2016 IL App (4th) 160127-U

NO. 4-16-0127

FILED
June 23, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| In re: D.S. and E.B., Minors, | ) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Champaign County |
| v. | ) | No. 14JA18 |
| MICHELLE BURNS SCOTT, | ) | |
| Respondent-Appellant. | ) | Honorable |
| | ) | John R. Kennedy, |
| | ) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court found the State proved respondent unfit by clear and convincing evidence and affirmed the trial court's decision to terminate her parental rights.

¶ 2 In March 2014, the State filed an amended petition for adjudication of neglect with respect to D.S. and E.B., the minor children of respondent, Michelle Burns Scott. In May 2014, the trial court made the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In February 2015, the State filed a motion to terminate respondent's parental rights. In December 2015, the court found respondent unfit. In March 2016, the court found it was in the minors' best interests that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the State failed to prove her unfitness by clear and convincing evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2014, the State filed an amended petition for adjudication of neglect and shelter care with respect to D.S, born in August 2008, and E.B., born in September 2013, the minor children of respondent. The petition alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2014)) because their environment was injurious to their welfare when they resided with respondent because the environment exposed them to substance abuse (count I) and the risk of physical harm (count II) and respondent failed to correct the conditions that resulted in a prior adjudication of parental unfitness (count III). The trial court entered a temporary custody order, finding probable cause to believe the minors were neglected.

¶ 6 In April 2014, respondent stipulated to count I, and the trial court found the minors neglected based on the injurious environment. In its May 2014 dispositional order, the court found respondent unfit and unable for reasons other than financial circumstances alone to care for, protect, train, or discipline the minors and the health, safety, and best interests of the minors would be jeopardized if they remained in her custody. The court noted respondent resided in facility for drug addiction and had a history of domestic violence and substance abuse. The court adjudged the minors neglected, made them wards of the court, and placed custody and guardianship of the minors with DCFS.

¶ 7 In February 2015, the State filed a motion to terminate respondent's parental rights. The motion alleged respondent was unfit because she (1) failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal (count I) (750 ILCS 50/1(D)(m)(i) (West 2014)); (2) failed to make reasonable progress toward the return of the minors within the initial nine months after the adjudication of neglect or abuse (count II) (750

ILCS 50/1(D)(m)(ii) (West 2014)); (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (count III) (750 ILCS 50/1(D)(b) (West 2014)); and (4) was incarcerated at the time the motion was filed, had repeatedly been incarcerated as a result of criminal convictions, and her repeated incarcerations had prevented her from discharging her parental responsibilities for the minors (count IV) (750 ILCS 50/1(D)(s) (West 2014)).

¶ 8 In September 2015, the trial court held a hearing on the motion to terminate parental rights. James Zielinski, a foster-care caseworker at the Center for Youth and Family Solutions (CYFS), testified he became the minors' caseworker in April 2014. At that time, respondent was attempting to address her substance-abuse issues at a rehabilitation facility in Springfield, Illinois. She was successfully discharged in May 2014. Zielinski had contact with respondent after her discharge and referred her for a substance-abuse assessment, individual therapy, a psychological evaluation, a parenting class, and a domestic-violence class. Zielinski stated respondent did not complete the substance-abuse evaluation at Prairie Center. Approximately two weeks after respondent's release from the facility, she was incarcerated and ultimately sentenced to prison. Zielinski stated respondent was unable to engage in individual counseling or parenting classes because of her incarceration. While in prison, respondent told Zielinski about prison services, but the only ones applicable to her service plan involved seeing a psychiatrist and attending drug and alcohol meetings. She was released from prison in June 2015. Respondent had not engaged in any visits with the minors since Zielinski became the caseworker.

¶ 9 In December 2015, respondent testified she had been addicted to crack cocaine for a year before her incarceration. She was referred to drug court after the State charged her

with retail theft. After leaving the rehabilitation center, she tested positive for drugs. She was found to have violated her probation and sentenced to three years in prison. While in prison, she attended Narcotics Anonymous meetings and completed a parenting class. She stated she had been sober since June 2014. While in prison, respondent had contact with Zielinski and they talked about her children. She also wrote letters to him to ask how the children were doing and to get pictures of them.

