2017 IL App (4th) 160697-U

NO. 4-16-0697

FILED
February 8, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.S., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 14JA44
MARCUS BROWN,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings (1) respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and (2) it was in the minor child's best interest to have respondent's parental rights terminated were not against the manifest weight of the evidence.

¶ 2 In February 2016, the State filed a motion for the termination of the parental rights of respondent, Marcus Brown, as to his minor child, M.S. (born in 2012). After an August 2016 hearing, the Vermilion County circuit court found respondent unfit. In September 2016, the court concluded it was in M.S.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding (1) him unfit and (2) it was in M.S.'s best interest to terminate his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2014, the State filed a petition for the adjudication of wardship of M.S.,

which alleged he was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)), in that his environment was injurious to his welfare due to the failure of his mother, Shennell Seward, to engage in her services, individual counseling, and family counseling in juvenile cases involving her other children. At the August 2014 adjudicatory hearing, the court found M.S. was neglected as alleged in the petition. After a December 2014 dispositional hearing, the court (1) found respondent unfit and unable to care for, protect, train, educate, supervise, or discipline M.S.; (2) made M.S. a ward of the court; and (3) placed his custody and guardianship with the Department of Children and Family Services (DCFS). Seward was found unfit, unable, and unwilling to care for M.S.

¶ 6 In February 2016, the State filed a motion to terminate respondent's and Seward's parental rights to M.S. The motion asserted respondent was unfit because he (1) abandoned the minor child (750 ILCS 50/1(D)(a) (West Supp. 2015)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor child's welfare (750 ILCS 50/1(D)(b) (West Supp. 2015)); (3) deserted the minor child for more than three months preceding the commencement of this action (750 ILCS 50/1(D)(c) (West Supp. 2015)); (4) is depraved (750 ILCS 50/1(D)(i) (West Supp. 2015)); (5) failed to make reasonable efforts to correct the conditions that were the basis for the minor child's removal during any nine month period after the neglect adjudication, specifically August 15, 2014, to May 15, 2015 (750 ILCS 50/1(D)(m)(i) (West Supp. 2015)); and (6) failed to make reasonable progress toward the minor child's return during any nine month period after the neglect adjudication, specifically August 15, 2014, to May 15, 2015 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)).

¶ 7 At the August 2016 fitness hearing, the State withdrew its depravity allegation

against respondent. As to the evidence at the hearing, the State presented the testimony of former Lutheran Social Services employees Karen Allen and Lindsey Ahart. The State also presented the case service plans in this case dated March 2, 2015; June 8, 2015; and January 14, 2016, as well as the findings of parental unfitness and dispositional orders in Vermilion County case Nos. 12-JA-5, 12-JA-6, and 12-JA-7, which involved Seward's other children. Respondent testified on his own behalf and presented a report from New Directions, where he was taking his parenting classes. Additionally, the circuit court took judicial notice of all of the previous orders entered in the case. The evidence relevant to the issues on appeal is set forth below.

¶ 8 Allen testified she was employed by Lutheran Social Services from April 2013 to October 2014. She knew M.S. and respondent through previous cases involving Seward's other children. At a hearing in March 2014, the circuit court ordered Lutheran Social Services to take custody of M.S. because Seward was not following through with services in the cases involving the other children. Before M.S.'s removal from Seward, respondent did have contact with M.S. However, Allen was told M.S. and respondent did not have a relationship at the time M.S. was removed from Seward's care. Allen further testified respondent's required services included substance abuse treatment and drug drops. He was also to complete parenting classes and participate in visits with M.S. When Allen left the agency in October 2014, respondent was working on his services but had not completed any of them. Respondent's visits with M.S. went "very well," and they developed a relationship. Respondent did get upset on a couple of occasions with M.S. when he was more interested in the toys than respondent.

