2017 IL App (3d) 170283-U

Order filed August 10, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re A.S., a Minor	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
(The People of the State of Illinois	)	Peoria County, Illinois.
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0283
	)	
v.	)	Circuit No. 14-JA-269
	)	
Shanterryona A.,	)	The Honorable
	)	Katherine S. Gorman Hubler,
Respondent-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's fitness and best interest findings were not against the manifest weight of the evidence where respondent left neglected minor's sibling with minor's father despite being repeatedly advised not to do so and father killed neglected minor's sibling.

¶ 2 The court adjudicated A.S. a neglected minor. Respondent is A.S.'s mother. The State filed a petition for termination of respondent's parental rights, alleging that respondent was unfit because she failed to make reasonable progress toward the return of A.S. during the nine-month

period of October 3, 2015 to July 3, 2016. Following adjudication and best interest hearings, the trial court found respondent unfit and terminated her parental rights to A.S. Respondent appeals the trial court's fitness and best interest determinations. We affirm.

¶ 3 Just days after A.S. was born, in October 2014, the State filed a petition alleging that A.S. was a neglected minor in that her environment was injurious to her welfare because (1) her mother had been previously found unfit and her parental rights of A.S.'s half-sibling, R.A., had been terminated, (2) her mother had not made sufficient progress prior to surrendering her parental rights to R.A., (3) her mother was a ward of the court herself and under DCFS guardianship until two months earlier, (4) her father, Marcus S., possessed a stolen vehicle, (5) her father pushed her mother while she was pregnant with A.S., and (6) her father had an extensive criminal history. In November 2014, respondent stipulated to the allegations contained in the State's petition.

¶ 4 In January 2015, the court adjudicated A.S. a neglected minor. The court found respondent unfit based on the allegations contained in the petition, the prior finding of unfitness against her, her failure to complete services, and domestic violence issues. The court entered an order requiring respondent to perform various tasks to correct the conditions that led to the adjudication of A.S., including participating in and successfully completing counseling, a parenting course and a domestic violence class, obtaining and maintaining stable housing, visiting A.S. as scheduled, and promptly notifying DCFS of any changes in her contact information.

¶ 5 By April 2015, respondent had successfully completed a parenting class and a domestic violence course. At the first permanency review hearing in May 2015, the court found that respondent had made reasonable efforts to achieve the service plan and permanency goal of A.S.

returning home within 12 months. The court stated that to achieve the permanency goal, respondent "needs to attend counseling."

¶ 6 At the next permanency review hearing in October 2015, the court set a new permanency goal of A.S. returning home within five months. The court found that respondent had made reasonable efforts toward the new service plan and permanency goal and found respondent "fit based on her show of initiative and stellar reports." A.S.'s father, Marcus, remained unfit. The court ordered respondent to work toward her G.E.D. and stated that it would consider returning guardianship of A.S. to respondent if she "remained on track." The court ordered that respondent not be allowed to supervise visitation between Marcus and A.S.

¶ 7 In November 2015, respondent had another child, M.S., with Marcus. Respondent was allowed to take M.S. home from the hospital. In January 2016, respondent filed for and was granted an emergency order of protection against Marcus, stating that he tried to kick in her door while M.S. and A.S. were home. She also reported that Marcus punched and choked her in 2015 and abused her in 2014 when she was pregnant with A.S. Five days later, respondent requested that the order of protection be dismissed stating: "He isn't any threat to me. Is not bothering me. Have a child together." The trial court denied the request.

¶ 8 On February 8, 2016, respondent filed another order for dismissal of the previously-issued order of protection. The trial court dismissed the order of protection because respondent "decided voluntarily not to seek further protection."

¶ 9 On March 1, 2016, respondent and Marcus moved to a new home together. On March 7, 2016, respondent arrived home from work and found M.S. with bruises and swelling on his face. Respondent called 911. Medical personnel arrived and found M.S. with life-threatening injuries. M.S. was transported to the hospital, where doctors found a bite mark on his shoulder and

bruises and swelling on his face, neck and arm. M.S. died three days later. The cause of death, as listed on his death certificate, was "blunt-force head trauma." Respondent was charged with endangering the health of a child, and Marcus was charged with first-degree murder.

¶ 10 On March 15, 2016, the State filed a motion for unfitness against respondent, alleging that she was unfit because she chose to live with Marcus when she was advised not to do so, did not tell her caseworker that she was living with Marcus, and left her infant, M.S., with Marcus, who inflicted deadly injuries on him.

¶ 11 In April 2016, the court found that the permanency goal of A.S. returning home within five months no longer appropriate because of the "dishonesty of parents, [and] death of sibling." The new permanency goal was substitute care for A.S. pending the court's decision on termination of parental rights.

¶ 12 On May 31, 2016, respondent pled guilty to felony child endangerment and was sentenced to 30 months in the Illinois Department of Corrections. A.S. visited respondent in prison on July 28, 2016. That was A.S.'s first visit with respondent since February 2016.

