2017 IL App (3d) 170231

Order filed July 10, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re B.M.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0231
	)	Circuit No. 13-JA-52
v.	)	
	)	
T.W.,	)	
	)	Honorable Theodore G. Kutsunis,
Respondent-Appellant).	)	Judge, Presiding.

In re K.W.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0232
	)	Circuit No. 13-JA-53
v.	)	
	)	
T.W.,	)	
	)	Honorable Theodore G. Kutsunis,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness finding was not against the manifest weight of the evidence.

¶ 2 In September 2016, the State filed a petition to terminate respondent's parental rights as to her two children, B.M. (born August 20, 2004) and K.W. (born July 16, 2011). Following a February 2017 fitness hearing, the trial court found respondent unfit to resume her parenting responsibilities. After a March 2017 best-interest hearing, the court terminated respondent's parental rights. Respondent appealed the trial court's order, arguing that its unfitness finding was against the manifest weight of the evidence. She does not challenge the trial court's best-interest finding. We affirm.

¶ 3 FACTS

¶ 4 On September 5, 2013, the State filed a petition for adjudication of wardship, alleging that B.M. and K.W. were neglected minors pursuant to section 2-3(1)(b) of the 1987 Juvenile Court Act (Act) (705 ILCS 405/2-3(1)(b) (West 2012)). The petition alleged that, on September 2 and September 3, police responded to disturbance reports at respondent's residence; police responded to similar reports at this residence approximately 16 times between June and September 2013. Police described the residence as a "flop house" with pervasive drug use. The residence was "filthy." Police noted several food items on the kitchen and bedroom floors.

¶ 5 The petition further alleged that respondent knew that other residents used drugs when she moved into the house with her children. Respondent showed police officers crack cocaine pipes and syringes "lying around" the residence. Respondent's third child, who is not subject to these proceedings, was not in school when police arrived. Respondent claimed she could not get

him to school; she had no transportation or money for bus fare. B.M.'s grandmother took him to school. Finally, the petition alleged that K.W. had severe eczema covering her body; respondent could not recall when she last treated K.W.'s condition.

¶ 6 Police arrested respondent, and the State charged her with two counts of child endangerment. The Department of Child and Family Services (DCFS) took respondent's children into protective custody. DCFS placed B.M. and K.W. together in a foster home. The Center for Youth and Family Solutions (CYFS) supervised respondent's case. On September 20, the trial court held an adjudicatory hearing; respondent appeared with counsel and stipulated to the petition's alleged facts. The court granted the State's petition, finding that respondent neglected B.M. and K.W. as defined by the Act (705 ILCS 405/2-3(1) (West 2012)).

¶ 7 On October 25 2013, the trial court held a dispositional hearing. The court assigned guardianship to DCFS and CYFS. The court also ordered respondent to obtain a substance abuse evaluation and follow any treatment recommendations; obtain a psychiatric evaluation and follow any treatment recommendations; cooperate with family and individual counseling; and maintain appropriate housing and income. These directives coincided with respondent's service plan, which CYFS prepared. Additionally, the court established a permanency goal for the minors to return home within 12 months. Finally, the court granted DCFS and CYFS discretion to schedule and monitor respondent's visitations with B.M. and K.W.

¶ 8 Over the course of three years, respondent failed to complete her service plan directives. In September 2016, the State filed a supplemental termination petition. The petition alleged that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to her children's welfare (750 ILCS 50/1(D)(b) (West Supp. 2013)); failed to make reasonable efforts to correct the conditions or circumstances giving rise to her children's removal during either of

two nine-month periods, October 25, 2013, through July 25, 2014, and December 14, 2015, through September 14, 2016 (750 ILCS 50/1(D)(m)(i) (West Supp. 2013)); or make reasonable progress toward returning her children home during either of the same two nine-month periods (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013)). The petition further alleged that respondent failed to maintain or provide proof of employment or income during either period; failed to contact CYFS for five weeks during the first period; failed to accommodate her children's medical conditions during the second period; failed to maintain sobriety or complete substance abuse treatment in either period; failed to consistently attend therapy during the first period; and failed to maintain appropriate housing during the second period.

