2016 IL App (3d) 160121-U

Order filed July 25, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re G.W.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-16-0121
	)	Circuit No. 13-JA-69
v.	)	
	)	
Jonathan R. W.,	)	The Honorable
	)	Theodore G. Kutsunis,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice O'Brien and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a termination of parental rights case, the appellate court held that the trial court's determination of parental unfitness was not against the manifest weight of the evidence. The appellate court, therefore, affirmed the trial court's judgment, terminating the biological father's parental rights to his minor child.

¶ 2 In the context of a juvenile-neglect proceeding, the State filed a petition to involuntarily terminate the parental rights of respondent father, Jonathan R. W., to his minor child, G.W.

After hearings on the matter, the trial court found that respondent was an unfit parent/person and that it was in G.W.'s best interest to terminate respondent's parental rights. Respondent appeals, challenging only the determination of parental unfitness. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 Respondent and Amanda W. were the biological parents of the minor child, G.W., who was born in June 2011. In October 2013, the State filed a juvenile neglect petition in the trial court as to G.W. The petition, which was later amended, alleged that G.W. had been subjected to an injurious environment. The petition stemmed from a report that respondent had been sexually molesting G.W.'s 13-year-old sister, T.D., who was respondent's step-daughter. The petition also alleged, among other things, that Amanda W. was not cooperating in services and that she had allowed respondent to have contact with the children (G.W. and his two sisters). Respondent was arrested for the offense, pled guilty, and was sentenced to 6½ years in prison.

¶ 5 In December 2013, after an adjudicatory hearing in which Amanda W. admitted or stipulated to the facts alleged in the petition, G.W. was found to be neglected.[1, 2] A dispositional hearing was initially scheduled for January 2014. On the January date, however, the case was continued so that the attorneys could explore the possibility of establishing a guardianship for G.W. and his sisters with the children's paternal aunt serving as the guardian. During a discussion of the matter, when the trial court was informed that respondent was going to be

[1] Although the petition was found to be proven and was granted at that time, the actual adjudication of the minor was continued to the date of the dispositional hearing.

[2] Respondent was present in court for the hearing with his attorney and took no part in the admission or stipulation.

sentenced to 6½ years in prison and that respondent might not consent to the proposed guardianship, the trial court commented:

> "All right. So what we can do is once we get to the dispositional phase we can have him ordered to complete the services that are recommended. He won't be able to do that, and then we'll be looking at termination of his parental rights, because he won't be able to do that within the nine month time frame and make substantial and reasonable progress.
>
> On the other hand, you can talk to him about whether or not he wants to avoid that, consenting to a guardianship. He doesn't have to, but he's potentially placing himself at risk of losing his parental rights. Because if we can't get a guardianship established, the only option the Court would have to be to adjudicate the children abused and neglected, have an integrated assessment done, have a service plan in place, and order all the parties to start complying with that. And as I indicated, if somebody's not complying with that, either because they can't comply with it or they refuse to - if somebody's incarcerated and can't - they potentially risk the termination of their parental rights. So I don't know if you want to set it up for further proceedings on the dispositional, if you want to have a dispositional hearing today, make the requisite findings[.]"

¶ 6 The proposed guardianship never materialized, and a dispositional hearing was held in February 2014. Respondent was incarcerated at the time of the dispositional hearing and continued to be incarcerated throughout the remainder of this case. At the conclusion of the

dispositional hearing, the trial court made G.W. a ward of the court and named DCFS as G.W's guardian.[3] The permanency goal was set at returning G.W. home within 12 months.

¶ 7 At the time of disposition, respondent was given certain tasks to complete in order to correct the conditions that led to the adjudication and removal of G.W. Those tasks included: (1) to follow the service plan and cooperate with the services and the service providers; (2) to successfully complete a parenting course and a batterer's education course; and (3) to obtain a substance abuse evaluation and a sex offender evaluation and comply with any treatment recommended.

¶ 8 The first permanency review hearing was held in August 2014. Respondent was incarcerated when that hearing was held and was not present in court, but his attorney was present in court on his behalf. A report, which had been prepared for the hearing by the caseworker, Brittany Bulman, indicated that respondent was currently incarcerated at Robinson Correctional Center for the aggravated criminal sexual abuse he had committed against G.W.'s sister. Respondent and the caseworker communicated by letter once a month. Respondent had told the caseworker that he was going to be released from prison in about 11 weeks. As for the positive aspects of respondent's performance during the period, the report indicated that respondent had: (1) completed a substance abuse symposium; and (2) was currently involved in a 12-step program (presumably for alcohol or substance abuse). As for the negative aspects of respondent's performance, the report indicated that respondent had not completed a parenting

