2016 IL App (4th) 160136-U

NO. 4-16-0136

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L.S., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 14JA66
BREANNA STERLING,	)	
Respondent-Appellant.	)	Honorable
	)	Brett N. Olmstead,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings (1) respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and (2) it was in the minor child's best interest to have respondent's parental rights terminated were not against the manifest weight of the evidence.

¶ 2 In July 2015, the State filed a motion for the termination of the parental rights of respondent, Breanna Sterling, as to her minor child, L.S. (born in 2003). After a two-day hearing, the Champaign County circuit court found respondent unfit. At the February 2016 best-interest hearing, the court concluded it was in L.S.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding (1) her unfit and (2) it was in L.S.'s best interest to terminate her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In September 2014, the State filed a petition for the adjudication of wardship of L.S., which alleged she was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)), in that her environment was injurious to her welfare when she resided with respondent because said environment exposed her to (1) domestic violence and (2) substance abuse. In its temporary-custody order, the circuit court suspended all visitation between respondent and L.S. until respondent's release from custody.

¶ 6 At the October 21, 2014, adjudicatory hearing, respondent stipulated L.S. was neglected under section 2-3(1)(b) of the Juvenile Court Act because L.S.'s environment was injurious to her welfare because her environment exposed her to domestic violence. The circuit court accepted the stipulation and adjudicated L.S. neglected. After a November 2014 dispositional hearing, the court (1) found respondent was unfit and unable to care for, protect, train, educate, supervise, or discipline L.S.; (2) made L.S. a ward of the court; and (3) placed custody and guardianship of L.S. with the Department of Children and Family Services (DCFS). Additionally, the dispositional order noted respondent had pleaded guilty to aggravated battery and was sentenced to 24 months' probation (People v. Sterling, No. 14-CF-1257 (Cir. Ct. Champaign Co.)) but was still in custody due to an Iowa parole hold.

¶ 7 On July 22, 2015, the State filed a motion to terminate respondent's and the unknown father's parental rights to L.S. The motion asserted respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to L.S.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis for L.S.'s removal (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3)

make reasonable progress toward L.S.'s return during the initial nine-month period after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 8 On October 15, 2015, the circuit court commenced a fitness hearing. It noted the relevant nine-month period for counts II and III was October 21, 2014, to July 21, 2015. The State presented the testimony of (1) Angela Shy, the case manager for L.S.'s case from fall or winter 2014 until March 2015; and (2) Kanitra Keaton, supervisor at Lutheran Social Services since November 2014. The court also admitted the State's exhibit No. 1, which was a letter from respondent. While respondent dated the letter April 16, 2015, Lutheran Social Services did not receive it until July 1, 2015. Additionally, at the State's request, the court took judicial notice of its prior orders in this case.

¶ 9 Shy testified she was present for respondent's integrated assessment, which took place in the Champaign County jail, where respondent was incarcerated. During the assessment, Shy went over in great detail what respondent needed to do upon her release from incarceration to get L.S. back and what Lutheran Social Services would be willing to provide her. Shy further testified she encouraged respondent to take advantage of as many services as she could while incarcerated. The only other contact Shy had with respondent was three letters from respondent, which were sent from the Champaign County jail around Christmas 2014. The letters were five to six pages long, and respondent expressed how much she loved L.S. and wanted to fix her problems so she could care for L.S. Respondent also noted her need to find stable housing. In response, Shy sent a letter to respondent at the Champaign County jail, which was returned to Shy. Shy then forwarded the letter to respondent's new address in the Iowa Department of Corrections. Shy did not have any contact with respondent when she was in the Iowa Department of Corrections. Shy did not make any referrals for respondent due to respondent's

incarceration. However, she did contact respondent's officer at the county jail to ascertain what services respondent was participating in there. Shy recalled respondent was participating in Alcoholics Anonymous but could not recall the other programs. Additionally, due to the court's order suspending visitation, Shy did not monitor any visits. Last, Shy testified she informed respondent she should contact Lutheran Social Services upon her release from incarceration.

