2017 IL App (3d) 160576-U

Order filed February 10, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

In the Interest of S.C., a Minor,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	Appeal No. 3-16-0576 Circuit No. 14-JA-164
v.	)	
JACKIE C.,	)	Honorable Paula Gomora,
Respondent-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Wright and Carter concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court terminating respondent's parental rights was not against the manifest weight of the evidence; the court did not err in appointing a guardian with the authority to consent to adoption; the court had personal jurisdiction over the respondent; and the respondent received adequate notice of the petition to terminate his parental rights and all hearings held on the petition.

¶ 2 This appeal is from a judgment of the circuit court of Will County terminating the parental rights of Jackie C. (respondent) regarding his daughter, S.C., a minor born April 21,

2010. On appeal, the respondent maintains that: (1) the trial court lacked the personal jurisdiction over him necessary to terminate his parental rights; (2) the court's finding that it was in the best interest of S.C. to terminate the respondent's parental rights was against the manifest weight of the evidence; and (3) the court erred in appointing a guardian with authority to consent to adoption. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On November 4, 2014, the State filed a petition pursuant to section 2-3(1)(c) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(1)(c) (West 2012) alleging that S.C. was neglected due to an injurious environment. A shelter care hearing was held the next day, at which the respondent and the child's mother, Jeanna R., were both present and represented by separate counsel.

¶ 5 Claire Yanes, a child protection supervisor with the Illinois Department of Children and Family Services (DCFS) testified for the State. Yanes testified that DCFS received a hotline tip on September 26, 2014, regarding a domestic violence incident involving the minor's parents. Yanes interviewed S.C. at the residence on the date of the incident. The child described being in the bathtub when an argument broke out between her parents. The child became frightened and locked the bathroom door, and only unlocked the door after the respondent repeatedly pounded on the door. When she emerged from the bathroom, the minor saw that the respondent was bleeding from the neck and her mother was holding a piece of broken glass. Yanes testified that she interviewed the respondent and Jeanna R. at the scene, and both admitted striking each other during an argument. Yanes further testified that she was made aware that the respondent was later charged with domestic battery and a no-contact order had been made a condition of bond. Under the no-contact order, the respondent was not to have any contact with Jeanna R. and was

required to stay away from the residence. Jeanna R. and S.C. were allowed to return to the residence. The record indicates that Yanes was cross-examined by the respondent's counsel.

¶ 6 Tiffany Sloan, a case manager with Children's Home and Aid, testified for the State. She testified that she was assigned to manage the case on October 27, 2014, the date upon which DCFS received a report that the respondent was living at the residence in violation of the no-contact order. Sloan spoke with Jeanna R., who admitted allowing the respondent to return to the home. Sloan testified that she believed the minor was in danger and took the child into protective custody, thus necessitating the shelter care hearing. The record indicates that Sloan was cross-examined by the respondent's counsel.

¶ 7 Following arguments by counsel, the court found probable cause to believe the minor was neglected due to an injurious environment and ordered the child placed in shelter care. The court found that respondent and Jeanna R. had failed to comply with intact services and had violated the current safety plan when the respondent returned to the residence. The child was placed in the temporary custody of a relative and Lutheran Children and Family Services (LCFS) was appointed guardian.

¶ 8 On March 19, 2016, the respondent and Jeanna R. entered into a stipulation with the State admitting that S.C. was neglected due to an injurious environment. The factual basis for the stipulation was the testimony heard at the November 5, 2015, shelter hearing.

¶ 9 On April 23, 2015, the court held a dispositional hearing at which the respondent was present with counsel. The State presented evidence at the hearing including the stipulations of the respondent and Jeanna R., a dispositional report issued by LCFS and the service plan drafted by LCFS on March 19, 2015. The respondent did not object to the evidence offered at the hearing. The respondent's attorney noted for the record that the respondent had not completed

services, due to an arrest and incarcerations in the Cook County and Will County. He stated that the respondent had been recently released and was looking forward to cooperating with LCFS so as to have his daughter returned to him. Following the close of arguments, the court found both parents to be unfit, made the child a ward of the court, set a goal of return home, and admonished both parents to comply with the LCFS service plan or risk the permanent loss of their daughter.

