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2017 IL App (3d) 170284-U

Order filed September 8, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

In re S.S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor,)	Peoria County, Illinois
)	
(THE PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	Appeal No. 3-17-0284
Petitioner-Appellee,)	Circuit No. 13-JA-201
)	
v.)	
)	Honorable
SHAWNIECE S.,)	Timothy J. Cusack
)	Kathleen Gorman
Respondent-Appellant).)	Judges, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err when it found mother to be an unfit parent and that it was in the child's best interest that mother's parental rights be terminated.
- ¶ 2 The trial court found respondent, Shawniece S., to be an unfit parent based on her failure to make reasonable progress toward the return of her daughter, S.S., to her care, and determined that it was in the best interest of S.S. to terminate Shawniece's parental rights. We affirm.

FACTS

¶ 3

¶ 4 The State filed a two-count neglect petition on July 24, 2013, alleging that S.S., the daughter of respondent Shawniece S., was medically neglected and in an injurious environment. In count I, the petition stated that the minor, S.S., suffered from osteogenesis imperfecta (OI) (brittle bone disease) and issues associated with the disease; and that Shawniece failed to maintain her diet, feeding S.S. mainly mashed potatoes and 2% milk; missed numerous doctor and medical appointments; refused home health care; requested a house, car, babysitter and compensation to care for S.S.; and failed to participate in early intervention for S.S. Count II, injurious environment, alleged the same claims as in count I, and added that Shawniece had an altercation with the police on June 15, 2013, where she punched a police officer, kicked a medical technician and another person, and spit on the doctor. The petition further alleged that Shawniece tested positive for cannabis on September 16, 2011, when she was pregnant with S.S.

¶ 5

The trial court found the State proved the allegations in the petition and that S.S. was neglected due to medical neglect and an injurious environment. The court pointed to Shawniece's medical neglect of S.S., and her own continued drug use and mental health issues, including her diagnoses for depression, schizophrenia, and bi-polar disorder, as factors impacting her ability to parent S.S. The trial court found Shawniece dispositionally unfit, made S.S. a ward of the court, and placed her with Shawniece's parents. Shawniece was ordered to undergo a substance abuse assessment and follow any recommendations, perform two drug drops per month, submit to a psychological examination and follow any recommendations, including remaining compliant with medications to treat her mental illness, participate in and successfully complete counseling as recommended, and complete a parenting class. The trial court also ordered Shawniece to obtain and maintain stable housing, attend S.S.'s medical appointments,

and participate in visitation. Shawniece appealed the unfitness finding and ordering her to perform services. This court affirmed. See *In re S.S.*, 2015 IL App (3d) 140382-U.

¶ 6 Permanency review hearing reports for the 9-month period between March 21, 2015, and December 21, 2015, reflected that Shawniece's progress was mixed. Shawniece filed a motion to restore fitness in May 2015, which the trial court denied. The court found Shawniece remained unfit but increased visitation to test Shawniece's ability to parent S.S. In June, Shawniece was arrested for shoplifting. She stopped taking her medications in June and was discharged from psychiatric services in July based on her report that she was stable. She completed a CPR course in August. In August, the trial court found Shawniece was not compliant with her service tasks and was not listening to the instructions of S.S.'s doctors. Her visits with S.S. were good overall and she was employed. A December 21, 2015, permanency review order found that Shawniece remained unfit.

¶ 7 On March 15, 2016, the State filed a petition to terminate Shawniece's parental rights. Count I alleged Shawniece was unfit because she failed to make reasonable progress toward S.S.'s return during the nine-month period between March 21, 2015, to December 21, 2015. Count II repeated the allegations for the nine-month period between June 20, 2014, to March 20, 2015.

¶ 8 An adjudication hearing took place on the petition. On the State's motion, the trial court dismissed count II. It also took judicial notice of a May 12, 2014 dispositional order finding Shawniece unfit and listing her service tasks and an August 10, 2015, permanency review hearing. At the hearing, the State established that Shawniece's efforts between March 21, 2015, and December 21, 2015, were not reasonable, in that she was discharged from counseling, did

not comply with services, and did not listen to S.S.'s doctors. Shawniece's counseling records and a certified copy of her conviction for retail theft were entered into evidence.

¶ 9 Shawniece's former probation officer testified. She talked to Shawniece on June 24, 2015. Shawniece said she was charged with retail theft, was not sorry for the crime because she needed clothes for school, but was sorry that she was caught. Shawniece's probation terminated in 2015.

¶ 10 The caseworker with Lutheran Social Services testified. She was the caseworker for Shawniece during the relevant nine-month period, March 21, 2015, to December 21, 2015. Shawniece was distracted and inattentive during family team meetings and at doctors' appointments, often playing on her phone instead. She would not respond to questions and could not name S.S.'s doctors or explain what was happening in the therapy sessions S.S. attended. Shawniece lifted S.S. improperly in July 2015, fracturing S.S.'s rib, despite being instructed how to lift S.S. Shawniece also failed to have S.S. wear her glasses. Shawniece did not think S.S. was growing or receiving proper nutrition in foster care.