¶ 9 The trial court held a fitness hearing on February 10, 2017. Respondent appeared for the hearing with counsel; however, she presented no evidence. The State called two witnesses—Ashley Velez, CYFS site supervisor, and Cecily Dorsett, CYFS placement supervisor. In making its fitness determination, the trial court considered only evidence relevant to the two nine-month periods cited in the State's termination petition, as must we. *In re J.L.*, 236 Ill. 2d 329, 341 (2010); see also *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶¶ 7-9.

¶ 10 I. First Nine-Month Period (October 25, 2013, through July 25, 2014)

¶ 11 Velez supervised respondent's case for nearly three years. She testified that respondent moved into her sister's residence to establish a "return home" option; CYFS deemed respondent's parents' home inappropriate due to their histories with DCFS. CYFS caseworkers initially provided respondent with basic parenting training, from which she benefitted. Accordingly, CYFS increased respondent's visitation privileges.

¶ 12 However, respondent failed her substance abuse treatment shortly after enrollment. She began failing drug screenings in January 2014. Respondent's substance abuse treatment provider

"unsuccessfully discharged" her in April 2014 due to continued positive drug screens. CYFS also reduced respondent's visitation privileges due to her positive drug screens.

¶ 13 At her mental health assessment, respondent's treatment provider prescribed her medication for sleep problems, anxiety, and depression. She began individual therapy at the Bonnie Howard Center in January 2014. Velez testified that respondent attended therapy "pretty inconsistently" from January through July 2014, when she was unsuccessfully discharged.

¶ 14 Despite her claims that she was working, respondent never provided proof of employment or income requested by CYFS. In April and May 2014, respondent failed to contact CYFS or her children for five weeks. This absence, along with respondent's failure to complete her therapy treatment, resulted in CYFS further reducing her visitation privileges.

¶ 15 On April 25, 2014, the trial court held a permanency review hearing. It found that respondent had not made reasonable and substantial progress or reasonable efforts toward returning her children home. The court continued respondent's service plan and maintained the 12-month permanency goal.

¶ 16 By the end of the first nine-month period, respondent satisfied only one of her primary service plan directives—she moved in with her sister to establish suitable housing for her children. As of July 2014, however, respondent was not enrolled in substance abuse treatment or therapy. Nor had respondent provided CYFS with proof of employment or income.

¶ 17 II. Second Nine-Month Period (December 14, 2015, through September 14, 2016)

¶ 18 Prior to December 2015, CYFS found that too many people lived in respondent's sister's residence; therefore, CYFS deemed the residence unsuitable as a return home option. Respondent moved back to her parents' home. CYFS approved respondent living with her parents so long as they did not assume caretaking roles for either child at any time. However,

CYFS deemed respondent's living situation inappropriate because respondent's mother was regularly assuming a parental caretaking role over both children.

¶ 19 Cecily Dorsett began working with respondent in December 2015. She testified that although respondent did not provide adequate proof of employment or paystubs, respondent was getting temporary employment opportunities through staffing agencies. Respondent also told CYFS that she found employment cleaning houses with a friend or relative. However, she characterized the cleaning job as "unofficial employment," so she claimed that she could not produce any paystubs or documentation.

¶ 20 Prior to December 2015, CYFS granted respondent overnight visitation privileges with her children. During the second nine-month period, respondent did not provide B.M. with his prescribed psychotropic medication when he spent the night. CYFS became increasingly concerned when during one of respondent's visits at B.M. and K.W.'s foster home, another foster child observed respondent taking B.M.'s medication. Dorsett further testified that respondent failed to accommodate K.W.'s severe allergies; the special foods K.W. needed were not consistently present at respondent's residence during Dorsett's inspections.

¶ 21 The trial court held another permanency review hearing on May 6, 2016. At this hearing, the trial court set a new permanency goal—substitute care pending the court's parental rights determination. The court attributed this change to respondent's lack of effort and progress toward returning her children home. Although she reentered substance abuse treatment between the two nine-month periods, respondent failed another drug screening in June 2016. After this failed screening, she never returned to substance abuse treatment. Respondent's failed screening prompted CYFS to again reduce her visitation privileges.

