2016 IL App (4th) 160115-U

NO. 4-16-0115

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 5, 2016
Carla Bender
4th District Appellate
Court, IL

In re: M.G., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 10JA42
MARQUIS GRANT, SR.,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: When finding, by clear and convincing evidence, that respondent was an "unfit person" within the meaning of section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2012)), the trial court did not make a finding that was against the manifest weight of the evidence.

¶ 2 Respondent, Marquis Grant, Sr., appeals from the termination of his parental rights to M.G., born on July 24, 2008, and confirmed by genetic testing to be his son. He challenges the trial court's finding that he was an "unfit person" within the meaning of section 1(D)(b) and section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(b), (D)(m)(iii) (West 2012)). Because we conclude the court did not make a finding that was against the manifest weight of the evidence when finding him to be an "unfit person" within the meaning of section 1(D)(m)(iii), we do not reach the question of his conformance to the other statutory definition. The record contains evidence to support the finding that he failed to make reasonable progress

toward the return of M.G. (see 750 ILCS 50/1(D)(m)(iii) (West 2012)), and therefore, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 Originally, M.G. was removed from the custody of respondent and the mother, Elishia Epps, because they neglected to seek medical care for him when he fell out of a second-story window and because, shortly before that, they neglected to seek medical care for one of his sisters when her cheek was split open by a doorknob. Other parental shortcomings were domestic violence and substance abuse (cannabis for respondent and cannabis and opiates for the mother).

¶ 5 The mother made progress for a time, and in fact, during the period of February 15, 2011, to April 10, 2012, the trial court regarded her as "fit" within the meaning of section 2-27(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-27(1) (West 2012)). Afterward, however, she regressed. For instance, she battered her brother, and this episode of domestic violence resulted in a conviction for her. From April 2012 onward, the mother never regained fitness, according to the findings in permanency hearings.

¶ 6 Respondent made better, more consistent progress. Ultimately, though, the trial court was dissatisfied with his progress for primarily two reasons: (1) his chronic unemployment and (2) his continued residency with the mother, to whom, because of her own unfitness, the court could not return M.G. These two things were related: the mother was receiving disability benefits for Blount's disease, and respondent had no income with which to pay rent.

¶ 7 On July 31, 2013, the State filed a petition to terminate the parental rights of respondent and the mother. As to respondent, the State alleged in paragraph 20(a) that he was an "unfit person" within the meaning of section 1(D)(b) (failure to maintain a reasonable degree of

interest, concern, or responsibility), and the State alleged in paragraph 20(b) that he was an "unfit person" within the meaning of section 1(D)(m)(iii) (failure to make reasonable progress).

¶ 8 On October 4, 2013, at the conclusion of the unfit-person hearing, the trial court found, by clear and convincing evidence, that both parents were "unfit persons" as alleged in the petition to terminate their parental rights. Regarding respondent, the court stated as follows:

> "With respect to [respondent], I think the same argument could be made with respect to the substance abuse and successfully completing that portion of his service plan because he didn't screen, didn't call in regularly at all. And he certainly never had adequate employment, legal income, in order to have the child returned to him.
>
> As far as I look at him, as I analyze this case and these allegations as to him though, you know, he was found fit in this case, and all he had to do was to end his relationship with [the mother]. Move out and have a suitable place for [M.G.] to go. His lawyer told him that repeatedly. Ms. Longbons [(a caseworker)] told him that repeatedly. I told him that repeatedly. *** And the period is October 6th through July 6th. He was still living with her as of July 6th and living with her substantially thoughout that entire period of time. So he knew he had to make a choice, and he made the choice.
>
> And as far as the Court finds paragraph 20(b) proven by clear and convincing evidence.
>
> Paragraph 20(a), the same analysis as with that same allegation as [respondent], but all he had to do, [M.G.] would have been returned to him months ago if he had just decided to end the relationship, move out and establish a

> suitable residence that [M.G.] could be returned to, and he didn't. He made the choice. And so the Court finds paragraph 20(a) proven. He could have been responsible for [M.G.] even if he—I guess I don't understand his logic. He didn't want to split up the kids, but the kids are split anyway and he could have had [M.G.] in his home[,] and if she would have achieved fitness later[,] they could have reunited perhaps. But she's never come close to a fitness finding throughout the course of this case, and he knew what the consequences were for staying with her, not getting his son back, and that's what happened. So the court finds Paragraphs 20(a) and 20(b) proven by clear and convincing evidence and finds the parents unfit."

¶ 9 On January 7, 2016, the trial court held a best-interest hearing, in which the court found it would be in M.G.'s best interest to terminate his parents' parental rights. Accordingly, on that date, the court issued an order terminating the parental rights of respondent and the mother to M.G.

