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2014 IL App (4th) 140627-U

NO. 4-14-0627

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 14, 2014
Carla Bender
4th District Appellate
Court, IL

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| In re: B.M., a Minor, |) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| Petitioner-Appellee, |) | Adams County |
| v. |) | No. 12JA3 |
| JESSICA MEREDITH, |) | |
| Respondent-Appellant. |) | Honorable |
| |) | John C. Wooleyhan, |
| |) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) the trial court's unfitness and best-interest findings were not against the manifest weight of the evidence, and (2) the court did not abuse its discretion in denying respondent's motion for a new hearing.

¶ 2 In August 2013, the State filed a petition to terminate the parental rights of respondent, Jessica Meredith, as to her son, B.M. (born November 2, 2011). Following a January 2014 hearing, the trial court found respondent unfit and terminated her parental rights. In February 2014, respondent filed a motion for a new hearing, which the trial court subsequently denied.

¶ 3 Respondent appeals, asserting the trial court erred by (1) finding her unfit, (2) determining it was in B.M.'s best interest to terminate her parental rights, and (3) denying her motion for a new hearing. For the following reasons, we affirm.

¶ 4

I. BACKGROUND

¶ 5 In February 2012, the State filed a petition for adjudication of wardship, alleging respondent neglected and/or abused B.M. in that she admitted to shaking B.M. three times, resulting in a subdural hematoma, and therefore subjected B.M. to an environment injurious to his welfare in violation of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1-41 to 7-1 (West 2012)). That same day, the trial court held a shelter-care hearing, after which the court ordered B.M. placed in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 6

A. Adjudicatory and Dispositional Hearings

¶ 7 On August 23, 2012, the trial court, pursuant to respondent's admission, entered an adjudicatory order finding respondent abused B.M. under section 2-3 of the Juvenile Act (705 ILCS 405/2-3 (West 2012)). The factual basis indicated respondent, on December 17, 2011, took B.M. to Blessing Hospital in Quincy, Illinois, after B.M. experienced "tremors." The hospital determined B.M. suffered a subdural hematoma resulting from shaking or multiple blunt-force injuries. Later that month, respondent admitted to police that, on December 16, 2011, she shook B.M. three times. In October 2012, the court entered a dispositional order finding (1) respondent unfit, and (2) it was consistent with B.M.'s health, safety, and best interest to make him a ward of the court.

¶ 8

Subsequent to the court declaring B.M. a ward of the court, DCFS regularly filed client-service plans outlining goals for respondent. As detailed below, respondent failed to meet the majority of those goals. Thus, the State filed a petition seeking termination of respondent's parental rights.

¶ 9

B. Termination Proceedings

¶ 10 In August 2013, the State filed a petition to terminate respondent's parental rights pursuant to section 1 of the Adoption Act (750 ILCS 50/1 (West 2012)), alleging she failed to make reasonable progress toward the return home of B.M. during (1) the initial nine-month period following the adjudicatory proceedings, and (2) any subsequent nine-month period. The initial nine-month period encompassed August 24, 2012, through May 23, 2013, while the second nine-month period encompassed May 24, 2013, through February 23, 2014.

¶ 11 *1. Fitness Hearing*

¶ 12 In January 2014, the fitness hearing commenced. During the hearing, the trial court granted the State's motion to admit certain service plans, reports, and assessments.

¶ 13 Julie Jones, respondent's caseworker at Chaddock from February 2012 to December 2012, testified she was involved with creating respondent's August 2012 service plan. From February 2012 to August 2012, respondent rated unsatisfactory in her progress because she failed to (1) regularly attend mental-health treatment or be forthcoming with her therapist; (2) maintain stable housing and employment; and (3) disclose two May 2012 domestic-violence incidents with her paramour. However, Jones noted respondent satisfactorily completed parenting classes.

¶ 14 Heather Hobb, formerly respondent's foster-care supervisor at Chaddock, testified she created the 2013 service plans. In February 2013, the service plan tasked respondent with addressing her abuse, learning coping skills, obtaining employment, and finding stable housing. Respondent rated unsatisfactory from August 2012 to February 2013 because she failed to maintain stable housing, participated only sporadically in mental-health treatment, and continued in an abusive relationship. The August 2013 service plan continued respondent on the same goals. According to Hobb, respondent's progress was rated unsatisfactory from February 2013 to

August 2013 due to her failure to maintain stable housing, sporadic mental-health treatment, and unsatisfactory attempts to address her domestic-violence issues.

