2017 IL App (4th) 160800-U

NO. 4-16-0800

FILED
March 17, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 15JA32
FELICIA MANN,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order terminating respondent mother's parental rights based on the court's finding respondent was an unfit parent and it was in the minor's best interest to terminate was not against the manifest weight of the evidence.

¶ 2 Respondent mother, Felicia Mann, appeals from the trial court's order terminating her parental rights. She challenges both the trial court's finding of unfitness, as well as the court's best interest finding. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent is the mother of J.M., born December 24, 2014, five weeks premature. Because she was born with a number of complex medical issues, J.M. remained in the hospital for several months. In March 2015, the State filed a petition for the adjudication of neglect, alleging J.M. was neglected within the meaning of section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2014)) because she was

not receiving the proper or necessary care for her well-being (count I). The State also alleged J.M. was a dependent minor within the meaning of section 2-4(1)(b) of the Juvenile Court Act (705 ILCS 405/2-4(1)(b) (West 2014)) because she was without the proper care due to respondent's physical or mental disability (count II). The State alleged in each count that respondent's developmental delays prevented her from parenting her "medically complex" infant, and noted respondent's parental rights to her older son had been terminated in a separate Macon County case. J.M.'s father was not identified and is not a party to this appeal.

¶ 5 According to the shelter-care report, J.M. was diagnosed with DiGeorge syndrome, cystic fibrosis, and laryngomalacia. However, respondent told the investigator from the Illinois Department of Children and Family Services nothing was wrong with J.M., she needed only to gain weight. Respondent did not appear to understand the severity of J.M.'s medical problems. Respondent's son had been removed from her care two years ago for similar reasons, as that child had similar medical problems. A prior psychological evaluation determined respondent's parenting capacity could not "meet the extensive medical problems that her child had." Upon release from the hospital, J.M. was placed in a medically specialized foster home with her brother.

¶ 6 Respondent began supervised visits with J.M. in May 2015. She visited for two hours every other week. The trial court entered an adjudicatory order on June 1, 2015, finding J.M. a dependent minor due to respondent's cognitive and developmental delays and J.M.'s medically complex condition. The court noted respondent's inability to care for J.M. On July 1, 2015, the court entered a dispositional order, finding respondent unfit and unable to care for J.M., adjudicating J.M. a dependent minor, and making J.M. a ward of the court.

¶ 7 Respondent continued visiting J.M. until August 2015, when she moved to Indianapolis with her boyfriend. In December 2015, J.M. was removed from her specialized foster home because it was discovered the foster parents were not following the doctors' recommendations. J.M. was placed in a traditional foster home, not with her brother and not in an adoptive placement.

¶ 8 On September 22, 2016, the trial court conducted a fitness hearing on the State's August 17, 2016, amended petition to terminate respondent's parental rights. (The State filed the initial petition on June 20, 2016. The amended petition changed text unrelated to the allegations against respondent.) The State alleged respondent was unfit in that she (1) abandoned the minor (750 ILCS 50/1(D)(a) (West 2014)); (2) deserted the minor for more than three months preceding the commencement of the termination proceedings (750 ILCS 50/1(D)(c) (West 2014)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal during any nine-month period (750 ILCS 50/1(D)(m)(i) (West 2014)); (4) failed to make reasonable progress toward the return of the minor within the nine-month period of June 1, 2015, through March 1, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (5) failed to make reasonable progress toward the return of the minor within the nine-month period of September 16, 2015, through June 16, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 9 The State called as its first witness Chelsea Smalley, the caseworker from the Center for Youth and Family Solutions. Smalley said she became the caseworker on November 17, 2015. Respondent had moved with her boyfriend to Indiana from Decatur in August or September 2015. Smalley said she provided respondent with a copy of her service plan, which recommended the following services: (1) a parenting class, (2) individual counseling, (3) visitation, and (4) participation in some of J.M.'s medical appointments. Smalley said she had

difficulty coordinating services in Indiana. Coupled with the difficulty of securing out-of-state services, respondent was indecisive on whether she wanted to stay in Indiana or move back to Decatur. When Smalley would find services in Indiana, respondent would indicate she intended to move to Decatur. Smalley would then cancel the Indiana services and establish services in Decatur. Respondent moved back to Decatur on April 28, 2016, having participated in no services.