¶ 10 This appeal by respondent followed.

¶ 11 II. ANALYSIS

¶ 12 To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proven, by a preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of

the child. 705 ILCS 405/2-29(2) (West 2014); *In re D.T.*, 212 Ill. 2d 347, 366 (2004); *In re M.M.*, 226 Ill. App. 3d 202, 209 (1992).

¶ 13 In November 2014, after the unfit-person hearing but before the best-interest hearing, both respondent and the mother voluntarily surrendered their parental rights to M.G. and consented to his adoption by a relative of respondent; but their surrender of parental rights was expressly conditional on M.G.'s being adopted by the relative. As it turned out, the preadoptive placement of M.G. with the relative was unsuccessful, and in July 2015, the trial court entered an agreed-upon order reinstating the parental rights of respondent and the mother to M.G. Because their surrender of parental rights was invalidated, proof of their conformance to a statutory definition of an "unfit person" remained a prerequisite to the termination of their parental rights to M.G. See 705 ILCS 405/2-29(2) (West 2014); *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20.

¶ 14 The mother is not a party to this appeal, and therefore, the trial court's finding that she was an "unfit person" is unchallenged. Respondent, however, challenges the court's finding that he was an "unfit person." The State alleged, and the court found it to be proved by clear and convincing evidence, that he was an "unfit person" within the meaning of section 1(D)(b) and section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(b), (D)(m)(iii) (West 2012)). (He does not challenge the best-interest finding.) Those sections provide as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***:
>
> * * *
>
> (b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.

* * *

> (m) Failure by a parent *** (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 [(705 ILCS 405/2-3 (West 2012))] ***." 750 ILCS 50/1(D)(b), (D)(m)(iii) (West 2012).

¶ 15 Because meeting a single definition in section 1(D) (750 ILCS 50/1(D) (West 2012)) would make respondent an "unfit person" (see *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000)), we need not discuss both of the definitions quoted above. Instead, we will choose one of them, the definition of an "unfit person" as someone who failed to make "reasonable progress" (750 ILCS 50/1(D)(m)(iii) (West 2012)), and we will decide whether the trial court made a finding that was against the manifest weight of the evidence when finding, by clear and convincing evidence, that respondent met that definition. See *id.* We will defer to the court's finding unless it is "clearly evident," from the record, that the State failed to prove, by clear and convincing evidence, that respondent's progress during the nine-month period the State specified in its petition, October 6, 2012, to July 6, 2013, was less than reasonable. *In re C.N.*, 196 Ill. 2d 181, 208 (2001).

¶ 16 The supreme court has said: "[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." *Id.*

at 216-17 (quoting 750 ILCS 50/1(D)(m) (West 1998)). We have said: " '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 re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 17 The trial court found that respondent failed to make reasonable progress during the period of October 6, 2012, to July 6, 2013, in that, during this entire nine-month period, he lived with the mother, who remained "unfit *** to care for" and "protect" M.G. (705 ILCS 405/2-27 (West 2012)). The continuing unfitness of the mother made it impossible for the court to responsibly return M.G. to respondent's custody. See *C.N.*, 196 Ill. 2d at 216-17. Because he lived with the mother, returning M.G. to him would have been tantamount to returning M.G. to the actual custody of the mother. Thus, the nine months went by without respondent's obtaining a suitable residence to which M.G. could be returned and without obtaining employment by which to pay for a suitable residence of his own and without the mother's regaining fitness. As of July 6, 2013, there was no apparent indication that this state of affairs would change "in the near future." (Emphasis omitted.) *L.L.S.*, 218 Ill. App. 3d at 461. Consequently, the court found a lack of reasonable progress as of that date.

¶ 18 Respondent raises essentially three points against this finding.

¶ 19 First, he points out that the petition for the termination of parental rights nowhere alleges that his "fail[ure] to end his relationship with [the] [m]other" was a failure to make reasonable progress. "It is well-settled," however, "that the requirement of pleading with specificity does not require more than setting forth the specific statutory ground of unfitness." *In*

re Dominique W., 347 Ill. App. 3d 557, 565 (2004). In its petition, the State alleged that respondent "ha[d] failed to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period which follow[ed] the date of the entry of the [a]djudicatory [o]rder, under [s]ection 2-3 of the Juvenile Court Act [of 1987 (705 ILCS 405/2-3 (West 2012))], specifically the time frame running from October 6, 2012[,] through July 6, 2013." All the State had to do in its petition was clearly allege the specific statutory ground of unfitness. See *id.* The State did so, and therefore respondent was sufficiently apprised of the charge against him. See *id.*