¶ 15 Susan Vandenboom, a visitation specialist with Chaddock, testified, in January 2013, she started supervising visits between respondent and B.M. She explained respondent received one-hour visits every Friday wherein respondent was to care for B.M. with little interference from Vandenboom. According to Vandenboom, respondent cancelled her visit on January 11 due to illness. On January 25, respondent struggled to soothe B.M. when he was fussy. Respondent then cancelled her February 1 visit due to illness. During the March 1 visit, respondent had to be reminded to change B.M.'s diaper, struggled to put a coat on B.M., and would have accidentally tipped B.M. out of his infant carrier had Vandenboom not intervened. Respondent faced the same struggles during her March 8 visit. She also required advice and assistance regarding how to remove B.M. from underneath furniture he had crawled beneath.

¶ 16 During respondent's March 15 visit, she struggled to distract B.M. from his new interest in the door and Vandenboom had to offer suggestions for engaging B.M. Again, Vandenboom had to suggest a diaper change. Respondent's struggle to engage B.M. arose again during the March 22, April 5, and April 12 visits. She also continued to struggle with the car seat.

¶ 17 Kathy Saunders, respondent's psychologist at Chaddock from February 2013 until her April 2013 incarceration, testified respondent had borderline personality disorder, major depressive disorder, and anger issues. Respondent disclosed her abusive relationships, explaining she was often the abuser in her relationships. Saunders estimated respondent needed 6 to 12 months of treatment to learn and use coping skills to deal with stressors in her life. Out

of the seven scheduled appointments, respondent missed four of them due to illness or "blacking out." In late April 2013, Saunders discharged respondent due to respondent's incarceration.

¶ 18 Laura Dagg, a child-welfare specialist with Chaddock, testified she had been respondent's caseworker since July 30, 2013. In August 2013, Dagg sent a letter to respondent in the Department of Corrections (DOC) requesting information on any services in which respondent was participating. Later that month, Dagg spoke with respondent in person at a court appearance and requested documentation of any services. At that time, respondent admitted she had not yet engaged in any services. In September, October, November, and December 2013, Dagg sent respondent letters requesting an update as to whether respondent had engaged in any services. Respondent finally responded in late December 2013, stating she had signed up for classes but had not started them. She provided no further documentation or confirmation.

¶ 19 Respondent testified she attempted to obtain services while incarcerated. She explained she was denied access to parenting classes in DOC due to her conviction for aggravated battery to a child. However, she signed up for domestic-violence classes, which she completed in December 2013. She explained she did not send a copy of her certificate of completion to her caseworker because she was unable to obtain access to the library to make copies. In addition, she stated she was on a waiting list for anger-management, stress-management, and healthy-relationship classes.

¶ 20 Respondent further testified, while in DOC, she sent letters to B.M. and called her father 8 to 10 times to check on B.M. Upon release, she planned to resume living with her aunt and uncle. She represented that she ended an abusive relationship in August 2012 and had not been in a romantic relationship since then. From her perspective, her visits with B.M. went well outside of some difficulties with the particular car seat used by Chaddock to transport B.M. She

also denied shaking her son, despite admitting to the factual basis during the adjudicatory proceedings.

¶ 21 In reaching its decision, the trial court found, during the initial nine-month period, respondent had engaged only sporadically in mental-health treatment. She also failed to maintain stable housing. Respondent participated regularly in supervised visits with B.M.; however, she never demonstrated the progress necessary for the caseworker to allow anything other than supervised visitation. During the second nine-month period, the court noted respondent had been in DOC, where she completed domestic-violence classes and remained on the waiting list for other classes. At the same time, due to her incarceration, respondent could not discharge her parental duties. The court ultimately concluded respondent's limited progress did not constitute reasonable progress toward the return home of B.M. during either nine-month period alleged by the State. Accordingly, the court found respondent unfit.

¶ 22 *2. Best-Interest Hearing*

¶ 23 Following a short break, the trial court proceeded to the best-interest stage. Melissa Meredith, respondent's stepmother, testified B.M. had been living with her and respondent's father since December 2011. Other than B.M., Meredith had three daughters and one son, and she had fully incorporated B.M. into the family. B.M. also socialized often with numerous members of the extended family. During the week, while Meredith worked, Meredith's mother cared for B.M. Due to his brain injury, B.M. required extensive medical treatment, and Meredith took him to all necessary appointments, including medical appointments and speech, physical, and occupational therapy. She expressed her willingness to continue taking B.M. to any necessary appointments and her desire to adopt him. In a letter admitted as

evidence, Chaddock caseworker Taryn Dunlap noted B.M. was "very bonded" to the Merediths and appeared "to have made great strides with his development regarding his physical abilities."