¶ 13 In October 2016, the State filed a petition for termination of parental rights against respondent and Marcus. The petition alleged that respondent is an unfit person in that she failed to make reasonable progress toward the return of A.S. during the nine-month period of October 3, 2015, to July 3, 2016. Respondent denied the allegation.

¶ 14 The adjudication hearing took place on March 10, 2016. At the hearing, the court admitted several documents into evidence, including records related to respondent's visitation with A.S., which showed that respondent declined visitation on January 18, 2016, cancelled visitation on February 29, 2016, and did not visit A.S. on March 4, 2016, or March 7, 2016. Records from respondent's counselor showed that respondent was discharged from counseling

on February 26, 2016, because she failed to attend any sessions in January or February 2016. According to the counselor, respondent would benefit from counseling because she "is in need of understanding how her choices impact her and her children."

¶ 15 William Calbow, a City of Peoria Police Department detective, testified that he met with respondent on March 7, 2016. He videotaped his interview with respondent, and the video was played for the court. In that interview, respondent told police that she and Marcus got into a physical fight that morning. Marcus pushed respondent and took swings at her, but her brother got involved and broke up the fight. After that, Marcus began playing a video game, and respondent got ready for work. When respondent left for work, Marcus and her brother were home with M.S.

¶ 16 When respondent returned home from work that evening, she saw bruises and swelling all over M.S.'s face. When she asked Marcus what happened, he said that M.S. fell out of a chair. Respondent did not believe Marcus and called 911. Before emergency personnel arrived, Marcus fled.

¶ 17 Respondent told police that she had been with Marcus "on and off" since 2013. During that time, Marcus had been arrested three times for domestic violence against her. Respondent told police that she never saw Marcus hit his children but saw him "flick" M.S.'s fingers and yell at him the past month.

¶ 18 Respondent visited Marcus in jail on March 13, 2016, three days after M.S. died. A videotape of their conversation was played for the court. During that interview, respondent smiled at Marcus and talked about marrying him. She told him, "I just want to be by your side."

¶ 19 Kim Rashid, respondent's DCFS caseworker, testified that she first met respondent on October 6, 2015. At that time, respondent had already completed a parenting course, domestic

violence course, counseling, and had stable housing. She was also participating in two two-hour supervised visits per week with A.S.

¶ 20 On October 8, 2015, Rashid met with respondent to set a visit plan to move toward transitioning A.S. back home. First, respondent's visits would be increased to two four-hour supervised visits per week. If that was successful, the visits would become unsupervised. Rashid made clear that Marcus was not to be with A.S. during unsupervised visits.

¶ 21 Rashid spoke to respondent and Marcus on November 2, 2015, the day after M.S. was born. Rashid advised them that Marcus could have no unsupervised contact with A.S. or M.S.

¶ 22 On January 6, 2016, respondent asked to have a visit with A.S. at Marcus's mother's house. Rashid refused because respondent's visits with A.S. were to be at her home with no one else around. On January 20, 2016, Rashid decided that respondent's visitation would become supervised again.

¶ 23 Rashid met with respondent on February 8, 2016. At that time, respondent told Rashid that Marcus had been staying with her and M.S. Rashid reiterated to respondent that Marcus was not allowed to be with M.S. and talked to respondent "at length that it was not in the children's best interest; it posed a risk of harm to the baby and herself because Marcus was unfit, he had been violent in the past, and that he should not be around the baby at all."

¶ 24 On February 26, 2016, Rashid asked respondent why she dismissed the order of protection against Marcus. Respondent told her that Marcus was not around, so she did not need it. According to her reports, Rashid spoke to respondent on four separate occasions from October 8, 2015 to February 26, 2016, about Marcus having no unsupervised contact with his children. Rashid repeatedly told respondent that being around Marcus was not a good choice and could prevent her from regaining custody of A.S. and cause her to lose custody of M.S.

¶ 25 Rashid did not know that respondent moved out of her apartment and into a new home with Marcus until after M.S. died. Respondent never told Rashid about the move even though she was ordered by the court to inform DCFS of any change in her address, contact information or living situation.

¶ 26 The trial court found that the State proved the allegations against respondent by clear and convincing evidence, stating that during the relevant nine-month period respondent "regressed more than anyone I've ever seen in this courtroom." The court told respondent: "You were devious; you were dishonest; you were manipulative; and it's clear that you *** chose not to do what was best for your children, and you left [Marcus] with your son, and now your son isn't with us."

¶ 27 A best interest hearing was held in April 2017. At the hearing, respondent testified that she completed several classes, groups and programs while incarcerated at Logan Correctional Center, including a parenting class, a substance abuse program, a domestic violence class, a class and group about overcoming trauma and grief, and classes to help her adjust to life outside prison and assist her in obtaining a job. At the time of the hearing, respondent had been out of prison for three weeks and was living with her father.

