2016 IL App (4th) 160330-U

NO. 4-16-0330

FILED
November 3, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Logan County
v.	)	No. 12JA30
TONYA BALLARD,	)	
Respondent-Appellant.	)	Honorable
	)	William Gordan Workman,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) section 1(D)(s) of the Adoption Act only requires proof of one conviction, (2) the State proved respondent's repeated incarceration, and (3) the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In August 2015, the State filed a motion seeking a finding of unfitness and the termination of the parental rights of respondent, Tonya Ballard, as to her child, M.P. (born February 25, 2010). The petition alleged, in part, respondent's repeated incarceration prevented her from discharging her parental responsibilities. 750 ILCS 50/1(D)(s) (West 2014). Following a March 2016 fitness hearing, the trial court found respondent unfit. In April 2016, the court found it was in the best interest of M.P. to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting (1) section 1(D)(s) of the Adoption Act (*id.*) requires proof of more than one criminal conviction and proof of more than one period of

incarceration after a criminal conviction has occurred, (2) the trial court's fitness finding was against the manifest weight of the evidence, and (3) the court's best-interest finding was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Procedural History

¶ 6 In September 2012, the State filed a petition for the adjudication of wardship of M.P., alleging the minor was neglected in that his environment was injurious to his welfare due to respondent's drug use. 705 ILCS 405/2-3(1)(b) (West 2012). In December 2012, the trial court found M.P. neglected by clear and convincing evidence. After a January 2013 dispositional hearing, the court made M.P. a ward of the court and granted custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 7 B. Termination Proceedings

¶ 8 In August 2015, the State filed a petition to terminate respondent's parental rights, alleging numerous grounds of unfitness. However, prior to the fitness hearing, the State dismissed all but one of the allegations of unfitness. Accordingly, the State proceeded only on the ground that respondent's repeated incarceration prevented her from discharging her parental responsibilities (750 ILCS 50/1(D)(s) (West 2014)).

¶ 9 1. *Fitness Hearing*

¶ 10 In March 2016, the case proceeded to a fitness hearing. The State introduced a certified copy of conviction in McLean County case No. 13-CF-140, reflecting respondent's February 2014 conviction for delivery of a controlled substance.

¶ 11 Kristy Cosby, a foster-care case manager for DCFS, testified she had been the case manager for M.P. since September 2015. According to Cosby, respondent had been

incarcerated since July 2015, with a projected parole date in March 2017. Since her incarceration, respondent had not been able to provide any financial support, physical support, or parenting for M.P. However, she did maintain contact with M.P. through cards and letters. Cosby had no information regarding respondent's parenting prior to her tenure as case manager, which included a period of time during which respondent was not incarcerated.

¶ 12 Respondent testified she was arrested in July 2013 and remained in pretrial custody until February 2014, when she entered a plea of guilty in her McLean County drug case and received a sentence of probation. Respondent remained on probation from February 2014 until July 2015. During that time, she maintained housing and obtained employment, and she did provide financial support for M.P., who resided with her parents. Respondent also had regular, supervised visits with M.P. In July 2015, respondent received a prison sentence after she violated her probation. Although respondent's release date was scheduled for March 2017, she hoped to be released by December 2016, following her completion of a drug-treatment program. Respondent last visited with M.P. in August 2015, when her parents brought M.P. to visit her in prison. Despite her attempts to arrange further visits, DCFS did not provide any visitation between the August 2015 visit and the March 2016 fitness hearing.

¶ 13 Following the presentation of evidence, the trial court found respondent unfit. The court noted respondent had been incarcerated twice in the McLean County drug case, once from July 2013 until February 2014, when she received probation, and again since July 2015, when she violated that probation and received a prison sentence. The court found respondent had provided a minimum amount of financial support, but her ability to provide parenting for M.P. was lacking due to her repeated incarceration.

¶ 14 2. *Best-Interest Hearing*

¶ 15 In April 2016, the trial court held a best-interest hearing, where the court heard the following evidence.

¶ 16 a. The Best-Interest Report

¶ 17 The best-interest report noted, while respondent had made some progress throughout the case, that progress was hampered by her continued substance abuse and her incarcerations. At the onset of the case, respondent initially failed to complete two referrals for substance-abuse treatment, but she eventually completed residential treatment in July 2013. Upon her release from treatment, respondent was arrested on pending drug charges in McLean County. Respondent received a probation sentence in February 2014; however, after submitting positive drug screens, she was resentenced to prison in July 2015. The report also noted, during those times when respondent was not incarcerated, respondent failed to maintain stable housing or employment.