¶ 10 There were some administrative issues with getting the proper referrals to the proper agencies, through no fault of respondent's. Due to some miscommunication among the providers, Smalley requested respondent participate in a psychological evaluation in order to gain more background information for the purpose of determining whether individual counseling would be beneficial for her. She completed the evaluation in June 2016 in Peoria. Smalley said she had never been rated satisfactory on any of her services.

¶ 11 Smalley said respondent had not successfully participated in visits with J.M. since moving to Indiana in September 2015. Respondent had one visit in December 2015, one in January 2016, and one in March 2016. Since June 2016, after moving back to Decatur, she has visited once per month. Smalley said respondent "does try" to engage with J.M., but "[i]t's clear [J.M.] is not too attached to [respondent]." In Smalley's opinion, respondent lacks the ability to nurture J.M. and lacks the knowledge of basic parenting skills, such as when to feed J.M., how to feed her, and how to interact with her.

¶ 12 Smalley also testified respondent had not indicated any interest in attending medical appointments with J.M. Respondent maintains regular contact with Smalley, regularly asks Smalley how J.M. is doing, and once mentioned she had performed research on J.M.'s DiGeorge syndrome.

¶ 13 According to Smalley, respondent had completed her counseling intake in May 2016 and her psychological evaluation in June 2016, but no other services had been completed. In Smalley's opinion, even if respondent had more time to complete services, she would not be able to safely parent J.M. The minor's medical needs will increase and her medical problems will become more severe as she grows older. Smalley believes respondent does not have the capacity to meet J.M.'s extensive medical needs.

¶ 14 On cross-examination, Smalley admitted she had been "lacking" in trying to coordinate medical appointments for J.M. with respondent's availability to attend. However, J.M.'s foster home and respondent's home were 1 1/2 hours apart, so transportation and other logistics made coordination difficult.

¶ 15 The State next called Willa Boles as a witness. Boles was the parenting instructor at Webster-Cantrell Hall. Respondent participated in her intake assessment on May 6, 2016. She scored a 52%, otherwise known as a "medium risk," which Boles described as "substantially below" the 66% score needed to be excused from taking the class. Respondent began the weekly course on May 7, 2016, and had been attending on a regular basis. After attending for 16 weeks, she would be given an assessment to evaluate her progress. On August 16, 2016, respondent asked to switch classes from Tuesday to Thursday. Boles has not heard from her since.

¶ 16 No other evidence was presented. After considering the evidence, the trial court found respondent unfit on three grounds alleged in the State's petition to terminate: (1) she failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal during any nine-month period (750 ILCS 50/1(D)(m)(i) (West 2014)); (2) she failed to make reasonable progress toward the return of the minor within the nine-month period of June 1, 2015, through March 1, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (3) she failed to make

reasonable progress toward the return of the minor within the nine-month period of September 16, 2015, through June 16, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 17 Specifically, the trial court noted respondent had not been successful in completing any of her three required services: parenting, counseling, and visitation. The court also noted respondent had attended no doctor's appointments with J.M., which the court found to be "very essential in terms of caring for a special needs child." The court stated: "Perhaps most importantly, Ms. Smalley testified credibly, I believe, that the mother could not safely parent the child even with another six to nine months if that time would be given to her."

¶ 18 The Center for Youth and Family Solutions' September 27, 2016, best interest report recommended the termination of respondent's parental rights. The report noted J.M. had "no observable attachment" to respondent, as respondent has had little involvement in J.M.'s life. During respondent's visits, it was apparent she lacked the natural ability to nurture J.M. The minor often looked to the caseworker if she needed to be comforted. J.M. has a close bond with her current foster parents; however, she will be transitioned into another foster home in order to be adopted with her biological brother. All parties have participated in transitional weekend visits, which have gone well. J.M. appears happy with the new foster parents as well. Respondent's developmental delays prevent her from adequately and safely caring for J.M., especially with J.M.'s extensive and specialized medical needs.

