2017 IL App (4th) 160731-U

NO. 4-16-0731

FILED
February 10, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 15JA139
SEAN COGAN,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment finding respondent unfit and terminating his parental rights is affirmed.

¶ 2 In October 2015, the State filed a petition alleging L.C., born September 24, 2015, was neglected and abused as a result of her mother's use of heroin throughout her pregnancy. Respondent, Sean Cogan, is the father of L.C. (The mother is not a party to this appeal.) In November 2015, respondent failed to appear and was defaulted. The trial court made L.C. a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS) by an order filed in December 2015. In March 2016, the State filed a motion to terminate respondent's parental rights. Respondent appeals, contending the court's finding he was an unfit parent was against the manifest weight of the evidence, as was the court's finding it was in L.C.'s best interest to terminate respondent's parental rights.

¶ 3 We affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On November 4, 2015, respondent failed to appear in court on the petition (filed October 15, 2015) alleging L.C. was neglected pursuant to counts I and II. Count I alleged L.C. was a minor under 18 years of age who was not receiving proper or necessary care in that L.C. was the mother's second substance-exposed child; L.C. required specialized treatment after birth due to opiate withdrawal symptoms; the parents only visited L.C. twice; the mother's whereabouts were unknown and respondent reported he would be going to prison "in a couple of months"; and neither parent was willing or able to care for a newborn. 705 ILCS 405/2-3(a)(1) (West 2014).

¶ 6 Count II alleged L.C. was born with a controlled substance in her body. The mother admitted heroin use throughout her pregnancy and during the last 10 years. 705 ILCS 405/2-3(1)(c) (West 2014).

¶ 7 Count III alleged abuse because the parents' conduct created a substantial risk of physical injury to L.C. as a result of her exposure to heroin. 705 ILCS 405/2-3(2)(ii) (West 2014). The trial court adjudicated L.C. abused.

¶ 8 Following adjudication, the trial court immediately proceeded to the dispositional hearing. The court found it was in L.C.'s best interest to be made a ward of the court and placed custody and guardianship with DCFS. The adjudicatory and dispositional orders were filed on December 2, 2015.

¶ 9 According to a shelter-care report filed on October 15, 2015, respondent admitted knowing L.C.'s mother was a heroin user and felt she was a "big girl" who could do what she wanted. L.C. had been in serious respiratory distress after her birth at Decatur Memorial

Hospital and was transferred to St. John's Hospital in Springfield, Illinois, two days after she was born. L.C. was discharged from the hospital on October 13, 2015. The hospital (St. John's) reported the parents visited only twice, but respondent called the hospital daily. Respondent admitted using heroin and pills prior to getting out of prison in April 2015. He denied currently using drugs. Respondent agreed to do a drug drop but never showed up at St. Mary's Hospital (St. Mary's) to complete it. On October 2, 2015, respondent told DCFS investigator Ali Collins he was homeless and had no idea where L.C.'s mother was. Collins told respondent again to do a drug drop at St. Mary's, but respondent failed to do so. Respondent advised Collins he would be going back to prison sometime between November 2015 and January 2016 to finish a previously imposed sentence. According to this report, respondent admitted he was not equipped to care for a newborn. Respondent was present at the shelter-care hearing when the next hearing was scheduled for November 4, 2015. As noted above, respondent failed to appear on November 4, 2015, and was defaulted.

¶ 10 On March 9, 2016, the State filed a motion seeking a finding of unfitness and termination of the parental rights of respondent. The motion alleged respondent was unfit because he (1) abandoned the minor (750 ILCS 50/1(D)(a) (West 2014)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); and (3) deserted the minor for more than three months prior to the unfitness proceeding (750 ILCS 50/1(D)(c) (West 2014)).

¶ 11 On August 24, 2016, the trial court began the fitness hearing. Respondent was represented by counsel and participated personally by telephone conference due to his incarceration in the State of Indiana.

¶ 12 Kylah Dedios, a case manager with Webster Cantrell Hall, had been the

caseworker assigned to L.C.'s case since November 2015. At the beginning of the case, respondent was scheduled to participate in an integrated assessment. He did not show up for it, nor could he be reached by telephone. From November 9, 2015, through January 4, 2016, Dedios had no contact with respondent. On January 5, 2016, Dedios received a phone call from respondent. He requested visitation with L.C. Dedios told respondent, because he had outstanding warrants, she could not allow him to visit L.C. She also received a letter from respondent on February 15, 2016, while he was incarcerated. The letter requested pictures and information about L.C. Dedios testified respondent sent no gifts, cards, or letters for L.C., nor did he provide any support for her. She further testified respondent had done nothing to move toward getting his child returned during the pendency of the case.

¶ 13 Shewanda Green testified next. She is a foster-care caseworker for Webster Cantrell Hall. She received L.C.'s case from DCFS on October 21, 2015. Respondent was present on October 21, 2015, when Green scheduled the integrated assessment for November 9, 2015, and he told her that date worked for him and he would attend. She and respondent exchanged contact information at that time. Respondent failed to appear for the assessment. Prior to November 9, 2015, Green had two or three phone contacts with respondent. He asked about visitation with L.C. Green told him agency policy prohibited visitation with parents who have outstanding warrants.

¶ 14 The State rested its case. Counsel for respondent requested a brief continuance so she could obtain a copy of the policy prohibiting visitation with parents with outstanding warrants. On September 22, 2016, the fitness hearing continued.