¶ 10 With regard to the respondent, the plan required him to: (1) maintain a domestic violence free home; (2) complete a domestic violence assessment and follow all resulting recommendations; (3) comply with all no-contact provisions of a current order of protection; (4) complete a substance abuse assessment and comply with all resulting recommendations; (5) inform LCFS of any changes of address and cooperate with all caseworker instructions; and (6) successfully comply with all random drug screens. The plan established December 13, 2014, through November 30, 2015, as the relevant time period for measuring reasonable efforts and reasonable progress. A second plan was subsequently approved by the court which established the relevant time period for demonstrating reasonable progress as beginning March 19, 2015, and concluding December 19, 2015.

¶ 11 On October 6, 2015, the respondent and Jeanna R. were arrested and charged with burglary. Both individuals subsequently plead guilty to the charge. The respondent was sentenced to a three-year term of imprisonment in the Illinois Department of Corrections (IDOC) and Jeanna R. was sentenced to a term of probation. The record established that the respondent had a projected release date of March 31, 2017.

¶ 12 On November 15, 2015, the court held a permanency review hearing. At the time of the hearing, the respondent was in custody at the Will County Adult Detention Facility awaiting sentencing on the burglary charge. The record indicates that the respondent appeared at the

review hearing. The court noted that the respondent had shown no progress toward reunification. The goal remained reunification and the case was continued for further review in 60 days.

¶ 13 On January 22, 2016, another review hearing was held, at which the State filed a petition to terminate the parental rights of both parents, based upon their failures to make reasonable progress toward reunification. 750 ILCS 50/1 (D)(m)(I) (West 2012). The respondent was not present at this hearing, having been recently incarcerated at the IDOC facility in Vienna, Illinois. The respondent was represented by Greg DeBord, an attorney with the Will County Public Defender's office. On behalf of the respondent, DeBord acknowledged receipt in open court of the State's petition to terminate parental rights. On the State's motion, the court issued a writ to the IDOC commanding that the respondent be brought to court for a hearing on February 16, 2016.

¶ 14 On February 16, 2016, the court held a hearing on the State's petition to terminate the respondent's parental rights. The record established that Jeanna R. received a summons on the petition to terminate her parental rights; however, the respondent was never served with a summons on the petition to terminate his parental rights. Despite the fact that the respondent was not served with a summons, the respondent was present in court on the hearing date, having been transported to the courthouse from the IDOC facility in Vienna pursuant to the writ issued by the court on January 22, 2016. The respondent appeared without counsel, so the court, on its own motion, appointed the public defender's office. Patricia Grimes-Adair, assistant public defender, entered an appearance for the respondent. The court inquired whether the respondent had received a copy of the State's petition to terminate parental rights, to which counsel replied "I have a copy of the petition, your honor." The court inquired whether the respondent was ready to proceed on the State's petition. The respondent, through his counsel, made an oral

motion to continue the hearing on the State's petition to terminate his parental rights. The respondent addressed the court directly, saying "[i]f you can just give me a continuance, I promise I will come out and do exactly what I got to do to get her back." The court, commenting that the case had been pending for over two years, continued the hearing on the State's petition to August 23, 2016.

¶ 15 On August 23, 2016, the respondent appeared in court and with his appointed counsel, Grimes-Adair. It appears from the record that the respondent had not been returned to the IDOC facility in Vienna following the February 16, 2016, hearing, having instead been housed at the IDOC facility in nearby Stateville to await adjudication of the instant matter. Following requests by counsel for both parents, the matter was continued to September 15, 2016.

¶ 16 On September 15, 2016, the matter proceeded to the evidentiary hearing on the State's petition to terminate parental rights. The respondent was present with counsel. Neither the respondent, nor his counsel, raised any objection to the court's lack of personal jurisdiction over him. Neither the respondent, nor his counsel, raised any objection to a lack of proper notice of the hearing on the State's petition to terminate his parental rights.