[3] There is no indication in the record from the dispositional hearing that the trial court made a formal finding that either respondent or Amanda W. was unfit, unwilling, or unable to care for G.W., although Amanda W. had already been found unfit in other cases and her parental fitness had never been restored.

course or a batterer's education course and had not obtained a sex offender evaluation. The caseworker noted in the report that the prison where respondent was incarcerated did not offer sex offender evaluations. The caseworker recommended in her report that the permanency goal for G.W. remain the same. After considering Bulman's report, the trial court found that respondent had not made reasonable efforts or reasonable progress toward returning G.W. home. The trial court agreed with the caseworker's recommendation and kept the permanency goal at returning the minor home within 12 months. Pursuant to the agency's request, the trial court also ordered that there would be no visitation with an incarcerated parent.

¶ 9 A second permanency review hearing was held in November 2014. Respondent was incarcerated when that hearing was held and was not present in court, but his attorney was present in court on his behalf. A report, which had been prepared for the hearing by Bulman, indicated that respondent was still incarcerated at Robinson Correctional Center and was still communicating with Bulman by letter.[4] As for the positive aspects of respondent's performance during the period, the report indicated that respondent had successfully completed the 12-step program at the prison and was currently participating in anger management classes. As for the negative aspects of respondent's performance, the report indicated that respondent had not completed a parenting course or a batterer's education course and that respondent had not obtained a sex offender evaluation. The caseworker recommended that the permanency goal for G.W. remain at returning G.W. home pending the recommendations of a legal screening. After considering Bulman's report, the trial court found that respondent had not made reasonable efforts or reasonable progress toward returning G.W. home. The trial court again agreed with the

[4] As a correction to the report, respondent's attorney told the court that respondent had been moved to Lincoln Correctional Center.

caseworker and kept the permanency goal the same. Before the hearing concluded, respondent's attorney pointed out that as to the issue of reasonable efforts and reasonable progress, respondent had enrolled in all of the programs that the prison would allow him to enroll in. The trial court noted that information but did not change its finding that respondent had failed to make reasonable efforts or reasonable progress.

¶ 10 A third permanency review hearing was held in February 2015. Respondent was incarcerated when that hearing was held and was not present in court, but his attorney was present in court on his behalf. A report, which had been prepared for the hearing by Bulman, indicated that respondent was incarcerated at Lincoln Correctional Center. Respondent was still communicating with Bulman by letter. As for the positive aspects of respondent's performance during the period, the report indicated that respondent had successfully completed the anger management classes that were offered at the prison. As for the negative aspects of respondent's performance, the report indicated that respondent had not completed a parenting course or a batterer's education course and that respondent had not obtained a sex offender evaluation. The caseworker recommended that the permanency goal for G.W. remain the same. The trial court found that respondent had failed to make reasonable efforts or reasonable progress toward returning G.W. home and kept the permanency goal the same.[5] Prior to the conclusion of the hearing, respondent's attorney asked the court to consider that respondent had made efforts for what was available to him at the prison. Respondent's attorney pointed out that respondent had completed the anger management and substance abuse programs at the prison. Respondent's attorney commented that respondent could only do what the prison would allow him to do. The

[5] The trial court made an oral finding as to respondent's efforts and progress. That finding, however, did not appear in the written order.

trial court indicated that it understood all of that, but that it was still finding that respondent had not made reasonable efforts or reasonable progress.

¶ 11 A fourth permanency review hearing was held in August 2015. Respondent was incarcerated when that hearing was held and was not present in court, but his attorney was present in court on his behalf. A report, which had been prepared for the hearing by Bulman, indicated that respondent was still incarcerated at Lincoln Correctional Center and was still communicating with Bulman by letter. As for the positive aspects of respondent's performance during the period, the report indicated that there was nothing new to report. As for the negative aspects of respondent's performance, the report indicated that respondent had not completed a parenting course or a batterer's education course and that respondent had not obtained a sex offender evaluation. The caseworker recommended that the permanency goal for G.W. be changed to substitute care pending a court decision on termination of parental rights. After considering Bulman's report, the trial court found that respondent had not made reasonable efforts or reasonable progress toward returning G.W. home. Based upon the lack of reasonable efforts and reasonable progress, the trial court changed the permanency goal for G.W. as the caseworker had recommended.

