2016 IL App (3d) 160308-U

Order filed October 26, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re S.B. and E.B.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-16-0308, 3-16-0309
	)	Circuit Nos. 11-JA-263, 11-JA-264
v.	)	
	)	
Diane B.,	)	Honorable
	)	Kirk D. Schoenbein,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court's finding that respondent-mother was unfit for failing to make reasonable progress toward the return of her children during the relevant nine-month period was not against the manifest weight of the evidence.
(2) Trial court committed no error in terminating respondent's parental rights to her eighteen-year-old son.

¶ 2 Respondent, Diane B., appeals from the judgment of the circuit court finding her to be an unfit parent of her children, S.B. and E.B., and terminating her parental rights to her eighteen-year-old son, S.B. On appeal, she argues that the trial court's finding of unfitness and its decision to terminate her parental rights to S.B. were against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 Respondent is the mother of S.B., born on March 4, 1998, and E.B., born on September 24, 2001. On November 9, 2011, the State filed juvenile petitions alleging that S.B. and E.B. were neglected. S.B.'s petition alleged that S.B. was neglected due to his care in that respondent failed to provide appropriate medical services for S.B.'s non-functioning gallbladder. According to the petition, respondent believed S.B.'s medical issue was a "demon" problem; she attempted to cure S.B. by pressing on his stomach and his head to "get the demons outs." The petition also alleged that S.B. and E.B. were living in an injurious environment in that respondent refused to consent to surgery to address S.B.'s gallbladder issues and had been previously indicated by the Department of Children and Family Services for medical neglect and inadequate supervision. E.B.'s petition contained an identical allegation of injurious environment. On March 12, 2012, the trial court entered an adjudicatory order finding S.B and E.B. neglected.

¶ 5 On April 17, 2012, the trial court determined that respondent was dispositionally unfit to care for the children, made them wards of the court, and placed them under the guardianship of DCFS. The court found respondent unfit based on (1) the allegations of medical neglect as alleged in the petition, (2) her failure to exercise proper judgment in handling S.B.'s gallbladder issue, and (3) her lack of empathy for S.B.'s medical condition.

¶ 6 Attached to the dispositional order was an order containing several services. That order required respondent to (1) cooperate fully with DCFS or its designee, (2) submit to a psychological examination and follow any recommendations, (3) successfully complete a parenting course, (4) obtain and maintain stable housing, and (5) visit the children as allowed. In addition to the ordered services, the trial court suspended visits with S.B. until such time as S.B.'s therapist indicated that contact would no longer be emotionally damaging.

¶ 7 Permanency review hearings were conducted on November 27, 2012, May 21, 2013, June 18, 2013, December 17, 2013, June 24, 2014, and December 13, 2014. During the initial hearing, the trial court admonished respondent that she had to accept the court's prior finding of unfitness in order to benefit from counseling services and noted that visitation had been suspended. At subsequent hearings, the record indicated that respondent had not completed individual counseling. The court also continued to suspend visitation.

¶ 8 At the permanency review hearing on December 13, 2014, the goal was noted as substitute care pending court decision. The court found that respondent failed to make reasonable efforts toward correcting the conditions that led to removal. The court ordered that (1) the goal remain substitute care pending court decision, (2) visits between respondent and S.B. and E.B. remain suspended, and (3) S.B. continue to receive independence services.

¶ 9 On August 6, 2015, the State filed a petition to terminate respondent's parental rights, alleging that respondent was unfit for failing to make reasonable progress toward the return of S.B. and E.B. during the nine-month period between June 22, 2014, and March 22, 2015.

¶ 10 At the fitness hearing, the State requested that the trial court take judicial notice of the neglect petition, the adjudication and dispositional orders, and the findings made at the

permanency review hearings. Respondent's objection was denied, and the court took judicial notice of the documents.

¶ 11 Amber Schneider testified that she was the social worker assigned to the case from June 2013 to August 2015. As of June 2014, respondent had completed a psychological evaluation and a parenting class. Following respondent's psychological evaluation, it was recommended that she attend individual counseling. Around August of 2013, Schneider was informed that respondent quit her counseling sessions. She stated that, to her knowledge, respondent was not currently attending counseling.

¶ 12 Schneider testified that in July 2014, she left two telephone messages for respondent in attempts to schedule additional court-ordered services. Respondent did not return her calls. In August of 2014, she wrote respondent a letter, but respondent did not respond. In September 2014, respondent did stop by Schneider's office to drop off a birthday present for E.B., but Schneider did not see her. Respondent did not try to contact Schneider when she dropped off the gift. Schneider attempted once more to contact respondent in October of 2014 by sending her a letter. Respondent did not answer her letter. Schneider testified that she did not see respondent between June 24, 2014, and November 20, 2014. She saw respondent in court at the December 2014 permanency review hearing. She had no contact with respondent after that court appearance.

¶ 13 On cross-examination, Schneider stated that she informed respondent that her licensed therapist agreed to provide counseling services on a *pro bono* basis. She further testified that during the relevant nine-month period respondent only attended one or two individual counseling sessions. Schneider never received any information indicating that respondent had successfully completed individual counseling. Although she was aware that respondent was seeing a

counselor with a religious background, she was not aware of any certification or academic training that the counselor had received.

¶ 14 The record before the trial court included respondent's psychological evaluation, which was admitted as State's Exhibit 1. The evaluation stated that, while respondent was likely to be able to provide proper and safe parenting to her sons, certain service requirements needed to be completed. According to the evaluation, respondent was required to complete individual therapy designed to avoid problems in her life and help her approach issues in a realistic manner. The evaluator noted that respondent needed a "reality therapy approach" that would emphasize respondent's ability to make appropriate decisions and take responsibility for her behavior.