¶ 24 Following the presentation of evidence, the trial court concluded it was in the best interest of B.M. to terminate respondent's parental rights. The court noted B.M. had been with the Merediths for most of his life and that he had bonded with them and had been incorporated into the family. The Merediths were meeting B.M.'s medical and special needs and expressed an interest in providing permanency through adoption. Conversely, the court found no evidence to support a stable relationship between respondent and B.M., and it noted respondent would not be in a position to provide permanency for a long period of time. The court then concluded the best way to provide permanency for B.M. was by allowing his foster family—respondent's father and stepmother—to pursue adoption.

¶ 25 C. Motion for a New Hearing

¶ 26 In February 2014, respondent filed a motion for a new hearing, alleging her attorney provided ineffective assistance of counsel. As a result, her attorney withdrew and another attorney entered his appearance. Respondent's posthearing attorney filed an amended motion for a new hearing, again alleging the ineffectiveness of trial counsel. Specifically, the amended motion alleged trial counsel was ineffective because she failed to (1) call numerous lay witnesses to testify that respondent was a good mother who loved her son; (2) call respondent's aunt and uncle to testify that they were willing to provide respondent with stable housing upon her release from DOC; (3) call respondent's mental-health counselor and therapist, both of whom would testify that respondent made efforts to comply with counseling; and (4) investigate claims by respondent's sister that the Merediths threatened B.M.

¶ 27 Following a June 2014 hearing on the amended motion for a new hearing, the trial court took the matter under advisement. Later that month, the court issued a written order. The court denied the motion for a new hearing, finding (1) respondent failed to allege newly discovered evidence, a change in the law, or an error by the court that entitled her to a new hearing; (2) the lay witnesses' personal opinions that respondent was a good mother who loved her son were inadmissible at the fitness hearing; (3) the counselors' statements regarding respondent's progress in treatment were outlined in the service plans that the court took into consideration; (4) respondent presented insufficient evidence of ineffective assistance of counsel; and (5) nothing presented was "so conclusive or decisive in character" as to rebut the court's finding of unfitness.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, respondent argues the trial court erred by (1) finding her unfit, (2) determining it was in B.M.'s best interest to terminate her parental rights, and (3) denying her motion for a new hearing. We address these contentions in turn.

¶ 31 A. Fitness Finding

¶ 32 Respondent first argues the trial court erred in finding her unfit. The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.* "[A] finding of unfitness on any one ground obviates the need

to review other statutory grounds." *In re J.J.*, 307 Ill. App. 3d 71, 76, 716 N.E.2d 846, 850 (1999).

¶ 33 Respondent asserts the trial court erred by finding her unfit for failing to make reasonable progress during (1) the initial nine-month period, from August 24, 2012, through May 23, 2013; and (2) the second nine-month period, from May 24, 2013, through February 23, 2014.

¶ 34 Under section 1(D)(m)(ii) of the Adoption Act, the trial court may find a parent unfit if he or she fails to make reasonable progress toward the return home of the minor within the initial nine-month period following an adjudication of abuse or neglect. 750 ILCS 50/1(D)(m)(ii) (West 2012). Section 1(D)(m)(iii) permits the finding of unfitness if a parent fails to make reasonable progress toward the return home of the child during any nine-month period after the initial nine-month period following the adjudication of abuse or neglect. 750 ILCS 50/1(D)(m)(iii) (West 2012). A failure to make reasonable progress "includes *** 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." *Id.* Whether a parent has made reasonable progress is an objective standard measured by the parent's progress since losing custody. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *Id.* The trial court should find reasonable progress where the court could order the child returned to the parent in the near future. *Id.*

¶ 35 We first turn to whether the trial court erred in finding respondent unfit for failure to make reasonable progress during the initial nine-month period following adjudication, from August 24, 2012, to May 24, 2013. In support of its finding of unfitness, the court highlighted respondent's (1) sporadic participation in treatment; (2) failure to demonstrate the necessary

progress to obtain more than supervised visits with B.M.; and (3) failure to maintain stable, appropriate housing.

¶ 36 The record demonstrates respondent completed parenting classes prior to the adjudicatory hearing and was to implement those skills during visits with B.M. However, Vandenoorn, the Chaddock visitation specialist, testified respondent relied heavily on her for guidance. Respondent needed to be reminded to change B.M.'s diaper, fumbled constantly with the car seat, and required suggestions on keeping the attention of B.M. She also failed to find suitable housing, as respondent admitted her aunt and uncle's home was cluttered and inappropriate for B.M.