¶ 17 The State presented the testimony of Kimberly West, the LCFS caseworker assigned to S.C's case. West testified that, during the relevant time period, the respondent had obtained a domestic violence assessment and had not engaged in acts of domestic violence. West was aware of no violations of the order of protection in effect during the relevant period. West observed, however, that the respondent had failed to complete the prevention of domestic violence classes as required under the assessment. West testified that the respondent attended the classes sporadically and was discharged from the program as "unsuccessful." West further testified that the respondent had failed to complete a domestic violence treatment program,

apparently due to his incarceration in October 2016. West testified that all of the respondent's drug screens were negative, however, he failed to complete the substance abuse evaluation as required under the plan. West further testified that the respondent had not kept LCFS apprised of his current residence during the relevant time period. She further noted that she had not been able to evaluate the respondent's home environment due to the fact that he was living with friends and then was incarcerated. West opined that the respondent was no closer to the goal of family reunification on the date of the hearing than he was when the service plan had been established. West further observed that much of the respondent's failure to demonstrate reasonable progress was due to his incarceration on the burglary charge and subsequent conviction. West was cross-examined by the respondent's counsel.

¶ 18 Crystal Bailey testified that she had been S.C.'s foster parent since November 2014. She testified that she was related to the respondent. Bailey testified that the child had integrated with her family, including her four children, and that S.C. shared a bedroom with two of her daughters. Bailey testified that, at the time of the hearing, S.C. was attending school in first grade and was making satisfactory progress. Bailey testified that it was her wish to adopt S.C. Bailey was cross-examined by the respondent's counsel.

¶ 19 Following the close of evidence, the respondent's counsel presented closing argument in which it was maintained that the respondent had demonstrated reasonable progress toward the return of S.C. to his care. Counsel also argued that the respondent's incarceration was due to end in March 2017, and that he would then be able to complete the remainder of the tasks in his plan.

¶ 20 Following arguments of counsel, the circuit court found that the respondent had failed to make reasonable progress toward reunification with S.C. and found that it was in the minor's

best interest that the respondent's parental rights be terminated.[1] The court appointed a guardian with the authority to consent to adoption. The termination order contained a finding by the court that the respondent had received proper notice of the petition to terminate by personal service in open court. The respondent filed a timely notice of appeal.

¶ 21 ANALYSIS

¶ 22 1. Jurisdiction and Notice

¶ 23 The respondent first maintains that the circuit court did not have personal jurisdiction over him, thus the order terminating his parental rights is void *ab initio*. *In re M.W.*, 232 Ill. 2d 408, 411 (2009). In support of this argument, he points out that he was not served with a summons at the time the State filed the petition to terminate his parental rights, nor at any other time during the proceedings. He maintains that at the time the State filed the petition to terminate his parental rights, it was required to serve his personally with a summons and copy of petition. He further argues that personal service of summons and petition upon him was necessary in order to establish the court's jurisdiction to enter judgment on the petition to terminate his parental rights. We review *de novo* the legal question of whether the circuit court obtained personal jurisdiction over the respondent. *In re A.M.*, 402 Ill. App. 3d 720, 723 (2004).

¶ 24 We find that the trial court had personal jurisdiction over the respondent at the time the order terminating his parental rights was entered. In doing so, we note that the respondent has conflated the concepts of personal jurisdiction and adequate notice. These are two separate concepts which we will address in turn. *In re Haley D.*, 403 Ill. App. 3d 370, 373 (2010) *aff'd on other grounds*, 2011 IL 110886.

[1] The court also terminated the parental rights of Jeanna R. in the same proceeding.

¶ 25 Personal jurisdiction over a party to a proceeding may be established either by service of process in accordance with statutory requirements or by a party's voluntarily submission to the court's jurisdiction by appearing in the proceedings. *BAC Home Loans Servicing, L.P. v. Mitchell*, 2014 IL 116311 ¶ 18; *In re D.J.S.*, 308 Ill. App. 3d 291, 294 (1999). The relevant statute at issue in this matter provides that "[t]he appearance of *** a person named as a respondent in a petition, in any proceeding under this Act shall constitute a waiver of service of summons and submission to the jurisdiction of the court." 750 ILCS 405/2-15(7) (West 2012).