¶ 28 Respondent had a one-hour supervised visit with A.S. one week prior to the hearing. Respondent testified that A.S. looked a little sad at the beginning of the visit but seemed to open up as the visit progressed and said she wanted to leave with respondent. While respondent was in prison, A.S. visited her monthly. A.S. usually called respondent "mom," but did not at her last visit. A.S. called respondent "mom" at the visit before that. Respondent asked the court not to terminate her parental rights because she feels like she has a bond with A.S.

¶ 29 At the time of the best interest hearing, A.S. was living with the same foster parent she had lived with since two days after her birth. Respondent's son, R.A., was adopted by that foster parent and lives in the same home. A.S.'s foster parent is willing and able to adopt A.S.

¶ 30 According to Rashid, A.S. "is very attached and bonded to her foster mother" and "does not appear to have a strong bond or attachment to" respondent. A.S. is also attached to R.A. and her foster mother's adult daughter who also lives in the home. Rashid believes that A.S. is in a safe, stable and loving environment, which respondent could not provide.

¶ 31 The trial court ruled that it was in A.S.'s best interest to terminate respondent's parental rights, explaining, in part, that A.S. deserves permanence.

¶ 32 I. Fitness Finding

¶ 33 A trial court's finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). The trial court's finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id*. A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record. *Id*.

¶ 34 Section 1(D)(m) of the Adoption Act provides that a parent is unfit for failing "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 2016). The section further states that " 'failure to make reasonable progress toward the return of the child to the parent' includes 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 during any 9-month period following the adjudication." 750 ILCS 50/1(D)(m) (West 2016).

¶ 35 Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent. *Daphnie E.*, 368 Ill. App. 3d at 1067. " 'Reasonable progress' requires, at a minimum, measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child." *In re M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991). "[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 that 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." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). 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. *Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 36 Here, the trial court found that respondent failed to make reasonable progress toward the return of A.S. from October 3, 2015, to July 3, 2016. At the beginning of the nine-month period, respondent was visiting A.S. regularly, participating in counseling and had already completed parenting and domestic violence courses. However, by January 2016, respondent was putting Marcus's best interests before her children's. On January 18, 2006, respondent declined visitation with A.S. because Marcus was at her home, and she did not want him to leave. Two days later, respondent called the police because Marcus was trying to kick down her apartment door while A.S. and M.S. were inside the apartment. While respondent initially sought an order of protection against Marcus for that incident, a few days later she tried to have the order dismissed, which she eventually succeeded in doing.

¶ 37 By late February, respondent had terminated her lease on her apartment and planned to move to a new location with Marcus and never told her caseworker that she was moving. Respondent was present for none of her three scheduled visits with A.S. from February 29, 2016 to March 7, 2016. In March, respondent began living in a new home with Marcus even though her DCFS caseworker repeatedly warned her that being around Marcus was a bad idea and could cause her to lose rights to both of her children. Respondent never notified DCFS of her new address or living situation.

¶ 38 On March 7, 2016, shortly after being involved in a violent physical fight with Marcus, respondent left M.S. with Marcus, who inflicted deadly injuries on the four-month-old baby. Just days later, respondent talked to Marcus in jail, professing her love to him and barely mentioning her dead child. The next day, respondent was arrested for child endangerment. Respondent did not see A.S. again until after the nine-month period ended.

¶ 39 Based on the evidence presented, the trial court's determination that respondent failed to make reasonable progress toward the return of A.S. during the relevant nine-month period was not against the manifest weight of the evidence.

¶ 40 II. Best Interest Finding

¶ 41 After a finding of unfitness, the State must prove by a preponderance of the evidence that it is in the child's best interest to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 364-65 (2004). When reviewing a trial court's best-interest determination, we apply the manifest weight of the evidence standard of review. A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evidence or the decision is unreasonable, arbitrary or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 42 During the best interest hearing, all considerations must yield to the child's interests to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364. When determining the best interest of a child for purposes of a termination petition, the court is required to consider a number of statutory factors "in the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These statutory factors include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures, siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 43 Here, the evidence shows that A.S. has lived in the same foster home with the same foster mother since she was just two days old. A.S. also lives with her half-brother, R.A., who has been adopted by the foster mother. A.S. is very attached to her foster mother, R.A. and her foster mother's adult daughter. A.S.'s foster mother has provided A.S. with a safe, caring and nurturing home and is willing to adopt her.

¶ 44 On the other hand, the evidence shows that respondent cannot provide A.S. with the safety, stability and permanence she needs. Until just three weeks before the best interest hearing, respondent was incarcerated, serving a prison sentence for endangering her infant son by leaving him with Marcus, who ultimately murdered the child. While respondent believes she has a bond with A.S., she and A.S. have spent less than 10 hours together in the last year. A.S.

has a much stronger bond and attachment to her foster family with whom she has been living continuously for two-and-a-half years.

¶ 45 Based on the evidence presented, the trial court's conclusion that it was in A.S.'s best interest to terminate respondent's parent rights was not against the manifest weight of the evidence.

¶ 46 The judgment of the circuit court of Peoria County is affirmed.

¶ 47 Affirmed.