¶ 10 Keaton testified she had been supervising the case since November 2014 and briefly was the case manager during personnel changes. Keaton was aware respondent was released from incarceration on April 1, 2015. The case manager had made a diligent search for respondent after her release. In July 2015, Keaton received respondent's letter, to which respondent attached some correspondence indicating respondent had attended some Alcoholics Anonymous meetings during her incarceration. In the letter, respondent apologized for contacting the agency so late and provided three telephone numbers at which to contact her. Keaton testified she called all three numbers. One of the numbers was disconnected. Keaton left a voicemail message at one of the numbers. At the third number, a woman answered, but she did not have contact with respondent. Keaton then sent a certified letter to the return address on the envelope, which contained the letter Keaton had received from respondent. Keaton's certified letter was returned to her unclaimed. Keaton also testified the letter referenced an April 23, 2015, job interview or orientation. Additionally, Keaton testified she had reviewed L.S.'s file and noted Amber Brodko, a case manager, had sent respondent a letter in jail before Shy had sent hers.

¶ 11 In late August or September 2015, Keaton had a telephone conversation with respondent. Keaton had received a message respondent had been trying to contact someone at the agency, and no one had called her back. Keaton called respondent, and respondent said she

had given her contact information to a person at her July 23, 2015, court appearance in this case. However, the person respondent described as the one to whom she gave the information did not work for Lutheran Social Services. After Keaton's conversation with respondent, the case manager set up visits for respondent, which she attended.

¶ 12 Keaton also explained Lutheran Social Services' policies for incarcerated parents. Case managers were required to see the parents monthly if the parents were incarcerated in Illinois. When parents were incarcerated out of state, the case managers were encouraged to contact the parent's correctional facility and find a contact person. Case managers are then to send monthly letters to the contact person as well as all service plans and court reports. Keaton did not know if that was done in this case. The importance of monthly visits with incarcerated parents was to keep them updated on what was going on with the child or children and to find out if the parent's correctional facility offered any services that might help the parent progress in the abuse or neglect case.

¶ 13 Respondent testified she was taken to the Champaign County jail on September 9, 2014. The next day or so, a DCFS investigator met with her at the jail. At that point in her life, she had a lot going on with her parents' illnesses. She described herself as a social drinker. At the end of October 2014, she had a visit with the DCFS investigator and Shy. Shy never met with her again. Respondent testified she never received a service plan or a permanency report while incarcerated. However, when examined by the circuit court, respondent acknowledged she received an order from the court in November 2014 that had suggestions about doing domestic-violence classes, maintaining employment, attending counseling, getting therapy, and providing random drug drops. It was "on the paper that said something about an adjudicatory or permanency hearing or something." Respondent did receive a letter from Shy in December

2014. Shy told her that, while incarcerated, she should do her best and take whatever classes she could. Shy could not help her with her housing beyond providing a list of shelters. Respondent did attend monthly parenting classes when she was in the Champaign County jail.

¶ 14 On December 10, 2014, respondent was transferred to the Iowa Department of Corrections on a parole violation. There, she attended Alcoholics Anonymous and Narcotics Anonymous meetings and kept a list of the meetings she attended. Her list was admitted as Respondent's exhibit No. 1. The list shows she first started attending meetings on February 24, 2015. Respondent explained she had to live in a certain unit and gain privileges to attend the meetings. Respondent further testified she attended a meeting every time there was one, which was three to four times a week. At those meetings, respondent learned how to (1) deal with alcoholism, (2) cope with withdrawal, and (3) become a recovering parent after being an addict. Once she was released from prison and settled in Kankakee, Illinois, she attended parenting classes and Alcoholics Anonymous meetings at a church until August 2015, when the church lost its funding. Respondent testified she was now sober. While incarcerated in Iowa, respondent also saw a counselor once a week. Respondent also repeatedly wrote to her case managers and the judge in this case.

¶ 15 When she was released from prison, respondent returned to Champaign and contacted her probation officer. At the time of the hearing, she was compliant with her probation requirements. Her probation officer told her to contact her lawyer in this case. She did not think she could also contact Lutheran Social Services. Respondent also testified she tried calling Lutheran Social Services multiple times a week after her release. Respondent tried to live in Champaign to be near L.S., but she was unable to find a stable job and housing. She contacted a cousin who lived in Kankakee and moved there. Respondent found employment with a large

catering company through a temporary employment agency. She commuted by train to Champaign for her job and visits with L.S. She had been visiting with L.S. since late October 2015.