¶ 18 According to the best-interest report, M.P. was enrolled in school and doing well academically. However, he had speech and communications delays that often made him difficult to understand. He lived with his maternal grandparents in relative foster care until November 2015, at which time DCFS received a hotline call that illegal substances were being sold within the foster home. At that time, M.P. was placed in traditional foster care along with his half-sister, where he has bonded with his foster family. The foster family indicated a willingness to provide permanency for M.P.

¶ 19 b. Respondent

¶ 20 Respondent admitted she made mistakes in her past, but she has been receiving treatment for her substance abuse and depression while incarcerated. Additionally, she was in

several self-improvement groups, on the waiting list for several more, and attended Bible study in an attempt to use her time wisely. She also completed a parenting class.

¶ 21 Respondent believed she could be a good mother and testified she maintained a strong bond with M.P. She presented the trial court with a log of her interactions with M.P. and the caseworker. The log demonstrated she frequently sent cards and letters to M.P. Despite her attempts to procure visitation while in prison, she had only seen M.P. twice since her incarceration—once in August 2015 and once in April 2016. According to respondent, when she saw M.P. during the April 2016 visit, he ran up to her and hugged and kissed her. He also told her he loved her and referred to her as "mommy." During that April 2016 visit, respondent stated she played blocks with and held M.P. Prior to her incarceration in July 2015, respondent testified she had been receiving supervised visitation with M.P. every day because M.P. resided with her parents. Respondent acknowledged, during the pendency of the case, she lived at several different residences with various individuals.

¶ 22 c. The Trial Court's Finding

¶ 23 Following the presentation of evidence, the trial court found it was in M.P.'s best interest to terminate respondent's parental rights. The court noted the case had been pending since September 2012, and respondent's incarceration precluded her from providing food, shelter, and medical care for M.P. Even when she was not in custody, the court found respondent could not provide a stable environment, as she lived at various residences with various individuals over a short period of time. The court acknowledged respondent's love for M.P., but it found her love did not extend to providing the support M.P. needed. Although respondent was in substance-abuse treatment, the court noted she had previously completed treatment but failed to maintain her sobriety.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent argues (1) section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2014)) requires proof of more than one criminal conviction and proof of more than one period of incarceration after a criminal conviction has occurred, (2) the trial court's fitness finding was against the manifest weight of the evidence, and (3) the court's best-interest finding was against the manifest weight of the evidence. For the following reasons, we affirm. We address these assertions in turn.

¶ 27 A. Fitness Finding

¶ 28 Respondent makes two arguments with respect to the trial court's fitness finding. First, respondent asserts section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2014)) requires proof of more than one criminal conviction and proof of more than one period of incarceration after a criminal conviction has occurred. Second, respondent asserts the court's fitness finding was against the manifest weight of the evidence.

¶ 29 1. *The Application of Section 1(D)(s) of the Adoption Act*

¶ 30 Respondent contends the trial court improperly found her unfit under section 1(D)(s) of the Adoption Act where she had only one criminal conviction and only one period of postconviction incarceration. Where the respondent challenges the statutory interpretation of a provision of the Adoption Act, our review is *de novo*. *In re J.L.*, 236 Ill. 2d 329, 340, 924 N.E.2d 961, 967 (2010).

¶ 31 Under section 1(D)(s), a parent is unfit where:

> "The child is in the temporary custody or guardianship of [DCFS], the parent is incarcerated at the time the petition or

> motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child." 750 ILCS 50/1(D)(s) (West 2014).

Respondent asserts the statute specifically requires "repeated incarceration" as a result of criminal "convictions," which suggests that more than one conviction and period of incarceration is necessary to prove this ground of unfitness. We disagree.

¶ 32 Respondent asks us to employ various tools of statutory construction in interpreting this section of the Adoption Act. However, this provision has already been construed by our supreme court and appellate courts.

¶ 33 The supreme court addressed the legislature's use of the phrase "repeated incarceration," explaining:

> "By using the singular form, stating 'the parent's *repeated incarceration* has prevented the parent from discharging his or her parental responsibilities for the child,' the legislature makes reference to the general inclusive concept of 'repeated incarceration,' suggesting that courts may consider the overall impact that repeated incarceration may have on the parent's ability to discharge his or her parental responsibilities—circumstances which may flow from the fact of repeated incarceration, such as the diminished capacity to provide financial, physical, and emotional

support for the child." *In re D.D.*, 196 Ill. 2d 405, 420-21, 752 N.E.2d 1112, 1121 (2001).