¶ 26 Here, the record established that the respondent was never served with a summons at any point in the proceedings before the circuit court. The record is clear, however, that the respondent voluntarily appeared, with counsel, at the shelter care hearing on November 5, 2014, the dispositional hearing on April 32, 2015, and a permanency review hearing on November 15, 2015. The record further established that the respondent was aware of the nature of the proceedings, the consequences of an adverse ruling in the matter, and the need to comply with the rulings of the court. Moreover, the record established that the respondent actively participated in the proceedings. We hold that, despite the lack of service of process upon the respondent, he voluntarily appeared and participated in the proceedings before the court, thus the court properly exercised personal jurisdiction over him. See *In re A.M.*, 402 Ill. App. 3d at 724 (where father was not served with summons but appeared in court four times, he voluntarily submitted to the personal jurisdiction of the court); *In re D.J.S.*, 308 Ill. App. 3d at 294 (respondent's voluntary appearance at initial hearing in abuse and neglect proceeding was sufficient to confer personal jurisdiction in the matter).

¶ 27 While the respondent acknowledges that he participated in the proceedings, he maintains that service of summons at the time the State filed the termination petition or voluntary

participation thereafter, were necessary to confer personal jurisdiction on the court in order for it to rule on the termination petition. Our courts have consistently rejected this argument. *In re Haley D.*, 403 Ill. App. 3d at 373 (jurisdiction over a respondent need not be reestablished once it has been established in an existing juvenile case); *In re Abner P.*, 347 Ill. App. 3d 903, 908 (2004) (the filing of a petition to terminate parental rights does not initiate an entirely new proceeding so as to require the reissuance of a summons for a respondent who is already a party to the proceedings); *In re D.J.*, 361 Ill. App. 3d 116, 119 (2005) (because the termination phase of a juvenile case proceeds under the same case number as the adjudication phase of the case, jurisdiction over a respondent need not be reestablished once it has been properly established in the existing juvenile case). We hold, therefore, that the personal jurisdiction over the respondent existed throughout the entire proceedings before the circuit court.

¶ 28 Our holding that the court had personal jurisdiction over the respondent does not end the inquiry. We must also address whether the respondent had sufficient notice of the content of the termination petition and any hearings on the termination petition so as to comply with the requirement of procedural due process. *In re Haley D.*, 403 Ill. App. 3d at 425. Proceedings involving the termination of parental rights must comply with requirements of due process, including the fundamental requirement that parents receive adequate notice of all proceedings. *In re A.M.*, 402 Ill. App. 3d at 723-24. Pursuant to section 2-15(c) of the Act, adequate notice of motion to terminate parental rights is governed by Supreme Court Rule 11. 705 ILCS 405/2-15(c) (West 2012). Supreme Court Rule 11 allows for service upon a party's attorney of record, or by personal service upon the party. Ill. S.Ct. R. 11 (eff. Jan 1, 2016).

¶ 29 Our review of the record in this case reveals that, contrary to the respondent's assertion, he received adequate notice of the termination petition and the hearing on that petition so as to

satisfy due process notice requirements. The petition to terminate the respondent's parental rights was filed on January 22, 2016. The record shows that attorney DeBord, an assistant public defender, was appointed as the respondent's attorney of record. The record further established that DeBord acknowledged receipt of the petition to terminate parental rights in open court on that date. This fact alone would satisfy the Rule 11 requirement that service the petition be made upon a party's attorney of record.

¶ 30 We note, however, that in addition to service upon the respondent's attorney of record, the record established other indicia that the respondent received actual notice of the termination petition and subsequent hearings. Actual notice to the respondent also satisfies the requirements of Supreme Court Rule 11. Ill. S.Ct. R. 11(b)(1) (eff. Jan 1, 2016).