¶ 16 In July 2015, she started meeting with Tom Smith in a group setting, which discussed life skills for recovering addicts. She was also trying to attend anger-management classes, which were to be set up by her probation officer. Respondent further testified she had changed a great deal in the past year as she was now sober, more patient, experiencing less stress, more forgiving, and not mad. Respondent explained that, since she had been sober, she did not have the urge to be aggressive. Additionally, respondent applied for housing in Rantoul, Illinois, to be closer to L.S.

¶ 17 At the conclusion of the hearing, the circuit court found respondent was unfit based on her failure to make reasonable (1) efforts to correct the conditions that were the basis for L.S.'s removal and (2) progress toward L.S.'s return during the initial nine months after the neglect adjudication.

¶ 18 On February 12 and 19, 2016, the circuit court held the best-interest hearing. The State did not present any evidence beyond the best-interest reports, and respondent testified on her own behalf and presented the testimony of Elizabeth Rich, the case manager in this case since August 2015. The best-interest report, which was written by Rich, stated L.S. was in the sixth grade, in good health, attended counseling, and lived with her maternal aunt. She appeared to be very bonded with her aunt and desired to continue living with her. L.S. had stated on more than one occasion that she did not want to live with respondent. The aunt reported L.S. could have an attitude and struggled with this case. The report noted the aunt and L.S. appeared to be working through those issues together. At school, L.S. received passing grades and participated

in a mentoring program and "strings." She had gotten into minor trouble at school for talking back and arguing with peers, and her aunt appeared to be addressing those problems with L.S. The aunt provided L.S. with a safe, stable, and loving home environment.

¶ 19 L.S. had visited with respondent seven times. Prior to respondent reestablishing contact with the agency, L.S. had stated she did not want to see respondent. During visits, they joked around and laughed a lot. They appeared to have "somewhat of a bond." However, they did not show a great deal of physical affection and only talked about lighthearted topics. Lutheran Social Services did not believe the visits were in L.S.'s best interest because they appeared to cause her distress.

¶ 20 Respondent lived in Kankakee but was looking for housing in or near Champaign-Urbana. She worked 15 to 35 hours per week for Express Personnel. Respondent was currently on probation and had no arrests since the one that led to L.S. being taken into care. Respondent's case manager had referred her to the Prairie Center for a substance-abuse assessment, which she did not complete. Her anger-management classes had not yet started. The report noted respondent had been incarcerated and then had not contacted the agency until after the termination petition was filed. Thus, she had not engaged in or completed individual counseling or parenting classes. The report recommended the termination of respondent's parental rights.

¶ 21 Jeff Unger, as the guardian *ad litem* and court appointed special advocate, also filed a best-interest report, which recommended the termination of respondent's parental rights. It noted L.S. was 12 years old and lived with her aunt and 3-year-old cousin. L.S. had stated she only attended visits with respondent because she did not want to hurt her feelings. The report also noted the aunt worked hard to provide a safe and stable environment for L.S. The aunt on numerous occasions had stated she wanted permanent custody of L.S.

¶ 22 Rich testified she did not interview respondent but did confirm some information with her. She had never been to respondent's residence in Kankakee. Rich contacted respondent's probation officer, but her call was not returned. Rich had personally observed all but one of respondent's visits with L.S. Respondent and L.S. would meet at the computer section in the downstairs section of the public library. Respondent and L.S. would talk some and do things on the computer. There appeared to be a bond between L.S. and respondent. However, L.S. seemed to be putting on a happy and bubbly act for respondent and appeared uncomfortable. Respondent was never under the influence at the visits and interacted appropriately with L.S. Respondent did miss one visit when she was at a different computer section at the library and did not want to lose the computer to look for L.S. Additionally, Rich testified part of her recommendation for the termination of respondent's parental rights was based on her conversation with Amber Allen, L.S.'s counselor at ABC Counseling. Rich asked Allen to prepare a report for the best-interest hearing, but Allen failed to do so.