¶ 11 S.S.'s foster mother, testified. S.S. was in her care during the period at issue. Shawniece left S.S.'s March 26, 2015, medical appointment early and before the family was instructed on how to put S.S.'s leg braces on her. At an April 8, 2015, dentist appointment, Shawniece was upset and told the foster mother in front of S.S. that she was not taking proper care of S.S. or providing her the necessary nutrition. During other appointments, Shawniece would disagree or be dissatisfied with the medical treatment. On July 2, 2015, she heard a pop when Shawniece lifted S.S., fracturing S.S.'s rib. Shawniece said that she forgot how fragile S.S. was. At a November 17, 2015, doctor appointment, Shawniece was agitated and argued with the doctor that a cast S.S. had on her leg was too tight and would break more bones. Shawniece told the

doctor that S.S. did not have O.I. On cross-examination, the foster mother testified that Shawniece attended most of S.S.'s doctor appointments and that she properly lifted S.S. after the July fractured rib.

¶ 12 The hearing was continued to November 2, 2016. Shawniece testified. She attended all visits and medical appointments for S.S. during the relevant time period. She completed her drug drops with negative results, attended counseling, maintained stable housing and employment, and was receiving mental health treatment. Her parents also attended visitations with S.S. She denied having any issues during visitation or medical appointments. Shawniece expressed concern that S.S. wore the same outfit every Friday and that it would negatively impact S.S.'s sense of confidence. When S.S.'s rib fractured, she had lifted S.S. the way she saw the water therapist work with her. She was instructed as to the proper technique to lift S.S. and had been more careful. She also admitted the caseworker rebuked her for not cutting S.S.'s food in small enough pieces and she then made sure the bite sizes were appropriate.

¶ 13 On November 16, 2016, the trial court found the State had proved Shawniece unfit. It pointed to Shawniece's refusal or failure to stay compliant with her own medications and the negative effect her mental health problems had on her ability to function as S.S.'s mother. The court noted one significant effect was Shawniece's failure to cooperate with the caseworkers and other involved agencies. The trial court found Shawniece failed to make reasonable progress toward the return of S.S. during the 9-month period between March 21, 2015, and December 31, 2015.

¶ 14 A best interest hearing took place. The caseworker testified that S.S. referred to Shawniece as mom, her foster parents as mommy and daddy, and her foster siblings as her brothers and sisters. S.S.'s maternal grandparents attended visitation, and S.S. knew them as her

grandparents and also had contact with aunts and uncles at a birthday party. Visitation with Shawniece was reduced from six hours per month to two hours a month to transition to termination.

¶ 15 Shawniece's aunt testified that she is a neurosurgery nurse at a local hospital and had assisted in the care of S.S. until she entered foster care and would be available to help in the future. S.S.'s family had a very close extended family and Shawniece's interactions with S.S. were loving and attentive.

¶ 16 S.S.'s maternal grandmother testified. She had a strong bond with S.S. and continued to visit with her one hour per month. On cross-examination, she explained how she would properly feed S.S. S.S.'s maternal grandfather testified that he had a good relationship with S.S. and that S.S. and Shawniece were bonded. He drove Shawniece to many of S.S.'s doctor appointments and attended them with her.

¶ 17 Shawniece testified. She lived for more than a year in a handicapped-accessible apartment. She was not employed or enrolled in school. Her parents helped support her and were also bonded with S.S. She had visited with S.S. six to eight hours per week before visitation was reduced pending termination and they had an "unbreakable" bond. Shawniece was the only person at ease getting S.S. out of the car and S.S. trusted her and looked to her for guidance. She comforted S.S., who felt secure when she was with Shawniece. Shawniece referenced S.S.'s doctors and various therapies. She listed S.S.'s dietary restrictions. She acknowledged that S.S. was progressing well health wise but that she could provide better care than the foster family.

¶ 18 The trial court found Shawniece failed to demonstrate a long-term ability to meet S.S.'s complex medical needs, which impacted S.S.'s safety. It noted that S.S. had thrived in her foster placement and deserved permanency. Although it considered Shawniece and S.S.'s bonds, it

found the bonds did not override S.S.’s medical needs and the stability she received from her foster parents. The trial court ruled it was in the best interest of S.S. to terminate Shawneece’s parental rights. Shawneece appealed.

¶ 19

ANALYSIS

¶ 20

On appeal, Shawneece challenges the termination of her parental rights. She argues that the trial court’s findings that she was unfit and that it was in S.S.’s best interest to terminate her rights were not supported by the evidence.