¶ 37 During the initial nine-month period, respondent also entered into mental-health treatment, where she received multiple diagnoses and a recommendation for treatment. Though she eventually engaged in mental-health treatment starting in early 2013, she missed four out of seven appointments prior to receiving her DOC sentence.

¶ 38 Because B.M. was removed from respondent's care due to domestic violence, respondent asserts we should place special weight on her progress in domestic-violence counseling. During this first nine-month period, respondent completed her initial domestic-violence counseling at Recovery Resources but failed to immediately engage in continued counseling at Chaddock as recommended by her counselor. When she finally engaged in continued domestic-violence counseling, respondent cancelled her first two appointments before attending regularly in February 2013. Significantly, Hobb rated as unsatisfactory respondent's progress in demonstrating her coping skills and cooperating with counseling recommendations. According to Saunders, respondent's psychologist, respondent needed 6 to 12 months of treatment to learn and implement coping skills in her life. Simply removing herself from a co-

¶ 43 The best-interest stage is about the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

"(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[;]

(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 2012).

¶ 44 Here, the record demonstrates B.M. had been living with his maternal grandfather and step-grandmother since December 2011, most of his young life. His grandparents incorporated him into their stable family environment and were committed to adopting him. The caseworker noted the strong bond between B.M. and his grandparents. Most significantly, B.M.'s grandparents provided for his special needs by transporting him to countless medical appointments and therapy sessions as well as implementing therapy at home, and they were willing to continue to provide for his special needs as necessary.

¶ 45 Conversely, at the time of the hearing, respondent was serving a three-year DOC sentence for battering B.M. She had not completed the service plan, nor had she made reasonable progress toward the completion of her service plan. Thus, she was in no position to provide permanency for B.M. for at least several months following her release from DOC. Despite completing parenting classes, respondent required the caseworker's assistance frequently during visitation, demonstrating her inability to properly care for B.M. Respondent asserts DCFS placed her at a disadvantage by providing only one hour of visitation per week, which impeded her ability to bond with B.M. However, respondent failed to demonstrate the parenting and coping skills necessary for DCFS to provide increased visitation.

¶ 46 In taking all of these factors into consideration, the trial court found it was in B.M.'s best interest to terminate respondent's parental rights. Sufficient facts in the record support the court's finding; thus, we conclude the court's finding was not against the manifest weight of the evidence.

¶ 47 C. Motion for a New Hearing

¶ 48 Finally, respondent asserts the trial court erred by denying her motion for a new hearing because certain witnesses would have brought pertinent information to the court's

attention. Respondent brought her motion under section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2012)). The purpose of a motion for a new hearing under this section is to apprise the trial court of newly discovered evidence, a change in the law, or errors in the court's application of the law. *Nissan Motor Acceptance Corp. v. Abbas Holding I, Inc.*, 2012 IL App (1st) 111296, ¶ 16, 976 N.E.2d 1076. We will not overturn the court's ruling on a posthearing motion absent an abuse of discretion. *Higgins v. House*, 288 Ill. App. 3d 543, 546, 680 N.E.2d 1089, 1091 (1997).

¶ 49 On appeal, respondent argues the posthearing motion "was bringing an essential fact before the court, that [respondent] had witnesses to present, but they were never subpoenaed." Specifically, respondent asserts her (1) aunt and uncle would have rebutted the finding that respondent lacked adequate housing, and (2) counselors would have provided new evidence regarding respondent's progress in treatment.

¶ 50 Respondent essentially argues that the witnesses who were not subpoenaed on her behalf had new evidence to offer the court. However, respondent makes no assertion that the witnesses' testimony constitutes *newly discovered* evidence that was unavailable at the time of the hearing. See *Nissan Motor Acceptance Corp.*, 2012 IL App (1st) 111296, ¶ 16, 976 N.E.2d 1076. Even if respondent's aunt and uncle had been called to testify that they would provide stable housing for respondent upon her release from prison, respondent acknowledged to a caseworker that the state of her aunt and uncle's house rendered it inappropriate for B.M. Similarly, respondent believed her various counselors could provide further insight into her progress at counseling; those counselors were not called to offer that testimony. Though not called to testify, the counselors' observations of respondent's progress in counseling came into evidence through various reports, service plans, and assessments. Respondent offers no