¶ 23 Respondent testified she was 31 years old. L.S. had lived with respondent her entire life, except for when respondent was incarcerated for 18 months and the most recent incarceration. She described her relationship with L.S. as "inseparable." Respondent cooked for L.S., had movie nights, played dolls with her, and took L.S. to church. Respondent wanted L.S. to live a better life than she did. Respondent was always able to provide L.S. with food, clothing, and shelter. She valued her relationship with L.S. and felt they were close. According to respondent, L.S. wanted to live with her but did not want to hurt her aunt's feelings. Respondent also testified she did not drink alcohol and was employed. Respondent's goals for L.S. were for her to graduate high school and attend college. She wanted her to be successful in life. Respondent believed she could provide the necessary support for L.S. to reach those goals.

¶ 24 After hearing the parties' evidence and arguments, the circuit court found it was in L.S.'s best interest to terminate respondent's and her unknown father's parental rights. That same day, the court entered the written termination order. Also, on that day, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 25 II. ANALYSIS

¶ 26 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2014)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the child's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 27 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving a minor, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding and best-interest determination unless they are contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830

N.E.2d 508, 516-17 (2005) (fitness finding); *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005) (best-interest determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 28 A. Respondent's Fitness

¶ 29 Respondent contends the circuit court's unfitness finding was against the manifest weight of the evidence. The State disagrees.

¶ 30 One of the bases for the circuit court finding respondent unfit was under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)), which provides a parent may be declared unfit if he or she fails "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 under Section 2-3 of Juvenile Court Act." Illinois courts have defined reasonable progress as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at

1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 31 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the relevant nine-month period was October 21, 2014, to July 21, 2015.

¶ 32 Here, respondent did not complete her services, which was, in part, a result of her incarceration for a large part of the relevant nine-month period and the services were not available to her. Incarceration does not toll the nine-month period during which reasonable progress must be made. *In re J.L.*, 236 Ill. 2d 329, 343, 924 N.E.2d 961, 969 (2010). Respondent was released from prison on April 1, 2015, but Lutheran Social Services did not receive communication from respondent until July 1, 2015, and then Keaton was unable to get in touch with respondent using the contact information respondent had provided. The circuit court did not find credible respondent's testimony she telephoned the agency at least twice a week after

her release. The court also noted respondent was aware of the no visitation order, yet she did not attempt to get that order changed upon her release. The no visitation order was in effect during the entire nine-month period at issue in this case. Moreover, L.S. was adjudicated neglected because her environment with respondent exposed her to domestic violence, but respondent never engaged in domestic-violence counseling. She also never completed a parenting class. The evidence clearly and convincingly showed the court was not able to return L.S. to respondent in the near future during the relevant nine-month period. Thus, we find the circuit court's finding respondent unfit based on her failure to make reasonable progress toward L.S.'s return during the first nine months after the neglect adjudication was not against the manifest weight of the evidence.

¶ 33 Our aforementioned finding does not downplay the significant personal progress respondent made during the neglect proceedings. For that, respondent should be commended. However, it was not enough in the initial nine-month period to show reasonable progress toward L.S.'s return. Moreover, our finding does not condone the actions of Lutheran Social Services in this case. The numerous case manager changes and the failure of the case managers to follow the agency's policies for incarcerated parents are troubling.

¶ 34 Because we have upheld the circuit court's determination respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West 2014)), we need not review any other bases for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 35 B. L.S.'s Best Interest

¶ 36 Respondent also challenges the circuit court's best-interest finding. The State contends the court's finding was proper.

¶ 37 During the best-interest hearing, the circuit court focuses on "the child's welfare and whether termination would improve the child's future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least-disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 38 We note a parent's unfitness to have custody of a child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 39 In this case, the State's evidence showed L.S. was 12 years old and had been in the home of her maternal aunt, where a younger cousin also lived, for close to 1 1/2 years. The aunt worked hard to provide a safe and stable environment for L.S. and desired to have permanent custody of L.S. L.S. and her aunt were very bonded. L.S. had stated numerous times she wanted to remain with her aunt. Rich reported L.S.'s visits with respondent appeared to cause her distress. While L.S. had lived with respondent for a large portion of her life, during that time, she was exposed to alcoholism, domestic violence, respondent's incarceration, and sexual abuse.

¶ 40 Accordingly, we find the circuit court's conclusion it was in L.S.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 43 Affirmed.