2016 IL App (3d) 160290-U

Order filed September 23, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re J.P. and A.W.,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Minors,	)	Iroquois County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal Nos. 3-16-0290, 3-16-0291
Petitioner-Appellee,	)	Circuit Nos. 14-JA-4, 14-JA-6
	)	
v.	)	
	)	
Tara W.,	)	Honorable
	)	James B. Kinzer,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The State's evidence established mother was an unfit parent by clear and convincing evidence. The trial court's finding that it was in the best interest of J.P. and A.W. to terminate mother's parental rights was not against the manifest weight of the evidence.

¶ 2 On January 20, 2016, the State filed a petition to terminate mother's parental rights concerning J.P. and A.W., minors. Mother appeals both the trial court's findings that she is an

unfit parent and that the termination of her parental rights was in the best interests of the children. We affirm.

¶ 3 FACTS

¶ 4 On June 27, 2014, the State filed separate petitions for adjudication of wardship, alleging that Tara W. (mother) neglected J.P., a female minor born on February 12, 2006, and A.W., a female minor born on October 17, 2011.[1] On the same day, the trial court entered a temporary custody order placing J.P. and A.W. in shelter care with the Illinois Department of Children and Family Services (DCFS).

¶ 5 On October 3, 2014, the State filed separate amended petitions for adjudication of wardship alleging J.P. and A.W. were neglected minors under 705 ILCS 405/2-3(1)(b) and (1)(d). On November 12, 2014, the trial court entered separate adjudicatory orders finding J.P. and A.W. neglected on 705 ILCS 405/2-3(1)(b) and (1)(d) grounds because the minors lived in an environment that was injurious to their welfare, and because the minors were under 14 years of age and were left unsupervised for an unreasonable period of time.

¶ 6 On January 20, 2016, the State filed a motion to terminate mother's parental rights. In its motion, the State alleged mother was an unfit parent pursuant to 750 ILCS 50/1(D)(m)(i) and (m)(ii) because mother had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors and failed to make reasonable progress toward the return of the children within nine months after adjudication of neglect on November 12, 2014.

¶ 7 On April 27, 2016, the trial court conducted a fitness hearing. At the outset, the State indicated they would be proceeding based on the nine-month period from November 12, 2014, to

[1]The record reveals that although the minors had separate court files, the trial court conducted the evidentiary hearings of each minor together.

August 12, 2015. Further, the State indicated that it was proceeding on grounds pursuant to 750 ILCS 50/1(D)(m)(ii).

¶ 8 The State called Susan Hipp, a child welfare specialist for Lutheran Children and Family Services as their only witness. Hipp testified that she became the caseworker for this family in June of 2014, after receiving reports concerning the following issues: J.P. having lice, J.P.'s absences from school as required to babysit her younger siblings due to the absence of adult supervision, and reports of J.P. and A.W. asking for food from strangers while unsupervised in a public park where they were outside all day.

¶ 9 According to Hipp, she first established a service plan for mother, which required mother to complete certain tasks. Initially, Hipp developed this plan to help facilitate the reunification goal. The service plan was established on June 25, 2014, and had an achievement date of June 30, 2015.

¶ 10 Hipp explained that the service plan she developed required mother to complete a substance abuse assessment, a domestic violence assessment, a mental health assessment, parenting classes, anger management classes, drug drops, create a family budget, create a safety plan, obtain income, and provide a stable living environment for the children.

¶ 11 During the next nine-month period in question, Hipp indicated that mother completed: the substance abuse assessment and anger management class, obtained income, created a stable living environment, and provided a sample for one drug test that was negative for prohibited substances. However, during the same nine months, mother missed appointments for both domestic violence and mental health assessments on four or five occasions. Mother also failed to make any progress regarding the completion of these two assessments during the nine-month

period. Further, mother did not complete parenting classes or create a family budget. Finally, mother refused to submit to additional random drug tests.

¶ 12 Hipp testified that she observed weekly visits between J.P., A.W., and mother. Hipp testified that mother was fairly reliable and missed just three or four visits during the nine-month period in question. However, Hipp commented that mother was not very attentive to J.P. and A.W. during the visits because she was busy tending to her infant child.

¶ 13 After arguments from counsel, the trial court held that the State had proven by clear and convincing evidence that mother was an unfit parent because she failed to make reasonable progress toward the goal of family reunification during the nine-month period from November 12, 2014, to August 12, 2015. Shortly after the trial court's ruling, a best interest hearing began.

