and I had an infection in my stomach.

Q. So when were you out of classes?

A. Well, I was out of class because of it, but I can't remember the exact date. I mean, it happened, but they can call Carle Clinic and they can verify it.

Q. And have you spoken with your caseworker about being sick?

A. Yes, several times.

Q. And had she—had you signed any documentation or anything for her?

A. No.

Q. And did she request that you give her any paperwork from Carle?

A. She did once, but I haven't gave it to her."

Apart from the question of whether illness explained *some* of the absences, a reasonable trier of fact could be unconvinced that illness explained *all* or even *most* of the absences.

¶ 39 Respondent claims "[h]is client service plans were rated satisfactory." On the page of the transcript that he cites, Duffin does indeed say that. Nevertheless, three pages later in the transcript, Duffin corrects herself by testifying that although respondent was rated as satisfactory in his service plan for August 30, 2012, he was rated as unsatisfactory in his service plan for February 14, 2013. The reason for the unsatisfactory rating was absenteeism.

¶ 40 B. Best Interest

¶ 41 If a trial court finds a parent to be unfit on one of the grounds in section 1(D) of the Adoption Act, the court then must decide whether it would be in the best interest of the child to terminate parental rights, and when making that decision, the court considers the factors in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2012)). *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). The State has the burden of proving, by a preponderance of the evidence, that terminating parental rights would be in the child's best interest. *Id.* We will reverse the court's decision only if it is against the manifest weight of the evidence or an abuse of discretion. *Id.* at 261-62.

¶ 42 Respondent notes that, according to the service plans, he always was loving and caring toward A.G. during visits and he appeared capable of taking care of an infant of A.G.'s age. "[W]here the child actually feels love, attachment, and a sense of being valued" is a factor to be considered. 705 ILCS 405/1-3(4.05)(d)(i) (West 2012). Nevertheless, affectionate and capable as he was during visitation, respondent has a very real parental deficiency in that he can be violent when angry, and he has not met Lutheran halfway in addressing that deficiency. See 705 ILCS 405/1-3(4.05)(a) (West 2012) ("the physical safety and welfare of the child"). By contrast, no "issues *** have come up regarding" the Weyrichs. Also, what respondent told Lutz is troubling: that "he was no longer wanting to get his child back." By contrast, the Weyrichs want to adopt A.G., just as they have adopted his brother. See 705 ILCS 405/1-3(4.05)(g) (West 2012) ("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"). Thus, we are unable to say the trial court abused its discretion or made a decision that was against the

manifest weight of the evidence when it decided that terminating respondent's parental rights would be in A.G.'s best interest.

¶ 43 III. CONCLUSION

¶ 44 For the foregoing reasons, we affirm the trial court's judgment.

¶ 45 Affirmed.