¶ 19 On October 13, 2016, the trial court conducted a best-interest hearing. Smalley again testified, stating J.M. was in a traditional foster placement. Smalley said she was in the process of obtaining a licensing waiver in order for J.M. to be placed in the same home with her brother, a potential adoptive placement. Smalley said J.M. was "doing very well." She was receiving feeding, speech, occupational, and physical therapies in the home. The foster parents

were "keeping on it" and providing all of the necessary care. Her potential adoptive placement has medically specialized experience, as J.M.'s brother is in the home and suffers from similar conditions. The two sets of foster parents cooperate with each other to provide transitional visits and general weekend visits. Smalley said she has seen J.M. improve. She said J.M. is "safe, comfortable, and happy." Each foster family has three other children in their respective home. They all get along "very well." Smalley said it is "a very good situation," and both foster moms are stay-at-home moms. J.M. has bonded quickly with both sets of foster parents, so, according to Smalley, the transition should be smooth.

¶ 20 On cross-examination, Smalley explained that J.M. was born in December 2014 and remained hospitalized until March 2015, when she was brought into care. Respondent has never had exclusive care of J.M. The minor was currently in her second foster home, after having been removed, along with her brother, from her first foster placement due to medical neglect in December 2015. The first foster family did not follow doctors' recommendations. J.M. seems to "fit[] in very well" with her prospective foster family. Smalley described them as "really great people" who have "done really well with her."

¶ 21 After considering the testimony, the best-interest report, the recommendations of counsel, and the applicable statutory factors, the trial court found the State had proven by a preponderance of the evidence it was in the minor's best interest to terminate respondent's parental rights. This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 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 2014)). *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). If the trial 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 (2004).

¶ 24 Since the trial 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 (2001). Further, in matters involving minors, the trial court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667. Thus, a reviewing court will not disturb a trial 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 (2005) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344 (2010) (best interest determination). A trial 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.

¶ 25 A. Respondent's Fitness

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

¶ 27 The trial court found respondent unfit under, *inter alia*, section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)), 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 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211 (2001), quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)). 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 (quoting *C.N.*, 196 Ill. 2d at 216-17).

¶ 28 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 omitted.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 29 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 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38 (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. In this case, the petition alleged one of the relevant nine-month periods was June 1, 2015, to March 1, 2016.

¶ 30 The evidence at the fitness hearing indicated respondent moved to Indiana during the relevant nine-month period. Her August or September 2015 move negatively affected her visitation with J.M., in that, during this time frame and after her move, respondent visited with the minor only twice. Further, while in Indiana, respondent did not participate in any other services. Of her three recommended tasks, she was rated unsatisfactory on each. She did not engage or satisfactorily participate in individual counseling, parenting, or visitation. At the end of the period, she remained in Indiana. The evidence showed respondent was never close to having J.M. returned to her custody during the relevant period. Accordingly, the trial court's finding respondent unfit based on her failure to make reasonable progress toward the minor's return during the period of June 1, 2015, through March 1, 2016, was not against the manifest weight of the evidence.

¶ 31 Because we have upheld the trial court's determination respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West 2014)), we need not review any other bases for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 32 B. Minor's Best Interest

¶ 33 Respondent also challenges the trial court's finding it was in J.M.'s best interest to terminate her parental rights. The State contends the court's finding was proper.

¶ 34 During the best interest hearing, the trial 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 (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 2014)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60 (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 2014).

¶ 35 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 (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. "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 (2006).

¶ 36 In this case, J.M. has been in foster care the entirety of her young life. Although she was in a caring foster placement, she was being transitioned to a new foster home to live with her biological brother. The new foster home was an adoptive placement for both siblings. According to Smalley, J.M. seems happy with her new foster parents. They have been adequately

addressing J.M.’s brother’s specialized medical needs, so they are well-equipped to care for hers as well. J.M. was participating in feeding, speech, occupational, and physical therapies at home and doing well.

¶ 37 Respondent’s developmental delays prevented her from properly and safely caring for J.M. Further, with the minor’s added medical needs, respondent does not have the ability to comprehend the amount of care required. The prospective foster family is well-equipped to address J.M.’s needs, as they have medically specialized experience. J.M. deserves competency, understanding, permanency, and stability. Therefore, the best interest factors favor the termination of respondent's parental rights.

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

¶ 39 III. CONCLUSION

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

¶ 41 Affirmed.