¶ 9 Ahart testified she took over the case in February 2015. The prior caseworker had provided her with written reports and documents about what happened between October 2014 and February 2015. Ahart testified respondent did not have a lot of contact with Lutheran Social

Services during that period. When she received the case, respondent began communicating with her. Her first and number one goal for respondent was to complete substance abuse treatment. He was also to attend individual counseling and complete parenting classes. According to Ahart, respondent did not complete any of his services. She had made a referral for respondent to attend substance abuse treatment but never one for parenting classes. Toward the end of her involvement with case, respondent indicated he wanted to take parenting classes before the completion of his substance abuse treatment. Ahart required respondent to provide three negative drug drops before she would make the referral, which respondent never did.

¶ 10 In June 2015, Ahart completed an evaluation of the case that covered the previous six months. Her report indicated respondent did not do drug drops in January and February 2015. He had a negative drug drop on March 5, 2015, but a positive drug drop for marijuana the next day before the court hearing in this case. Respondent had four negative drug drops in April 2015 and visited with M.S. every week that month. In May 2015, respondent discontinued doing drug drops and thus did not visit with M.S. From May 2015 to the end of her employment in May 2016, respondent did not visit with M.S. At the time of the June 2015 report, respondent had not made enough progress to have M.S. returned to him.

¶ 11 Ahart further testified respondent did very well during his visits with M.S. Respondent acted appropriately and understood M.S.'s needs and requirements. M.S. did not have any special medical needs.

¶ 12 Respondent testified he had known M.S. since he was born. Before M.S. was brought into care, respondent had contact with him every day. Respondent was suffering from health problems when M.S. was taken into care. He had heart bypass surgery in February 2015. Before the surgery, he had to stay still and could not lift more than a gallon of milk. Respondent

did not fully recover from the surgery until May or June 2015. He sent M.S. toys and clothes on a monthly basis. M.S. was placed with Seward's mother until February 2016, and during that time, he had visits with M.S. that were not sanctioned by DCFS. Additionally, respondent testified he and Seward talked about getting back together. He thought it would help if the court could see both of them were involved in M.S.'s care. It did not work out, and when Seward stopped doing her services, respondent reengaged in his. He started taking parenting classes in June 2016. At the time of the fitness hearing, respondent had a couple of weeks of parenting classes left and around 20 hours of substance abuse treatment to complete. Respondent also stated he had five other children and had actively participated in raising them.

¶ 13 At the conclusion of the hearing, the circuit court found respondent was unfit based on his failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to M.S.'s welfare; (2) make reasonable efforts to correct the conditions that were the basis for M.S.'s removal; and (3) make reasonable progress toward M.S.'s return during any nine month period after the neglect finding.

¶ 14 Lutheran Social Services' September 8, 2016, best interest report recommended the termination of respondent's parental rights. The report noted respondent had a residence in Danville, Illinois, but Lutheran Social Services had not been to the home to do a safety check due to respondent's lack of consistent contact with the agency. His current employment status was unknown. Moreover, respondent had "an extensive criminal history," with his last arrest "in March 2015 for 'DUI/BAC .16 or Child PASS/1S.' " Respondent had a visit with M.S. on August 10, 2016. The last documented visit before the August 2016 one was in April 2015. In February 2016, respondent was discovered having an unsupervised visit with M.S. Respondent did complete parenting classes in August 2016.

¶ 15 The report noted M.S. was 4 years old and had been in foster care since March 2014, which was about 2 1/2 years. He had resided with his maternal grandmother until February 2016, when he was removed due to his grandmother allowing unsupervised visits with respondent and Seward. He was removed from his second foster home on August 26, 2016, because the placement declined to provide permanency for M.S. Since then, he had resided in a relative foster home with his older sister. The foster parent was able to provide for his needs and was willing to provide permanency for M.S. She was also willing to maintain his relationships with all of his siblings. A pending hotline call did exist for the foster parent. M.S was not removed from the home, and the victim had changed the name of the alleged perpetrator, so the foster parent was no longer the alleged perpetrator. The investigation had not been completed. Additionally, M.S. had just started attending Head Start. When he first got to school, M.S. was nervous and asked to return to his foster home. Later in the school day, M.S. was fine and engaged with the other children.