¶ 12 In September 2015, the State filed a petition to terminate respondent's parental rights to G.W.[6] The termination petition alleged that respondent was an unfit parent/person as defined in the Adoption Act because: (1) he had failed to make reasonable efforts to correct the conditions that were the basis for the removal of G.W. during any nine-month period following the adjudication of neglect (see 750 ILCS 50/1(D)(m)(i) (West 2014)); and (2) he had failed to make reasonable progress toward the return home of G.W. during any nine month period following the

[6] The State also sought to terminate the parental rights of Amanda W. to G.W.

adjudication of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2014)). The nine-month periods specified in the petition were from February 21, 2014, through November 21, 2014, and from November 22, 2014, through August 22, 2015 (both time periods were listed for each of the two grounds of the petition).

¶ 13 An evidentiary hearing on the parental unfitness portion of the termination petition (the parental fitness hearing) was held in January 2016. Respondent was present in court for the hearing in the custody of the Department of Corrections (DOC) and was represented by his attorney. The evidence presented at the hearing relevant to respondent can be summarized as follows. The State presented the testimony of the caseworker, Brittany Bulman. Bulman testified that she had been the caseworker in this case since February 2014. According to Bulman, G.W. first came into DCFS care because respondent had sexually abused one of G.W.'s sisters, who was respondent's stepdaughter. As part of the trial court's ruling in this case, respondent was ordered to complete certain services, including sex offender treatment, a batterer's education course, a parenting education course, and substance abuse treatment. Respondent was in custody throughout the duration of this case and was expected to be released from custody in November 2016. While respondent was incarcerated, it was his responsibility to complete the services that he was ordered by the court to complete. Although respondent had completed a parenting education course in September 2014, he had not completed a batterer's education course or sex offender treatment. According to Bulman, respondent was not considered a viable return option for G.W. at any point during this case because respondent had been incarcerated the entire time. G.W. was currently 4 years old, and respondent had been incarcerated for a very significant part of G.W.'s life. In Bulman's opinion, respondent had not made reasonable efforts or reasonable progress in this case to have G.W. returned to his care

because respondent had been incarcerated the entire time and had not completed a sex offender evaluation, which was required because of the nature of respondent's conviction.

¶ 14 Bulman acknowledged during her testimony, however, that respondent had maintained regular contact with her during the course of this case and that he had completed a substance abuse program and anger management counseling while in prison. Bulman confirmed that anger management counseling could be part of a batterer's education course. Bulman acknowledged further that sex offender treatment was not offered at either of the prisons where respondent had been incarcerated and that there was no way for respondent to complete the requirement if it was not offered at the facility where he was being housed. Bulman agreed that respondent had completed every service that he could possibly complete while he was in prison.

¶ 15 In addition to Bulman's testimony, as part of its case-in-chief, the State also admitted a copy of G.W.'s birth certificate and the court documents from defendant's aggravated criminal sexual abuse case (the charging instrument, plea of guilty, and sentencing order). The court documents showed that defendant's conviction in the aggravated criminal sexual abuse case was entered in December 2013.

¶ 16 As for respondent's case-in-chief, respondent testified in his own behalf that he was 33 years old, that he had a tenth-grade education, and that he was pursuing a general equivalency diploma (GED) while in prison. Prior to his arrest, respondent was employed as a school bus driver from 2010 to 2012. Respondent was still currently married to Amanda W. but had not had any contact with her since about October 2013. Respondent was arrested on the criminal sexual abuse charge in August 2013 and arrived at the Department of Corrections in January 2014. Respondent's first placement was at Robinson Correctional Center, where he stayed for about eight months. After Robinson, respondent was transferred to Lincoln Correctional Center, where

he was currently being housed. Respondent requested the transfer to Lincoln because Lincoln had a drug program and because respondent believed that it also had a sex offender program (the computer indicated that Lincoln had sex offender classes). Upon his release from prison, respondent will be on parole for two years.

¶ 17 According to respondent, while he had been in prison, he had completed every class that he had been asked to complete that was available to him. Neither of the two prisons where respondent had been housed offered a batterer's education program or a sex offender program. Respondent initially believed that a sex offender program was offered at Lincoln. However, after respondent got transferred to Lincoln, he learned that the prison had stopped offering that program. Respondent talked to the counselors about possibly being transferred to another facility where a sex offender program was offered but was told that his security level was not high enough and that his out-date was too close. Despite the unavailability of a batterer's education program or a sex offender program, respondent had participated in every other program that was available at the prisons where he had been housed in an effort to better himself.