¶ 14 The State called Jacqueline Jennings, an Indiana DCFS investigator, as the first witness. Jennings testified that she became involved with mother in September of 2015, when DCFS received a report from the hospital that mother had given birth to a child who tested positive for THC in Indiana. Jennings contacted Susan Hipp and learned J.P. and A.W. had been taken from mother in Illinois. Jennings' primary testimony did not concern J.P. and A.W., but when asked on cross-examination whether she would be concerned about J.P. and A.W. moving back into mother's apartment, Jennings stated no, it would just be an adjustment.

¶ 15 The State also called Daniel Cagle, J.P.'s foster parent, as a witness for purposes of the best interest hearing. According to Cagle, J.P. came into Cagle's care in September of 2015, and lived with the family for the last eight months. Cagle testified that J.P. attends a public school, is a straight A student, lives in a family-friendly neighborhood, has friends in the neighborhood,

engages in gymnastics, receives counseling, has contact with her siblings, grandmother and aunts, and has a close relationship with Cagle's biological daughter.

¶ 16 Cagle is employed as a physical therapist, and his wife, Cheryl, is employed as a billing manager. Cagle testified that he has two other children, and the family lives in a 2800 square foot tri-level home. J.P. refers to Cagle and his wife, Cheryl, as mom and dad; they love J.P. and would like to adopt her. Cagle stated that J.P. expressed a desire to stay with his family.

¶ 17 Next, the State called Christine Gidley, A.W.'s foster parent. Gidley testified that she and her husband, Steven, reside in a 2300 square foot home with their two children and A.W.'s younger brother. Gidley works as a court reporter, while Steven owns a towing company. A.W. came into Gidley's care approximately two years earlier in June of 2014. Gidley testified that A.W. had plenty of clothing, attended school, lived in a family-friendly neighborhood, visits her siblings, had some contact with her aunt, and had loving connections with her children. Gidley said A.W. still loves her biological mother. Lastly, Gidley explained that A.W. calls her and Steven mom and dad, that they love A.W., and would like to adopt her.

¶ 18 After arguments from counsel, the trial court found it would be in the children's best interests to terminate mother's parental rights. On April 29, 2016, the trial court entered a written order terminating mother's parental rights.

¶ 19 On May 24, 2016, mother filed a timely notice of appeal.

¶ 20 ANALYSIS

¶ 21 On appeal, mother challenges the trial court's ruling finding her to be an unfit parent because the State failed to prove by clear and convincing evidence that she failed to make reasonable progress toward the return home of J.P. and A.W. within the relevant time period.

Further, mother also argues the trial court's decision to terminate her parental rights was against the manifest weight of the evidence.

¶ 22 The State argues the evidence established mother was an unfit parent by clear and convincing evidence. In addition, the State asserts that the trial court's best interest finding was not against the manifest weight of the evidence.

¶ 23 To begin, we note the trial judge's written order identifying the basis for unfitness erroneously relied on 750 ILCS 50/1(D)(m)(i), requiring mother to make reasonable efforts to correct conditions that were the basis for removal. However, both parties agree for purposes of this appeal, and the record shows, the State did not elect to proceed on the reasonable efforts theory, but rather advised the court that the State would be presenting evidence in support of the allegations that mother failed to make reasonable progress toward the children's return as required by 750 ILCS 50/1(D)(m)(ii). We conclude, based on this record, the court's written order contains a harmless scrivener's error. Therefore, for purposes of this appeal, we examine whether mother made progress during the nine-month period from November 12, 2014, to August 12, 2015, as contained in the State's separate petitions to terminate parental rights.

¶ 24 The judicial proceedings for a termination petition consist of a two-step, bifurcated process. 705 ILCS 405/2-29 (West 2014); 750 ILCS 50/1(D) (West 2014). The court first conducts a fitness hearing, and if the court adjudicates the parent unfit based on the allegations in the termination petition, the court then conducts a separate dispositional or "best interest" hearing to determine whether it is in the best interest of the child that the parent's rights be terminated. 705 ILCS 405/2-29(2) (West 2014); *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). In making a finding of parental unfitness, the trial court is held to a standard of clear and convincing evidence. *In re Allen*, 172 Ill. App. 3d 950, 956 (1988). Clear and convincing

evidence means something less than proof beyond a reasonable doubt. *In re R.G.*, 165 Ill. App. 3d 112, 134 (1988).

