2016 IL App (4th) 160519-U

NOS. 4-16-0519, 4-16-0541 cons.

FILED
December 6, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.S., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-16-0519)	)	No. 13JA171
KAYLONI ABBOTT,	)	
Respondent-Appellant.	)	
	)	
In re: T.W., a Minor,	)	No. 13JA172
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0541)	)	
KAYLONI ABBOTT,	)	Honorable
Respondent-Appellant.	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which terminated respondent's parental rights.

¶ 2 In January 2016, the State filed petitions to terminate the parental rights of respondent, Kayloni Abbott, as to her daughter, D.S. (born December 12, 2012) (case No. 13-JA-171), and her son, T.W. (born November 23, 2009) (case No. 13-JA-172). In June 2016, the trial court conducted the first-stage hearing of termination proceedings, after which the court found respondent unfit. Following the July 2016 best-interest hearing portions of termination proceedings, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest deter-

minations were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 In November 2013, the State filed petitions to adjudicate D.S. and T.W. as abused and neglected minors. Following a shelter-care hearing, the trial court placed D.S. and T.W. in the temporary guardianship of the Department of Children and Family Services (DCFS). Following a January 2014 adjudicatory hearing, the trial court found that D.S. and T.W. were neglected. Following a dispositional hearing immediately thereafter, the court made D.S. and T.W. wards of the court and maintained DCFS as their guardian, and DCFS placed them with a custodian. After an October 2014 permanency hearing, the trial court ordered physical custody of the minors returned to respondent.

¶ 7 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 8 In January 2016, the State filed petitions to terminate respondent's parental rights as to D.S. and T.W., alleging that respondent was unfit within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). Specifically, the petition alleged, in pertinent part, that respondent was unfit because she had failed to make reasonable progress toward the return of the minors during three separate nine-month periods. See 750 ILCS 50/1(D)(m)(ii) (West 2014) (defining "unfit person").

¶ 9 1. *The June 2016 Fitness Hearing*

¶ 10 a. The State's Evidence

¶ 11 Kim Gaff, a foster care caseworker with Webster Cantrell Hall, testified that she worked with D.S. and T.W. beginning in July 2015. (Prior to Gaff's taking over, a different caseworker was assigned to the minors' case.) Gaff explained that as part of respondent's treat-

ment plan, respondent was required to engage in services, including substance-abuse counseling, mental-health counseling, and parenting classes.

¶ 12 Gaff testified that respondent never finished the required mental-health counseling but was successful in fulfilling her other service goals. In addition, she testified that after the minors were returned to the physical custody of DCFS, respondent missed some scheduled visitations with them, which was "very disruptive to [the] children." In addition, the minors would sometimes report to Gaff that they did not have enough food to eat when they visited respondent's home. Further, one of the minors' foster parents reported that, after the visitations, respondent would return the minors dirty, sometimes without underwear, or wearing clothes that were too big.

¶ 13 Gaff also explained that, while the previous caseworker was handling the minors' cases, the following occurred in April 2015:

> "The report is that they came back into care because [T.W.] was tied [up], and apparently he reported this to a head start teacher who reported it to DCFS. And upon investigating[,] it was determined that, yes, [T.W.] was tied up."

Gaff recommended that terminating respondent's parental rights would provide the minors with the necessary "consistency in care" that they required. In addition, Gaff was skeptical that respondent could satisfy the children's daily needs, such as having sufficient food. Gaff also noted that she had had several conversations with respondent about "keeping appointments, remembering the importance of keeping food in the house, and remembering what we need to do for the children." In addition, T.W. told Gaff that he did not want to return to respondent's home because he "does not feel safe" and because respondent did not give him enough food when he visited. On cross-examination, Gaff testified that up until the children were removed in March

2015, respondent had been "overall compliant" with her service plans.

¶ 14 Caitlin Deady testified that she was respondent's counselor. She had been working with respondent since January 2016 and had reviewed respondent's case history. Deady testified that of 25 scheduled appointments she had with respondent, respondent cancelled 4 of them and failed to attend 6 of them. However, Deady described respondent's attendance as "consistent."

¶ 15 Therapist Andrea Burns from Webster-Cantrell Hall testified that she began treating T.W. in July 2015 and respondent in August 2015. Burns testified that respondent missed their second meeting and did not call to reschedule. Respondent did not attend another meeting until October 2015. Burns was not able to complete the assessment process for respondent. As to T.W., Burns testified that he needed structure in his life to be successful; otherwise, he would suffer stress and anxiety.

¶ 16 b. Respondent's Evidence

¶ 17 Respondent recalled Gaff to testify. Gaff testified that since the minors were returned to care, respondent had successfully completed all the services required of her but had not completed the required ongoing mental-health counseling.

¶ 18 c. The Trial Court's Judgment

¶ 19 At the conclusion of the hearing, the trial court found that this case was unusual because respondent "for the most part complied with the requirements of her service plan." The court found credible Gaff's testimony that the children sometimes did not receive enough food when visiting respondent. The court found that the relevant issue "was not with [respondent's] effort, which she should be commended for, but rather not making progress." The court found that respondent was not "consistent" in meeting minimal parenting standards. The court ultimate-

ly made a finding that the State had proved by clear and convincing evidence that respondent was unfit.