¶ 22 After CYFS reduced respondent's visitation privileges, her therapist incorporated a "family component" to her therapy. Respondent received an additional one-hour supervised "therapeutic visit" with her children each week. Respondent's therapist directed her to tell her children why CYFS decreased their visitation times; respondent refused. Because respondent refused her therapist's directive, CYFS and her therapist discontinued the weekly therapeutic visits. Thereafter, respondent stopped attending therapy altogether, and her therapist discharged her.

¶ 23 After hearing the evidence, the trial court found respondent unfit. Specifically, the court's order held that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to her children's welfare during either nine-month period and failed to make reasonable progress toward returning her children home during either period. This appeal followed.

¶ 24 ANALYSIS

¶ 25 A parent's rights can be terminated where the State proves, by clear and convincing evidence, that the parent is unfit pursuant to any ground set forth in the Adoption Act (750 ILCS 50/1(D) (West Supp. 2013)), and the trial court holds that termination is in the child or children's best interest. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). Respondent does not challenge the trial court's best-interest finding. Accordingly, our review is limited to the trial court's basis in finding respondent unfit.

¶ 26 The Adoption Act (750 ILCS 50/1 *et seq.* (West Supp. 2013)) sets forth numerous grounds for trial courts to find parents unfit; two such grounds are at issue here. First, the trial court held that respondent failed "to make reasonable progress toward the return of the child[ren] to the parent during any 9-month period following the adjudication of neglect." 750 ILCS

50/1(D)(m)(ii)) (West Supp. 2013). The State relied upon two nine-month periods following the adjudication, October 25, 2013, through July 25, 2014, and December 14, 2015, through September 14, 2016. A court may find a parent unfit if the parent fails to make reasonable progress during *any* nine-month period following adjudication. 750 ILCS 50/1(D)(m)(ii) (West Supp. 2013); *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7. The court also held that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to her children's welfare. 750 ILCS 50/1(D)(b)) (West Supp. 2013). Either ground is sufficient to support the court's unfitness finding. See 750 ILCS 50/1(D) (West Supp. 2013); *In re Donald A.G.*, 221 Ill. 2d at 244.

¶ 27 Each parental termination case presents unique facts; therefore, we accord great deference to the trial court's judgment. *In re K.H.*, 346 Ill. App. 3d 443, 456 (2004); *In re T.D.*, 268 Ill. App. 3d 239, 245 (1994). The trial court's judgment will not be overturned unless it is contrary to the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009). A judgment is against the manifest weight of the evidence if the opposite conclusion is clearly evident, or if the judgment is unreasonable, arbitrary, or not based upon the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 28 Courts objectively measure a parent's "reasonable progress" by the amount of movement toward the parent's goal to regain custody. *In re D.J.S.*, 308 Ill. App. 3d 291, 295 (1999). To measure a parent's progress, courts must assess the parent's compliance with the service plans and court directives; courts note the conditions giving rise to the parent's custody loss, as well as the conditions that develop throughout the case that may prevent the court from reinstating the parent's custody rights. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001).

¶ 29 The Adoption Act also provides some guidance as to the definition of "reasonable progress." Where, as here, the trial court establishes a service plan, the Adoption Act defines the parent's "failure to make reasonable progress" as the parent's "failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care." 750 ILCS 50/1(D)(m)(ii) (West Supp. 2013).

¶ 30 Respondent argues that "reasonable progress" means the children are closer to being returned home at the end of a statutory period than at the beginning. Yet, she cites *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006), supporting the conflicting proposition that "reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody *in the near future*" (Emphasis added). *Id.* Reasonable progress, as defined by the Adoption Act and relevant case law, is not synonymous with *any* progress.

¶ 31 Respondent's service plan required her to maintain suitable housing for her children, maintain employment and sufficient income, complete substance abuse treatment, and obtain mental health services as needed. Respondent needed to substantially comply with these directives to make "reasonable progress" under the Adoption Act. 750 ILCS 50/1(D)(m)(ii) (West Supp. 2013). Further, from October 2013 until May 2016, respondent's permanency goal was to complete these directives and return her children home within 12 months.