¶ 31 The respondent was present in court on February 16, 2016, for the initial hearing on the State's petition to terminate parental rights. When the court inquired whether the respondent was aware of the content of the State's petition, counsel responded "I have a copy of the petition, your honor." The respondent invites this court to speculate that his counsel did not share the petition with him, an invitation we decline. Moreover, the respondent's own words to the court at the February 16, 2016, hearing establish that he was well aware of the nature and content of the petition to terminate his parental rights: "[i]f you can just give me a continuance, I promise I will come out and do exactly what I got to do to get her back." Additionally, the respondent was present at the hearing on the petition to terminate held on August 23, 2016, at which time he requested and was granted a continuance. We note that he raised no due process challenge based upon lack of notice. Finally, the respondent was present with counsel when the evidentiary hearing was held on September 15, 2016. The record shows that the respondent and his counsel put on a defense against the petition to terminate his parental rights and did so without

challenging the adequacy of notice of the proceedings. See *In re Jerome F.*, 325 Ill. App. 3d 812, 817 (2001) (failure to raise the issue of adequate notice in the trial court forfeits the issue on appellate review).

¶ 32 Based upon our review of the record, we conclude that the respondent received adequate notice of the content of the petition to terminate his parental rights and all the hearings on the petition so as to satisfy all statutory and constitutional due process requirements.

¶ 33 2. Termination of Parental Rights

¶ 34 The respondent next maintains that the circuit court erred in finding that it was in the best interest of S.C. that his parental rights be terminated. He maintains that he made reasonable progress toward the child's return and that, if given more time, he would be able to demonstrate sufficient progress to warrant return of the child.

¶ 35 In cases involving the termination of parental rights, each case is *sui generis* and must be decided based upon the unique facts and circumstances presented. *In re D.D.*, 196 Ill. 2d 405, 422 (2001). A trial court's finding of unfitness is accorded great deference since the court has the best opportunity to view and evaluate the parties and their testimony, and that finding will not be overturned on appeal unless it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). A decision is not against the manifest weight of the evidence unless the opposite conclusion is clearly apparent. *Id*. Reasonable progress exists when the trial court can objectively conclude that the minor will be able to return to parental custody in the near future. *In re Daphne E.*, 368 Ill. App. 3d 1052, 1067 (2006). The benchmark for measuring reasonable progress is compliance with service plans and court directives. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). It is well-settled that a respondent's incarceration during the relevant nine-

month period for demonstrating reasonable progress will neither excuse lack of progress nor require the court to extend the relevant time period. *In re J.L.*, 236 Ill. 2d 329, 342-43 (2010).

¶ 36 Viewing the record in its entirety, we cannot say that the court's finding that the respondent was unfit and his parental rights should be terminated was against the manifest weight of the evidence. The record shows that, while he had demonstrated compliance with some plan requirements, the respondent had failed to demonstrate necessary compliance with all of the plan requirements. Moreover, the circuit court determined that the respondent's failure to demonstrate reasonable progress was largely of his own making when he chose to commit the crime of burglary and subject himself to incarceration during the relevant nine-month time period. We cannot find that the court erred in this conclusion.

¶ 37 3. Adoption

¶ 38 Lastly, the respondent maintains that, even if the circuit court correctly determined that he failed to demonstrate reasonable progress toward reunification with S.C., the court nonetheless erred in appointing a guardian with authority to consent to adoption. We disagree.

¶ 39 Once evidence of parental unfitness has been found, all of a parent's rights must yield to the best interest of the child. *In re T.G.*, 147 Ill. App. 3d 484, 488 (1986). The court's determination of what is in the best interest of the child, including the appointment of a guardian with the authority to consent to adoption, is given great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re D.M.*, 298 Ill. App. 3d 575, 581 (1998). Here, it cannot be said that the trial court's determination that it was in the best interest of the child to appoint a guardian with authority to consent to adoption was against the manifest weight of the evidence. The record established that the child was currently in the care

of a stable family willing to adopt the child and prospects of reunification were nonexistent. Nothing in the record established that an opposite conclusion was clearly apparent.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Will County, terminating the respondent's parental rights regarding S.C., and appointing a guardian with the authority to consent to the child's adoption is affirmed.

¶ 42 Affirmed.