¶ 20 Second, respondent argues the trial court was factually mistaken when remarking, at the conclusion of the unfit-person hearing: "But [the mother has] never come close to a fitness finding throughout the course of this case ***." Actually, respondent observes, "[the] [m]other maintained a period of nearly 14 consecutive months of parental fitness during the case (from February 15, 2011, through April 10, 2012)." This is a valid correction, but ultimately it changes nothing. The question is whether, at the conclusion of the nine-month period, on July 6, 2013, there existed any "conditions *** which would [have] prevent[ed] the court from returning custody of the child to" respondent (*C.N.*, 196 Ill. 2d at 216-17), conditions that there was no clear prospect of eliminating in the near future (*L.L.S.*, 218 Ill. App. 3d at 461). The circumstances existing during the period of February 15, 2011, to April 10, 2012, do not speak to that question. Instead, we look at the circumstances existing on July 6, 2013. As of that date, respondent was unemployed, and in the unfit-person hearing, he testified that the last time he worked was in 2010, for a temporary-service agency. Donald Bernardi, the guardian *ad litem*, asked him: "Do do you think that you could parent your son without employment?" and he candidly answered: "No." Apparently, respondent was financially dependent on the mother,

who was receiving disability benefits. Throughout the nine-month period of October 6, 2012, to July 6, 2013, he depended on her for living quarters, which could not have served as M.G.'s living quarters, considering that she was "unfit" within the meaning of section 2-27(1) (705 ILCS 405/2-27(1) (West 2012)) and had been "unfit" since April 2012. Employment and suitable living quarters were goals in respondent's service plan, goals important to M.G., and at the end of the nine months, those goals were unreached.

¶ 21 Third, respondent complains that the trial court sent him "very mixed signals," given that, in the permanency hearings of January 8 and March 28, 2013, the court declared him "fit" within the meaning of section 2-27(1), despite his residency with the mother, only to suddenly and unexpectedly find him "unfit," in the permanency hearing of July 5, 2013 (as it turned out, the penultimate day of the nine-month period), on the ground that he still was residing with the mother. "[N]othing had changed" since January and March 2013, respondent argues: "[e]ven though basically the same factual situation existed at the July 2013 hearing as it did nearly six months earlier at the January 2013 hearing, the trial court suddenly found that [respondent] was unfit because he was living with [the] [m]other."

¶ 22 The problem with respondent's argument is that it has no apparent expiration date: he could have made the same argument one year, two years, or three years later. In other words, something *had* indeed changed: the further passage of time. Just because, in January and March 2013, it was acceptable, for the time being, for him to reside with the mother despite her unfitness, he could not reasonably assume it would be acceptable forever. By continuing to reside with her despite her continuing status of being unfit, he hitched his case to her case, and the longer the two cases remained hitched together, the greater the risk for him.

¶ 23 The trial court told respondent on August 7, 2012: "But if [respondent] did not know it before, he certainly is aware now that it could have an implication in the future, sir, if you are able to achieve fitness and you and [the mother] are together and she is unfit. We cannot return [M.G.] to that household." Again, on January 8, 2013, even though the court found him to be fit at that time, it warned him and gave him a conditional directive:

> "[W]hen you have got parents together, you kind of hitch your horse to the same wagon. And so if the mom isn't fit, we can't return children to the fit parent if there is one parent not fit. *** [I]f [the mother does not achieve fitness], then [respondent's] going to have to make some decisions about where he wants to go and whether he wants to care for [M.G.] and do that in a separate household. *** [Y]ou do need to find stable employment and housing if you can't be living together. Maybe you can, but that's your barrier."

And yet again, on March 28, 2013, the court found respondent to be fit but reminded him: "We always tell parents if they are involved in a relationship, *** they need to make sure that their partner is fit and otherwise [the] child can't be returned home ***."

¶ 24 Granted, as respondent notes, the trial court repeatedly expressed its belief that the mother could possibly reachieve fitness. Saying something is possible, however, is not saying much, and the court fairly warned respondent that, as long as he resided with the mother, he bore the risk that this possibility might not come to pass. He must have known that M.G. could not be put on hold forever and that his own status as a parent was more and more imperiled the longer he resided with a mother who, month after month, remained unfit. Maybe he sincerely believed in her potential to make progress, but the standard of reasonable progress is objective rather than subjective (*L.L.S.*, 218 Ill. App. 3d at 461), and the objective fact is that for nine months, from

October 6, 2012, to January 6, 2013, he made no appreciable progress toward obtaining employment and suitable housing. Therefore, we are unable to say it is "clearly evident," from the record, that the State failed to prove, by clear and convincing evidence, respondent's failure to make reasonable progress from October 6, 2012, to July 6, 2013 (750 ILCS 50/1(D)(m)(iii) (West 2012)). *C.N.*, 196 Ill. 2d at 208.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment.

¶ 27 Affirmed.