¶ 20 2. *The July 2016 Best-Interest Hearing*

¶ 21 a. The State's Evidence

¶ 22 Gaff testified that she visited D.S. and T.W. at least two times a week at their foster home, where they were placed together in March 2016. She testified that the minors were doing "quite well." T.W.'s day care provider told Gaff that T.W.'s behavior had improved since the previous summer. Gaff testified further that T.W.'s older foster brother was a good role model and that T.W. had signed up for football at the YMCA. D.S. was receiving speech services at school and her speech was improving. Gaff also noted that D.S. had become "a fun-loving three-year-old child" and was "blossoming."

¶ 23 Gaff explained that it took a while for the children to bond with their foster parents but "they love their foster mother." The minors referred to both respondent and their foster mother as "Mom" and referred to their foster grandmother as "Grandma." The foster parents had agreed to adopt D.S. and T.W. and also to allow respondent to have supervised visitation after the adoption. In addition, the foster home was near respondent's home, so the minors were able to maintain the connections to their family, church, and community. Gaff opined that the foster home was an "excellent" placement for D.S. and T.W. Gaff also testified that over the past two years, respondent had been late or cancelled 32 of 104 scheduled visits with the minors. In Gaff's opinion, "consistency and judgment" were her two biggest concerns with respondent's parenting ability.

¶ 24 b. Respondent's Evidence

¶ 25 Respondent testified that at the time of the best-interest hearing, she had visits

with D.S. and T.W. once a month and that the minors were "really excited" to see her during the visits. At the end of the visits, D.S. would hide and both minors would tell respondent that they did not want to leave. The minors continued to refer to respondent as "mother." As to the alleged missed meetings, respondent explained that she was a single, working mother without a vehicle who tried her hardest to maintain her appointments. She also stated that the scheduled times of the visits kept changing, which made it hard to attend them consistently.

¶ 26 c. The Trial Court's Judgment

¶ 27 Following argument, the trial court determined by a preponderance of the evidence that it was in the minors' best interest to terminate the parental rights of respondent.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant argues that the trial court's findings that (1) respondent was unfit and (2) that it was in the best interest of the minors to terminate respondent's parental rights were both against the manifest weight of the evidence. For the following reasons, we disagree and affirm the trial court's judgment.

¶ 31 A. The Trial Court's Fitness Determination

¶ 32 1. *The Applicable Statute and the Standard of Review*

¶ 33 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) defines an "unfit person" as "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 Adoption Act then lists several grounds that can support a finding of unfitness, including the following:

> "Failure by a parent *** 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)(ii) (West 2014).

¶ 34 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

> "[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."

¶ 35 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

> " 'Reasonable progress' *** exists when the [trial] 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 ***." (Emphases in original.)

¶ 36 The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For

cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006), *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067-68, 808 N.E.2d 596, 605 (2004), *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999), and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 37 The State has the burden to prove unfitness by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005).

¶ 38 2. *This Case*

¶ 39 In this case, we conclude that the State met its burden to establish that respondent was unfit because she failed to make "reasonable progress" during two distinct nine-month time periods: (1) October 24, 2014, through July 24, 2015; and (2) April 8, 2015, through January 8, 2016.

¶ 40 As to the period from October 24, 2014, through July 24, 2015, the evidence established that the minors were returned to respondent's temporary custody on October 1, 2014. However, they were again removed from her custody in April 2015. Certainly, having the minors removed from respondent's custody does not constitute reasonable progress toward having the children *returned* to respondent's custody. To the contrary, having the children removed is the *opposite* of having the children returned. In no way could a parent make reasonable progress toward the return of her children during a nine-month period in which those children were removed from her custody because of neglect or abuse.

¶ 41 Turning to the nine-month period from April 8, 2015, through January 8, 2016, we conclude that the State met its burden to prove that respondent failed to make reasonable progress. Burns testified at the termination hearing that respondent missed several meetings, and he was never able to complete an assessment of respondent. In addition, Gaff testified that during

this time period, the minors returned dirty and hungry from their visits with respondent. The problems continued despite Gaff's speaking to respondent about the minors' need for consistency. Considering that consistency was one of the key problems with respondent's parenting, respondent's ongoing inconsistent behavior showed a failure to make reasonable progress. Considering the foregoing testimony, we conclude that the evidence was sufficient to prove by clear and convincing evidence that respondent failed to make reasonable progress.

¶ 42 B. The Trial Court's Best-Interest Determination

¶ 43 1. *The Applicable Law and Standard of Review*

¶ 44 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 45 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 46 2. *This Case*

¶ 47 In this case, the evidence established that the minors had been placed with a foster family, where they were thriving. The foster family was providing the minors with the structure, consistency, and stability that they were not receiving from respondent, despite her claims that she was making her best effort to do so. We consider the following remarks by the trial court

particularly pertinent in this case:

> "I have considered all of the best interest factors that appear at 705 ILCS 405/1-3. After considering all of those factors, I believe that the most important ones that come to mind as I review the evidence in this case include the child's sense of attachment, the child's sense of security, familiarity, continuity, and, of course, very, very important, the child's needs [*sic*] for permanence. Permanence, including the need for stability and continuity of relationships."

¶ 48 We agree with the trial court that remaining in the foster home was in the best interest of D.S. and T.W. Therefore, the court's determination that remaining in the foster home was in the minors' best interest was not against the manifest weight of the evidence.

¶ 49 III. CONCLUSION

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

¶ 51 Affirmed.