¶ 15 Deanna Willis, a foster-care supervisor at Webster Cantrell Hall, testified it was her understanding since she began working at Webster Cantrell Hall eight years ago, parents

with warrants were not allowed to visit their children. The policy is not written down and she recently learned it is not official DCFS policy to deny visitation to parents with warrants. However, Willis testified there is a DCFS rule that prohibits placement of a minor with a person who has outstanding warrants.

¶ 16 Respondent testified L.C. was born on September 24, 2015, and was transferred from Decatur Memorial Hospital to St. John's Hospital in Springfield. He was with L.C. at the hospital in Decatur until she was transferred to St. John's two days after she was born. He visited L.C. three times while she was at St. John's. (L.C. was discharged on October 13, 2015.) He was living in Decatur at the time and had to arrange for transportation to Springfield. Respondent called the hospital two or three times a day to check on L.C., except for a three-day period when he did not have a phone.

¶ 17 Respondent further testified he told caseworker Green he had outstanding traffic warrants and would have to serve a sentence in Indiana. According to respondent, he called the day before the scheduled integrated assessment and was told if he showed up, he would be arrested on his warrants. Respondent contacted Webster Cantrell Hall on December 12, 2015, to let them know he had just been released from jail on his traffic warrants. During that phone call, he learned Kylah Dedios was the new caseworker. He never informed her when he went to Indiana to begin his sentence. He first let her know in his February 15, 2016, letter.

¶ 18 The trial court took the matter under advisement. On September 26, 2016, the court found respondent unfit by clear and convincing evidence due to his desertion and abandonment of L.C. and his failure to maintain a reasonable degree of interest, concern, or responsibility as to L.C.'s welfare. The court found the following: (1) respondent never appeared for his integrated assessment; (2) respondent periodically inquired about visitation, but

he never inquired about services necessary for reunification; (3) visitation was not provided because respondent had outstanding warrants; (4) respondent never sent gifts, letters, or cards to L.C.; (5) respondent failed to support L.C. financially or otherwise; (6) no evidence suggested respondent took any steps toward reunification other than his requests for visitation; (7) respondent was incarcerated in Indiana since January 10, 2016; and (8) caseworkers Dedios and Green provided credible testimony.

¶ 19 On October 13, 2016, the trial court held a best-interest hearing. Kylah Dedios testified L.C. was in an adoptive placement with her maternal great-grandparents, who were in their 50s or 60s. L.C. had been with them since the case was opened and had bonded with them. L.C. was healthy and happy. L.C., now one year old, was developmentally on target. The foster parents were able to meet all of L.C.'s needs. Dedios felt adoption would be best for L.C. because she had been with the foster parents since birth and neither of L.C.'s parents had requested services to get L.C. back.

¶ 20 The trial court took judicial notice, without objection, of the best-interest report filed September 29, 2016. Respondent chose not to present any evidence. The court found it was in L.C.'s best interest to terminate respondent's parental rights.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, respondent argues the State failed to prove him unfit by clear and convincing evidence and the trial court's order terminating his parental rights was not in the best interest of L.C.

¶ 24 A. Fitness Determination

¶ 25 A parent will be deemed unfit if the State proves, by clear and convincing

evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 26 We note the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). Accordingly, we begin our analysis with respondent's argument the trial court's finding he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare was against the manifest weight of the evidence.

¶ 27 When considering whether a parent is unfit for failure to maintain a reasonable degree of interest, concern, or responsibility for a child, "the parent's efforts to communicate with and show interest in the child, not the success of those efforts," are key. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 68, 824 N.E.2d 221, 226 (2005) (quoting *In re Adoption of Syck*, 138 Ill. 2d 255, 279, 562 N.E.2d 174, 185 (1990)). A court may find a parent unfit if any one of the three is proved. *In re Richard H.*, 376 Ill. App. 3d 162, 166, 875 N.E.2d 1198, 1201 (2007). The State is required to prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). As noted above, we will reverse a finding of unfitness only where it is against the manifest weight of the evidence. *In re C.W.*, 199 Ill. 2d 198, 211, 766 N.E.2d 1105, 1113 (2002).

¶ 28 Here, respondent never showed up for the integrated assessment, never showed up for requested drug drops, and visited with his newborn only two or three times between

September 26 and October 13, 2015, while she was hospitalized in Springfield. While respondent called fairly regularly when L.C. was hospitalized and requested visitation, he failed to take prompt steps to resolve his warrants so he could have visitation. He never sought services or inquired about what was necessary for him to do to regain custody. He has been incarcerated in Indiana for a relatively lengthy period. While this no doubt impacted his ability to financially support L.C., he also failed to write letters or send cards or small gifts to her. The trial court's finding respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to L.C.'s welfare was not against the manifest weight of the evidence. Accordingly, we need not address the court's other bases for the unfitness finding.

¶ 29 B. Best-Interest Determination

¶ 30 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's best interest. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* at 364, 818 N.E.2d at 1227. Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. *Id.* at 366, 818 N.E.2d at 1228.

¶ 31 When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These include the following:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) 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;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3 (4.05)(a) to (j) (West 2014).

¶ 32 The trial court's finding termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 33 Here, L.C. has been in an adoptive placement with her maternal great-grandparents since DCFS opened the case. She is healthy and bonded to her foster parents. They meet all of her needs and L.C. is developmentally on target. The foster parents are able to provide L.C. with a permanent, loving home, something respondent is unable to do. The trial court did not err in finding it was in L.C.'s best interest to terminate respondent's parental rights.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment.

¶ 36 Affirmed.