¶ 32 During the first nine-month period cited in the State's termination petition, October 2013 through July 2014, respondent moved into her sister's residence to establish a "return home" option for her children—she made efforts to maintain suitable housing. However, respondent could not complete her substance abuse treatment. She inconsistently attended, failed to follow her treatment plan, and tested positive on several drug screenings beginning in January 2014. Respondent's treatment provider unsuccessfully discharged her in April 2014. Around this same

time, in April and May 2014, respondent disappeared for five weeks—she did not contact CYFS or her children. She attended therapy "inconsistently" until her therapist discharged her for lack of attendance in July 2014. Finally, respondent never provided CYFS with documentation proving she was employed or maintained sufficient income to support herself and her children. This evidence does not clearly demonstrate that respondent substantially complied with her service plan or made reasonable progress toward bringing her children home. Accordingly, the trial court's findings as to the first nine-month period were not contrary to the manifest weight of the evidence.

¶ 33 After the first nine-month period, CYFS began increasing respondent's visitation privileges; eventually, CYFS allowed respondent to keep her children overnight. However, in determining whether a parent has made reasonable progress pursuant to section 1(D)(m)(ii) (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013)), courts may consider evidence occurring only during the relevant nine-month period or periods defined in the statute and cited in the termination petition. *In re J.L.*, 236 Ill. 2d at 341; see also *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶¶ 7-9.

¶ 34 By December 2015, respondent still had not completed substance abuse treatment. However, the record indicates she had no positive drug screenings since she reenrolled in treatment. Then, in June 2016, respondent tested positive for THC. Respondent never reenrolled in substance abuse treatment after this positive screening. Additionally, CYFS reduced respondent's visitation privileges. Despite her therapist's directive, respondent refused to tell her children why CYFS reduced her visitation privileges. Subsequently, respondent stopped seeing her therapist.

¶ 35 During the second period, respondent also failed to substantially comply with other service plan directives. Although respondent reported part-time and "unofficial" employment, she did not provide CYFS with any documentation proving her employment or level of income. B.M. and K.W.'s foster mother told CYFS that respondent was not giving B.M. his psychotropic medication during overnight visits. Also, during one of respondent's visits at B.M. and K.W.'s foster home, one of the other foster children reported witnessing respondent take B.M.'s medication. A CYFS employee noted during home inspections that respondent did not consistently accommodate K.W.'s medical needs—special foods for her severe allergies. Finally, CYFS deemed respondent's parents' and sister's homes unsatisfactory as "return home" options for her children. Respondent would have been eligible for Section 8 housing if she had completed substance abuse treatment and been within 90 days of returning her children home; she never completed the treatment.

¶ 36 By the end of the second nine-month period, respondent had no suitable home to which her children could return, no verified employment or income, had not completed substance abuse treatment, and stopped going to therapy. Although the record indicates that respondent appeared to make progress in short spurts between October 2013 and September 2016, she could not maintain her progress and never substantially complied with her service plan during either relevant nine-month period. The trial court never found respondent to be making reasonable and substantial progress or effort toward returning her children home at any permanency review hearing during either nine-month period. In July 2014 and September 2016, the end of each period, respondent was not going to therapy or substance abuse treatment—the trial court had no basis to believe it could return her children home in the near future. See *In re Daphnie E.*, 368 Ill. App. 3d at 1067 (citing *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991)).

¶ 37 As with the first nine-month period, the evidence occurring during the second nine-month period supports the trial court's unfitness determination. We affirm the trial court's finding that respondent failed to make reasonable progress toward returning her children home during either nine-month period.

¶ 38 Pursuant to the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013)), respondent's failure to make reasonable progress during either nine-month period provides the trial court sufficient basis to deem her unfit. See also 750 ILCS 50/1(D) (West Supp. 2013); *In re Donald A.G.*, 221 Ill. 2d at 244. Because we affirm the trial court's finding that respondent failed to make reasonable progress during either nine-month period, we need not address whether respondent maintained a reasonable degree of interest, concern, or responsibility as to her children's welfare under section 1(D)(b) (750 ILCS 50/1(D)(b) (West Supp. 2013)).

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 41 Affirmed.