¶ 18 During his testimony, respondent admitted into evidence numerous certificates from all of the courses that he had successfully completed while he was in prison. Those certificates included ones for: (1) a parenting program; (2) a 6-week anger management program that respondent completed in September 2014; (3) an anger management program from the Christian perspective that respondent completed in October 2014; (4) a 12-step program from Alcoholics Anonymous (AA); (5) a program on applying the 12-step program that respondent completed in September 2014; (6) a 6-week substance abuse symposium that respondent completed in June 2014; (7) proof of attendance at AA meetings at Lincoln from dates in March 2015, June 2015, and August 2015; (8) proof of attendance at Narcotics Anonymous (NA) meetings at Lincoln

from dates in February 2015, March 2015, and May 2015; (9) proof of attendance at AA, NA, and Cocaine Anonymous meetings at Robinson dated September 2014; (10) a certificate dated August 2014 showing that respondent was baptized while at Robinson; (11) a weekend-long Christian seminar dated October 2014; (12) a Christian seminar called Bondage to Freedom dated June 2014; (13) a 2-day seminar entitled The Freedom and The Fear that respondent completed in August 2014; (14) a program entitled Freedom—God's Way that respondent completed in July 2014; (15) proof that respondent had passed a U.S. Constitution test in August 2014; (16) proof of attendance in substance abuse treatment for 9 months/540 hours; (17) the discharge summary from respondent's substance abuse treatment program dated January 2016; (18) proof of attendance at AA meetings at Lincoln for October 2015; (19) proof of attendance at AA meetings at Lincoln for December 2015; (20) a 6-week stress management program respondent completed at Lincoln in November 2015; and (21) a family law class that respondent completed at Lincoln in November 2015. As part of his testimony, respondent briefly described each of those courses. According to respondent, he had taken advantage of every opportunity that he had available to him while he was in prison. In addition, respondent did his best to maintain contact with his caseworker and continued to request information about his children. When asked why he got baptized, respondent stated that he was looking for clarity and trying to change his life and that he decided to try to use the church to get a different perspective on life because his perspective was obviously wrong.

¶ 19 Respondent acknowledged during his testimony, however, that upon his release from prison, he would be required to register as a sex offender for the rest of his life. Respondent confirmed that because he was in prison, he currently had no way to provide for G.W.

Respondent knew that when he was released from prison, he would be required to complete a sex offender course and stated that it was his intention to do so.

¶ 20 After respondent rested his case-in-chief, the State recalled the caseworker, Brittany Bulman, to the witness stand. Bulman testified that even if respondent got out of prison and fully complied with the rest of his services, there would still be a problem with placing G.W. with respondent because of respondent's status as a sex offender. To overcome that problem, respondent would have to get his name removed from the sex offender registry and would have to obtain an evaluation showing that he was no longer a risk to re-offend. Bulman's understanding was that the earliest that those events could possibly happen would be ten years after respondent's parole was completed.

¶ 21 At the conclusion of the parental fitness hearing, the trial court found that both of the grounds of parental unfitness alleged in the termination petition as to respondent had been proven by the State by clear and convincing evidence. The trial court concluded, therefore, that respondent was an unfit parent/person.[7]

¶ 22 In March 2016, a hearing was held on the best interest portion of the termination petition. Respondent was present at the hearing in the custody of the DOC and was represented by his attorney. At the conclusion of the hearing, the trial court found that it was in G.W.'s best interest to terminate respondent's parental rights. The trial court terminated respondent's parental rights, set G.W.'s permanency goal to adoption, and named DCFS as the guardian of G.W. with the right to consent to adoption.[8] Respondent filed this appeal to challenge the trial court's ruling.

¶ 23 ANALYSIS

[7] The trial court also found that Amanda W. was an unfit parent/person.

[8] Amanda W.'s parental rights to G.W. were also terminated.

¶ 24 On appeal, respondent challenges only the trial court's determination of parental unfitness. Respondent asserts that the trial court's finding—that respondent was an unfit parent/person because he had failed to make either reasonable efforts or reasonable progress during the relevant nine-month periods—was against the manifest weight of the evidence. In making that assertion, respondent points out that he was in custody throughout the entire duration of this case and that he completed all of the services that were available to him while he was in prison, even several services that were not required. Respondent asks, therefore, that we reverse the trial court's determination of parental unfitness and the trial court' order terminating respondent's parental rights to G.W. The State argues that the trial court's determination of parental unfitness was proper and that the parental unfitness determination and the trial court's termination order should be affirmed.

¶ 25 The involuntary termination of parental rights is governed by the provisions of both the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq*. (West 2014)) and the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2014)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the first stage of termination proceedings in the trial court, the State has the burden to prove the alleged ground of parental unfitness by clear and convincing evidence. See 705 ILCS 405/2-29(2) (West 2014); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The proof of any single statutory ground will suffice. 750 ILCS 50/1(D) (West 2014); *C.W.*, 199 Ill. 2d at 210. A trial court's finding of parental unfitness is given great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion. *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005).