¶ 10 At the close of the evidence, the trial court found in favor of respondent on counts I and IV and found in favor of the State on counts II and III. As to count III, the court found clear and convincing evidence that respondent failed to maintain a reasonable degree of responsibility as to the minors' welfare.

¶ 11 In February 2016, the trial court conducted the best-interests hearing and considered the reports filed by CYFS and the court-appointed special advocate (CASA). Respondent did not appear at the hearing. The CASA report indicated the minors were placed in a traditional foster home and have become part of a large extended family which looks after their needs. The CYFS report indicated D.S. had improved behaviorally in the foster home and continued to engage in therapy. E.B. continued to do well in the foster home and received in-home therapy.

¶ 12 Zielinski testified respondent wrote letters to him while she was in prison. The letters asked for updates on how her children were doing in their foster home and in school. Respondent also engaged in classes while in prison.

¶ 13 Following recommendations from the parties, the trial court found it in the minors' best interests that respondent's parental rights be terminated. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Respondent argues the State failed to prove her unfitness by clear and convincing evidence. We disagree.

¶ 16 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001).

¶ 17 A. Reasonable Progress

¶ 18 In the case *sub judice*, the trial court found respondent unfit for failing to make reasonable progress toward the return of the minors within the initial nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)). The initial nine-month period following the adjudication of neglect began on April 16, 2014, and ended on January 16, 2015.

¶ 19 "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

> "[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." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

"The law does not afford a parent an unlimited period of time to make reasonable progress toward regaining custody of the children." *In re Davonte L.*, 298 Ill. App. 3d 905, 921, 699 N.E.2d 1062, 1072 (1998). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006).

¶ 20 Here, the evidence indicated respondent failed to make reasonable progress. Respondent resided in a rehabilitation facility in April 2014 and was discharged in May 2014. However, two weeks later, respondent violated her probation by testing positive for drugs. The trial court sentenced her to prison, where she remained until May 2015. Thus, respondent spent the majority of the nine-month period confined to prison, and she failed to demonstrate she made reasonable progress toward the goal of reunification during that time. See *In re J.L.*, 236 Ill. 2d 329, 341, 924 N.E.2d 961, 968 (2010) (stating time spent in prison does not toll "the nine-month period during which reasonable progress must be made"). Although respondent contends she took steps to confront her drug addiction while in prison, nothing indicates those steps were of such a quality that the minors could be returned to her in the near future. Accordingly, the

court's finding of unfitness on this ground was not against the manifest weight of the evidence.

¶ 21 B. Reasonable Degree of Responsibility

¶ 22 The trial court also found respondent unfit for failing to maintain a reasonable degree of responsibility as to the minors' welfare. Before finding a parent unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)), the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185.

¶ 23 "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202. Moreover, "a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern and responsibility must be reasonable." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004).

¶ 24 Here, respondent contends she maintained a reasonable degree of responsibility because, although she was incarcerated during much of the case, she took parenting classes and lifestyle-redirection courses and wrote to Zielinski and the children. However, respondent's violation of her probation, just two weeks after her release from the rehabilitation facility, failed to show a reasonable degree of responsibility for the minors. While she states visitation was suspended due to her incarceration, it was her conduct that prevented her from visiting her

children. Moreover, the evidence indicates respondent wrote two letters to Zielinski, one letter to the trial court on behalf of D.S.'s father, and one letter to her children. These letters were written in January and February 2015, and 4 letters in 10 months does not exhibit reasonable responsibility. Lastly, respondent did not complete her technical class, lifestyle-redirection class, and financial-peace class until April 2015, which was after the State filed the motion to terminate her parental rights. This last-ditch effort to better herself does not amount to a reasonable degree of responsibility. We find the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence. Moreover, as respondent does not contest the best-interests portion of the court's decision, we conclude the court's order terminating respondent's parental rights was appropriate.

¶ 25 III. CONCLUSION

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

¶ 27 Affirmed.