¶ 16 On September 15, 2016, the circuit court held the best interest hearing. In addition to the best interest report, the State presented the testimony of Charlene Meister, the current caseworker. Respondent did not present any evidence.

¶ 17 Meister testified she had been the caseworker for almost a month. M.S. was currently residing with his godmother, her two children, and his sister. M.S. was adjusting to his new home, school, and family life. Meister had no concerns about M.S.'s current foster parent's ability to care for him and meet his needs. The investigator of the hotline call had cleared the foster mother on the hotline allegations. Additionally, M.S. got along with his sister.

¶ 18 Meister also testified respondent had been cooperative with her and had displayed an interest in M.S. They had two visits since the unfitness finding. M.S. called respondent both

"Marcus" and "Dad." M.S. was happy to see respondent and there was "some" bond between them. At that point, Meister did not have any concern with M.S. being placed with respondent. However, Meister had not looked into respondent's housing and did not know if it was a suitable placement.

¶ 19 On September 16, 2016, the circuit court entered a written termination order, terminating respondent's and Seward's parental rights to M.S. On September 27, 2016, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016). We note Seward is not a party to this appeal.

¶ 20 II. ANALYSIS

¶ 21 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2014)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West Supp. 2015)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor child's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 22 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and

weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding and best interest determination unless they are contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010) (best interest determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 23 A. Respondent's Fitness

¶ 24 Respondent contends the circuit court's unfitness finding was against the manifest weight of the evidence. The State disagrees.

¶ 25 The circuit court found respondent unfit under, *inter alia*, section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)), which provides a parent may be declared unfit if he or she fails "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 under Section 2-3 of the Juvenile Court Act." Illinois courts have defined reasonable progress as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit 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 in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 26 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the petition alleged the relevant nine month period was August 15, 2014, to May 15, 2015.

¶ 27 The evidence at the fitness hearing indicated respondent had engaged in services off and on during the relevant nine month period. His visitation with M.S. was also inconsistent. By the end of the period, he was no longer visiting with M.S., was not engaged in any services,

and had not completed any services. While respondent had heart bypass surgery in February 2015, he was able to do drug drops and attend court in March 2015 as well as attend all of his visits in April 2015. Thus, his health issues did not prevent him from engaging in services for most of the relevant time period. The evidence showed respondent was never close to having M.S. returned to his custody during the relevant period. Accordingly, the circuit court's finding respondent unfit based on his failure to make reasonable progress toward M.S.'s return during the period of August 15, 2014, through May 15, 2015, was not against the manifest weight of the evidence.

¶ 28 Because we have upheld the circuit court's determination respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)), we need not review any other bases for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 29 B. M.S.'s Best Interest

¶ 30 Respondent also challenges the circuit court's finding it was in M.S.'s best interest to terminate his parental rights. The State contends the court's finding was proper.

¶ 31 During the best interest hearing, the circuit court focuses on "the child's welfare and whether termination would improve the child's future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West Supp. 2015)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of

attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West Supp. 2015).

¶ 32 We note a parent's unfitness to have custody of his or her child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 33 In this case, M.S. had been in foster care a majority of his young life. While he was in a new foster home, the foster parent was not a stranger to him and his sister resided there. The foster parent desired to adopt M.S. and maintain his relationships with his other siblings. M.S. was just starting school and was adjusting to the home. During the pendency of this case, respondent had been inconsistent in visiting with M.S. Moreover, his inconsistency in engaging in services and communicating with Lutheran Social Services had prevented him from being close to M.S. being placed in his care. M.S. is entitled to stability, and the best interest factors favor the termination of respondent's parental rights.

¶ 34 Accordingly, we find the circuit court's conclusion it was in M.S.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 37 Affirmed.