¶ 26 In this particular case, although respondent presents arguments as to both reasonable efforts and reasonable progress, we will address only the ground of reasonable progress because it is dispositive of the issue before us. See 750 ILCS 50/1(D) (West 2014); *C.W.*, 199 Ill. 2d at 210. Pursuant to section 1(D)(m)(ii) of the Adoption Act, a parent may be found to be an unfit parent/person if he or she fails to make reasonable progress toward the return of the child to the parent during any nine-month period following the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2014). To determine if reasonable progress has been made, a court will apply an objective standard and will generally consider the parent's compliance with the service plan and the court's directives, in light of the condition that gave rise to the removal of the child and in light of any other conditions that later became known which would prevent the court from returning custody of the child to the parent. *C.N.*, 196 Ill. 2d at 216-17; *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of the return of the child. *J.A.*, 316 Ill. App. 3d at 565. Reasonable progress exists when based upon the evidence before it, the trial court can conclude that the progress being made by a parent to comply with the 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 to be returned to the custody of the parent. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). The court will be able to do so because, at that point, the parent will have fully complied with the directives that the parent was previously given to regain custody of the child. *Id.* In determining whether reasonable progress has been made, the trial court may only consider the parent's conduct that occurred during the statutorily prescribed nine-month period and may not consider conduct that occurred outside the nine-month period. *In re J.L.*, 236 Ill. 2d 329, 341 (2010); *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35.

¶ 27 In the present case, the trial court's finding—that respondent was an unfit parent/person because he had failed to make reasonable progress toward the return of the minor home during the relevant nine month periods—was well supported by the evidence. The evidence presented showed that G.W. was removed from respondent's care because respondent had sexually molested G.W.'s 13-year-old sister, T.D., who was respondent's stepdaughter. Respondent pled guilty to aggravated criminal sexual abuse of T.D. and was sentenced to 6½ years in prison. Respondent was in prison throughout the duration of this case, from the dispositional hearing up through the time of termination, which spanned a significant portion of G.W.'s life. Respondent had no contact with G.W. during that period because he was not allowed to do so. As part of its dispositional ruling, the trial court ordered respondent to complete a parenting course and a batterer's education course. The trial court also ordered respondent to obtain a substance abuse evaluation and a sex offender evaluation and to comply with any recommended treatment. Although respondent completed a parenting course and substance abuse treatment while he was incarcerated, he did not complete a batterer's education course or a sex offender evaluation/treatment because those services were not offered in the prisons where respondent had been housed. The failure to complete those services was the basis for the trial court's determination at the permanency review hearings that respondent had failed to make reasonable progress. The fact that the assigned services were not offered at the prisons where respondent was housed does not provide respondent with an excuse for failing to complete those services. See *J.L.*, 236 Ill. 2d at 341 (the Illinois Supreme Court held that the nine month period contained in the statute was not tolled when a parent was in custody).

¶ 28 Furthermore, in addition to respondent's failure to complete services, the caseworker testified that respondent was not being considered as a placement option for G.W. because

respondent was currently incarcerated. The caseworker also stated that the earliest point at which respondent could possibly be considered as a placement option for G.W. would be 10 years after respondent completed his parole in the sexual abuse case, but only if respondent completed everything that he was supposed to complete and was found to no longer be a risk to re-offend. Based upon all of the evidence presented in this case, we conclude that the trial court's finding—that respondent was an unfit parent/person because he had failed to make reasonable progress during the relevant nine-month periods—was not against the manifest weight of the evidence. See *C.N.*, 196 Ill. 2d at 208; *A.M.*, 358 Ill. App. 3d at 252-53. The trial court, therefore, after making a best-interest determination, properly terminated respondent's parental rights. See 750 ILCS 50/1(D) (West 2014); *C.W.*, 199 Ill. 2d at 210.

¶ 29 In reaching that conclusion, we note that although respondent completed all of the programs that were offered to him at the prisons where he was housed, including programs that he was not required to complete, from an objective standpoint, respondent made no movement toward the placement of G.W. with him because respondent was still a sex offender, he had still not completed a sex offender evaluation or treatment, and because he would not be allowed to have G.W. placed with him for several years after his release from prison, if at all. Thus, it cannot be found, under the circumstances of the present case, that respondent made reasonable progress toward the return of the minor during the relevant nine-month periods. See *C.N.*, 196 Ill. 2d at 216-17; *J.A.*, 316 Ill. App. 3d at 564-65.

¶ 30 CONCLUSION

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

¶ 32 Affirmed.