¶ 21

The termination of parental rights occurs in a two-step process. *In re L.M.*, 385 Ill. App. 3d 393, 395 (2008). The State must first prove that the parent is unfit and, if so, then must prove it is in the child’s best interest to terminate the parent’s rights. *Id.*; 750 ILCS 50/1D (West 2016); 750 ILCS 405/2-29(2) (West 2016). Unfitness grounds include the parent’s failure to make reasonable progress toward the return of the child within a specified nine-month period after an adjudication of neglect or abuse. 750 ILCS 50/1D(m)(ii) (West 2016). Reasonable progress is shown by “ ‘demonstrable movement toward goal of reunification.’ ” *In re C.N.*, 196 Ill. 2d 181, 211 (2001) (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)). The failure to make reasonable progress is determined by an objective standard measured by the amount of progress from the time the child was removed from the parent’s care. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). The court uses the parent’s compliance with the directives of the court, the DCFS service plan, or both, to evaluate progress. *In re A.A.*, 324 Ill. App. 3d 227, 236 (2001) (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 463-64 (1991)). The State must prove unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). We will not reverse a trial court’s fitness determination unless it was against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208.

¶ 22 To determine the child’s best interest, the trial court must consider the following factors: the child’s physical safety and welfare, including food, shelter, health and clothing; development of her identity; the child’s familial, cultural, and religious background and ties; her sense of attachment, including where she feels love and a sense of being valued, security, and familiarity; continuity of affection for the child; the least disruptive placement alternative; the child’s wishes, long-term goals, community ties, need for permanence, each family and child’s uniqueness; risks of substitute care; and the preferences of the available caretakers. 705 ILCS 405/1-3(4.05) (a)-(j) (West 2016). At the best interest hearing, the focus shifts to the child and the parent’s interest in maintaining a parent-child relationship yields to the child’s interest in a stable and loving home. *In re D.T.*, 212 Ill. 2d 347, 363-64 (2004). Many of the best interest factors focus on the parent-child relationship and bond. *In re O.S.*, 364 Ill. App. 3d 628, 637 (2006). The State must prove termination is in the child’s best interest by a preponderance of the evidence. *In re B.B.*, 386 Ill. App. 3d 686, 699 (2008). We will not reverse a trial court’s best interest determinations unless it was against the manifest weight of the evidence. *In re D.M.*, 298 Ill. App. 3d 574, 581 (1998).

¶ 23 Shawniece faults the trial court for what she describes as its almost exclusive focus on her failure to take her medications as a basis for its unfitness finding. While the trial court did rely on Shawniece’s failure to stay compliant with her medications, its focus was on the effects on Shawniece’s ability to parent S.S. when she stopped taking her medication. It pointed out that one result of Shawniece’s noncompliance with her medications was her disruptive and uncooperative behavior with S.S.’s caseworker and others, including S.S.’s doctors. She told her caseworker she was compliant with her medication requirement but was released from psychiatric services on her self-report that she had successfully stopped taking her medications.

¶ 24 Other evidence supports the trial court's findings that Shawniece failed to make reasonable progress toward the return home of S.S. during the 9-month period between March 21, 2015, and December 31, 2015. Shawniece did not pay attention to or disregarded advice from S.S.'s doctors about how to care for S.S. She failed to understand S.S.'s medical needs and the necessity of following the care instructions provided by S.S.'s doctors and therapists. She fractured S.S.'s rib by lifting her improperly and commented that she forgot S.S.'s fragility. Shawniece consistently expressed that she knew what was best for her child and persisted in her belief even when it was demonstrated that she was wrong. Shawniece was also argumentative and uncooperative with the doctors. She was discharged from counseling for her failure to attend. She neglected her own mental health to the detriment of S.S. and her ability to care for daughter.

¶ 25 Lastly, Shawniece committed the criminal offense of retail theft, for which she expressed remorse only for getting caught. Shawniece's conduct during the 9-month period between March 21, 2015, and December 31, 2015, did not demonstrate reasonable progress toward reunification with S.S. We find the trial court's finding that Shawniece was unfit was not against the manifest weight of the evidence.

¶ 26 The evidence also supports the trial court's findings that termination was in S.S.'s best interest. The court found that Shawniece had not demonstrated a long-term ability to care for S.S., which impacted S.S.'s safety. In contrast, S.S.'s food, shelter, health and clothing needs were provided by the foster family. She was current on her medical appointments and therapies. S.S. knew the foster parents as mommy and daddy and her foster siblings as her brothers and sisters. Like Shawniece and her family, the foster family was also active in their church and S.S. participated with them. The foster family provided S.S. a safe and permanent home. They were

able and willing to meet S.S.'s complex and unique medical needs. The foster family wished to adopt S.S. and were willing to consider maintaining a relationship between S.S. and Shawniece and her parents. S.S. was thriving in her foster placement and liked living there. We find these factors support the trial court's best interest finding and its termination of Shawniece's parental rights.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 28 Affirmed.