Our appellate courts have further concluded one period of incarceration—and, therefore, one conviction—will support a finding of unfitness under section (1)(D)(s) "if the incarceration prevented the discharge of parental duties, including providing the child with a stable home and the necessary physical, emotional, and financial support." *In re Gwynne P.*, 346 Ill. App. 3d 584, 597, 805 N.E.2d 329, 340 (2004), *aff'd*, 215 Ill. 2d 340, 830 N.E.2d 508 (2005); see also *In re E.C.*, 337 Ill. App. 3d 391, 399, 786 N.E.2d 590, 597 (2003).

¶ 34 Although the aforementioned cases involve parents with multiple convictions or periods of incarceration, our courts have noted, "[i]t makes no difference to the child whether the parent's imprisonment results from a single conviction or several; the parent is equally unable to provide a stable home environment." *In re D.D.*, 309 Ill. App. 3d 581, 591, 723 N.E.2d 397, 406 (2000), *aff'd*, 196 Ill. 2d 405, 752 N.E.2d 1112 (2001). The statute's clear purpose is to ensure a minor will be provided with a stable home within a reasonable time and to provide a means by which to terminate a parent's rights where that parent is unable to parent due to repeated incarceration. *Id*. at 591, 723 N.E.2d at 405-06.

¶ 35 Further, the record demonstrates respondent's repeated incarceration. Respondent had been incarcerated for two periods of time since the case opened in September 2012—from July 2013 until February 2014, and from July 2015 onward. Respondent initially received probation, which included a jail term of 180 days, with credit for 221 days previously served. The 180-day jail term constituted incarceration resulting from a conviction. See *E.C.*, 337 Ill. App. 3d at 399, 786 N.E.2d at 597. Then, upon the revocation of respondent's probation, the trial court resentenced respondent to five years in prison. Accordingly, we conclude section 1(D)(s)

applies to respondent in this case, despite the fact she has one conviction that resulted in repeated incarceration.

¶ 36 Having determined section 1(D)(s) properly applies to the present case, we now turn to whether the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 37 2. *The Manifest Weight of the Evidence*

¶ 38 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id*. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009). The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604.

¶ 39 As noted above, the trial court found respondent unfit because her repeated incarceration prevented her from discharging her parental responsibilities. After her initial arrest in July 2013, respondent had an opportunity to prove herself on probation and maintain her sobriety. Instead, she violated her probation after continuing her drug use and was resentenced to prison, which prevented her from discharging her parental responsibilities. Based on testimony from the caseworker, the court determined these incarcerations prevented respondent from parenting M.P., establishing a stable home, and providing "the necessary physical, emotional, and financial support." *Gwynne P.*, 346 Ill. App. 3d at 597, 805 N.E.2d at 340. The extent of respondent's exercise of parental responsibility since July 2015 had been corresponding

with M.P. through letters and cards. Under such circumstances, we cannot say the court's finding was against the manifest weight of the evidence.

¶ 40 We therefore conclude the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 41 B. Best-Interest Finding

¶ 42 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The petitioner must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 43 The focus of the best-interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2014). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments ***[;]
>
> * * *
>
> (e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) 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;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." *Id*.

¶ 44 In reaching its decision, the trial court noted M.P. had been under DCFS care for nearly four years, during which time respondent never moved beyond supervised visitation. Respondent was incarcerated twice during the pendency of the case—from July 2013 through February 2014, and from July 2015 onward. As a result, the court determined respondent had been unable to provide M.P. with the permanency and support he needed. Even when she was not incarcerated, respondent failed to maintain stable housing, as she frequently moved and shared her housing with various roommates.

¶ 45 The trial court believed respondent loved M.P. but found her love needed to manifest itself beyond words by providing physical and emotional support. Although the court recognized respondent's participation in substance-abuse treatment in prison, the court also noted respondent had successfully completed treatment in the past only to relapse shortly thereafter. Therefore, her sobriety in prison failed to sway the court that she could maintain sobriety upon

her release. Even once respondent was released from prison, she would need to participate in further services and visitation before custody of M.P. could realistically be returned.

¶ 46 Conversely, M.P. was placed in a stable foster home where he was progressing well academically, lived alongside one of his half-sisters, and had developed a bond with his foster family. The foster family also expressed an interest in providing M.P. with permanency, a level of stability respondent would be unable to provide for a significant period of time.

¶ 47 Given that respondent was in no position to provide permanency or stability for M.P. in the foreseeable future, we conclude the court's best-interest finding was not against the manifest weight of the evidence.

¶ 48 III. CONCLUSION

¶ 49 For the foregoing reasons, we affirm the trial court's judgment.

¶ 50 Affirmed.