¶ 15 Sheryl Douras testified that she was employed by Peoria Rescue Ministries and had a bachelor's degree from Fort Wayne Bible College. Douras began treating respondent in November of 2014 and continued to see her through March of 2015. She counseled respondent at least once a month. During their sessions, Douras talked to respondent about setting healthy goals, establishing a base of encouragement, and developing a support system to assist her in making life decisions. She testified that respondent had made progress in her counsel sessions and had become more focused and less agitated. Peoria Rescue Ministries does not charge a fee for counseling services. Respondent told Douras that she had attempted to see licensed therapists but could not afford them.

¶ 16 Respondent testified that between June 22, 2014, and March 22, 2015, she was unemployed and could not afford a licensed counselor.

¶ 17 The trial court acknowledged respondent's efforts to seek counseling with Douras. However, the court noted that such counseling did not meet the criteria established in her

psychological evaluation and therefore did not rise to the level of reasonable progress. The court found that the State proved the allegations in the petition by clear and convincing evidence.

¶ 18 The best interest hearing was conducted on May 10, 2016. The trial court stated that it had received the best interests report, dated February 25, 2016, and the permanency review report, dated March 3, 2016, as well as other materials.

¶ 19 Elizabeth Hinsel testified as the caseworker for S.B. and E.B. She stated that S.B. was 18 years old at the time of the best interests hearing and was employed as a dental assistant. He had completed his G.E.D. and lived in a "self-selected" residence. He also expressed a desire to be emancipated and refused to attend the termination proceedings. He did not wish to have contact with his biological family. Hinsel testified that, normally, the goal in a situation where the child is 18 years old is independence.

¶ 20 S.B. testified that he was working as a dental assistant in Peoria and had been accepted to Columbia College in Chicago. He was currently living with his aunt, and he enjoyed living with her. S.B. had no desire to live with respondent. He stated that he seldom had contact with her. He testified that he would be better off if respondent's rights to him were terminated. He believed that his relationship with respondent had been "weighing [him] down" for years.

¶ 21 Respondent testified that, although she did not have a relationship with S.B., she loved him and did not want her rights to him terminated. She stated that she had been attending counseling and had learned to control her behavior.

¶ 22 The trial court found that all of the termination factors supported termination or were neutral. The court further noted that S.B. no longer had ties to respondent and was an independent person. The court concluded that it was in S.B.'s best interests to terminate respondent's parental rights.

¶ 23 ANALYSIS

¶ 24 I

¶ 25 Respondent first claims that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 26 A trial court's finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). On review, we will not reverse the trial court's finding that a parent is unfit unless it was contrary to the manifest weight of the evidence. *In re A.L.*, 409 Ill. App. 3d 492, 500 (2011).

¶ 27 Section 1(D)(m) of the Adoption Act (Act) (750 ILCS 50/0.01 *et seq*. (West 2014)) provides that a parent is unfit for failing "(ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(iii) (West 2014). The Act also states that " 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her obligation under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication." 750 ILCS 50/1(D)(m) (West 2014).

¶ 28 Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent. *Daphnie E.*, 368 Ill. App. 3d at 1067. It requires, at a minimum, "measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child." *In re M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991). The test for measuring a parent's progress toward the return of a child under section 1(D)(m) of the 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." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future. *Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 29 Here, the trial court found that respondent failed to make reasonable progress toward the return of S.B. and E.B. from June 22, 2014, to March 22, 2015. During that period, respondent was required to perform several tasks, including individual counseling. She began counseling with an approved counselor but only attended one or two sessions and failed to successfully complete treatment. Although respondent maintained that she could not afford counseling from a licensed therapist, the record indicates that she was offered approved services at no cost and declined to continue her counseling sessions. In addition, she failed to maintain communication with her caseworker. Schneider testified that she made multiple efforts to contact respondent through various forms of communication between June 22, 2014, and March 22, 2015. Respondent did not respond. Respondent's failure to comply with required tasks and refusal to communicate with the caseworker assigned to the case demonstrate a lack of reasonable progress. Based on the evidence presented, the trial court's determination that respondent failed to make reasonable progress toward the return of her children during the relevant nine-month period was not against the manifest weight of the evidence.

¶ 30 II

¶ 31 Respondent also contends that the trial court erred in finding that it was in S.B.'s best interests to terminate her parental rights.

¶ 32 After a finding of unfitness, the State must prove by a preponderance of the evidence that it is in the child's best interests to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 365 (2004). When reviewing a trial court's best interests determination, this court applies the manifest weight of the evidence standard of review. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004); *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). A trial court's decision is against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite conclusion. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 33 During the best interests hearing, all considerations must yield to the child's interests to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364. When determining the best interests of a child for purposes of a termination petition, the court is required to consider a number of statutory factors "in the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These statutory factors include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) 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; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014); see also *B.B.*, 386 Ill. App. 3d at 698-99.

¶ 34 Here, the evidence shows that the State proved by a preponderance of the evidence that it was in S.B.'s best interest to terminate respondent's parental rights. Hinsel testified that S.B. is

18 years old, has a high school degree, lives in housing of his own choice, and has a job. S.B. testified that he enjoys living with his aunt and has been accepted to a private college. He further testified that he does not want to live with or interact with respondent. Given S.B.'s maturity and development apart from respondent's influence, we cannot say that enforcing a relationship with respondent would be in S.B.'s best interests. In light of the factors to be considered during a best interests hearing, the trial court's finding that it was in S.B.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.