¶ 25 Mother first argues that the State's evidence was insufficient to establish her unfitness since the State presented only one witness, Susan Hipp. Since the State did not present or introduce service plans, reports, or court orders at the fitness hearing, mother asserts the State failed to present clear and convincing evidence establishing mother failed to make reasonable progress towards the return of her children as required by 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 26 We do not find mother's argument to be persuasive. During the fitness hearing, Hipp testified in great detail regarding the requirements of the service plan developed shortly after the children came into foster care. Hipp testified that the service plan she developed was designed to meet the reunification goal. Unfortunately, mother failed to attend appointments for both domestic violence and mental health assessments on multiple occasions and did not complete these assessments during the nine-month period. Mother also failed to: complete parenting classes, create a family budget, establish a safety plan for the family, and refused to submit to additional drug drops. We acknowledge that mother did successfully complete other tasks such as: a substance abuse assessment and anger management class, obtaining income, creating a stable living environment, and providing a sample for one drug test that was negative for prohibited substances.

¶ 27 Hipp's testimony also established mother regularly attended the weekly visitations with J.P and A.W., even though her youngest child distracted mother during the visits. We recognize that according to Hipp, mother missed only three or four weekly visits during the nine-month period in question. Regardless of whether the service plan was introduced as evidence, mother does not suggest that Hipp inaccurately reported the tasks Hipp assigned mother to complete.

Under these circumstances, Hipp's testimony alone was sufficient to establish the tasks assigned to mother in hopes of having J.P. and A.W. returned to her custody.

¶ 28 Based on our careful review of the record, we conclude the evidence presented was sufficient to establish mother failed to make reasonable progress under the service plan as provided in 750 ILCS 50/1(D)(m)(ii) (West 2014) by clear and convincing evidence. Therefore, the court did not err in finding mother an unfit parent.

¶ 29 Next, we examine the trial court's finding that it was in the best interest of J.P. and A.W. to terminate mother's parental rights. Following a finding of unfitness, the focus of the proceedings shifts to consider only the best interests of the child. *In re D.T.*, 212 Ill. 2d 347, 363-364 (2004). Therefore, at the 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." *Id.* at 364; *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34.

¶ 30 In making this determination, the court considers statutory factors "in the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These statutory factors include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural and religious background; (4) the child's sense of attachment, including love, security, familiarity, continuity of relationships with parent figures; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. *Id.*

¶ 31 During the best interest hearing, the State must prove by a preponderance of the evidence that it was in the child's best interest to terminate mother's parental rights. *In re D.T.*, 212 Ill. 2d at 365 (2004). A trial court's best interest finding will not be disturbed on appeal unless the

finding is contrary to the manifest weight of the evidence. *In re S.D.* at ¶ 33. A trial court's ruling will be found to be against the manifest weight of the evidence "only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented." *In re D.F.*, 201 Ill. 2d at 498.

¶ 32 In this case, it is clear that the trial court considered the relevant statutory factors in making its best interest determination. The evidence presented concerning J.P.'s best interests was compelling. J.P has lived with her foster family for eight months, attends a public school, is a straight A student, enjoys a family-friendly neighborhood, has friends in the neighborhood, engages in gymnastics, receives counseling, and has contact with her biological siblings, grandmother and aunts.

¶ 33 In addition to developing new friendships while maintaining ties to her biological siblings, J.P. has developed a close relationship with Cagle's daughter. Further, J.P. now calls her foster parents mom and dad. She has expressed a desire to stay with her foster family. J.P.'s desires are reciprocated by her foster family. J.P.'s foster family loves J.P. and would like to adopt her.

¶ 34 The evidence presented in regard to A.W. indicates that she has lived with her foster family for approximately two years, has plenty of clothing, attends school, lives in a family-friendly neighborhood, visits her biological siblings, has some contact with her aunt, and has loving connections with the other children in her foster family's home. A.W. also calls her foster parents mom and dad. The foster parents love A.W., and would like to adopt her.

¶ 35 After a careful review of the record, we conclude the trial court's decision finding mother unfit was proven by clear and convincing evidence. We also conclude the trial court's finding

that it was in the best interest of J.P. and A.W. to terminate mother's parental rights was not against the manifest weight of the evidence.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Iroquois County is affirmed.

¶ 38 Affirmed.