2017 IL App (4th) 170163-U

NO. 4-17-0163

FILED
June 27, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: S.G., a Minor	)	Appeal from
	)	Circuit Court of
	)	Sangamon County
(The People of the State of Illinois,	)	No. 15JA15
Petitioner-Appellee,	)	
v.	)	Honorable
James Gordon,	)	Karen S. Tharp,
Respondent-Appellant).	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not err by finding James Gordon an unfit parent and terminating his parental rights with respect to S.G.

¶ 2 In December 2016, the trial court found respondent, James Gordon, an unfit parent within the meaning of section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)) because he failed to maintain a "reasonable degree of interest, concern, or responsibility" as to S.G.'s welfare. In February 2017, the court determined it was in S.G.'s best interests to terminate Gordon's parental rights. See 705 ILCS 405/2-29(2) (West 2014). Gordon appeals, arguing the court's unfitness finding and best-interest analysis are against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Gordon is the biological father of S.G., who was born in 2008. Gordon was incarcerated in 2008 after pleading guilty to unlawful possession of a controlled substance with intent to deliver, a Class X felony (720 ILCS 570/401(a)(2)(A) (West 2008)). Gordon was sentenced to 18 years in prison, and he was released on parole in March 2017. His prison sentence began prior to S.G.'s birth.

¶ 5 In January 2015, S.G. and her minor siblings were taken into protective custody following a physical altercation between their mother and grandmother. Temporary custody was granted to the State the following day, and the children were then placed in foster homes. S.G. was initially placed with a relative, but the placement was unsuccessful. S.G. was later placed in a foster home with an older sister, where she has remained throughout these proceedings.

¶ 6 Katherine Johnson, a caseworker with the Family Service Center (Family Services), was assigned to the case involving S.G. and her siblings. Johnson established a service plan in July 2015, which was to run through January 2016, and she reviewed the plan with S.G.'s mother. The children's mother cooperated with Family Services for a few months, but she eventually stopped working with Family Services and ceased all contact with them. Her parental rights were terminated at the same time Gordon's were terminated, but she is not a party to this appeal.

¶ 7 A. Fitness Hearing

¶ 8 In December 2016, the trial court held a fitness hearing pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)). Johnson testified to the following facts at the hearing. She mailed Gordon the service plan, which required him to

complete deoxyribonucleic acid (DNA) testing to prove his paternity and to cooperate with Family Services to complete an integrated assessment. Johnson informed Gordon he would have to put her on his visitor's list to complete the assessment. Gordon completed the DNA testing, which proved he is S.G.'s biological father. Johnson stated she attempted to keep in contact with Gordon via letter every couple of months. Gordon responded to one of Johnson's letters in December 2015, stating he added her to his visitor's list and his mail had been delayed because he was transferred from Jacksonville to East Moline.

¶ 9 The integrated assessment was delayed until April 2016 due to the lack of communication from Gordon. Rather than conducting the assessment in person, as they had discussed, Johnson conducted it via telephone. Around the time the assessment was completed, the goal for the service plan had changed from returning the children to their mother's care to permanent substitute care. Because the goal had changed, no services were recommended for Gordon, but Johnson testified she would have recommended substance abuse treatment. Johnson rated Gordon "unsatisfactory" for his lack of communication with Family Services, indicating it would take months for him to respond to her letters. He was also rated “unsatisfactory” for failing to work with Johnson to schedule and complete the integrated assessment.

¶ 10 Gordon had never, to her knowledge, had any contact with S.G., and the two had no relationship whatsoever. She indicated Gordon was not surprised to learn he was the father of S.G., and the lack of relationship between the two was not the result of him being unaware he was her father. Gordon did not request to see S.G. or inquire into S.G.'s well-being throughout this process. Gordon did, however, indicate he was interested in being involved in this case and engaging in the necessary services while he was incarcerated.

¶ 11 Johnson testified, even if Gordon was found fit, custody of S.G. would not immediately be given to Gordon because he would need to stabilize after having been incarcerated for several years. Before S.G. would be released into his custody, he would have to obtain adequate housing and maintain "legal" means of employment. Johnson noted, throughout his adult life, Gordon had only maintained "one legal means of income, and it was a very short period of time." Gordon would also be required to complete parenting classes and possibly substance abuse treatment.

¶ 12 The State argued Gordon should be determined unfit. The State noted Gordon seldom spoke with Johnson, and there was no indication Gordon completed any services toward gaining custody of S.G. Further, even though he was set to be released on parole shortly, he would be required to complete several tasks before S.G. could be released to him.

¶ 13 Gordon's counsel argued he should determined fit because he cooperated with Johnson to complete the DNA testing and the integrated assessment. Counsel argued the delay in completing the integrated assessment was caused by confusion about whether to complete it over the phone or in person and delays in the prison mail system. Counsel noted Gordon was never assigned services to complete and argued "[Gordon] never had an opportunity, never had a chance to be involved as a father." According to counsel, Gordon did everything asked of him throughout the process, and he should therefore not be found unfit.

¶ 14 The guardian *ad litem*, Stacey Hollo, representing S.G. and her minor siblings agreed with the State's argument. Hollo also argued Gordon had never done anything to develop a relationship with S.G., and he had been in prison for S.G.'s entire life. Hollo indicated "it's not a situation where [S.G. was] with Dad up until" he went to prison.

¶ 15 The trial court held as follows:

> "With regard to Mr. Gordon, again, incarcerated during the life of this case. Little contact with the child beforehand. Did very little to really show an interest in the child, show that he was wanting to maintain contact with the child. Did not regularly contact the caseworker even just—even if he wasn't getting any mail from the worker, he was not doing anything to reach out to the worker on any sort of regular basis to inquire about the child. How's the child doing, to send letters to the child, to try and maintain some sort of relationship with the child even though he's incarcerated in anticipation of a time that he may get out. So I do find that the State has proved Mr. Gordon is an unfit person, that he has failed to maintain a reasonable degree of interest, concern, or responsibility because of the limited services available based upon his situation."

¶ 16 B. Best-Interest Hearing

¶ 17 In February 2017, the trial court held a hearing to determine whether it was in S.G.'s best interest to terminate Gordon's parental rights pursuant to section 2-29(2) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-29(2) (West 2014)). Brittani Provost, a caseworker with Family Services, took over the case involving S.G. and her minor siblings in August 2016. Provost testified at the February 2017 hearing as follows. Prior to her current placement, S.G. had two other placements, a relative placement and a nonadoptive

placement. S.G. was then placed in a foster home with an older sister. S.G. was making progress in the placement and doing well in school. S.G.'s medical, social, and emotional needs were met. S.G. was bonding well with her foster parents and foster siblings and appeared very attached to the family. Family Services' goal was to make this placement permanent for S.G., and the foster parents were willing to provide permanency for S.G. Provost testified S.G. was not attached to Gordon, and to her knowledge, Gordon had never contacted S.G. In Provost's opinion, S.G. would not be harmed if Gordon's parental rights were terminated. However, Provost also opined, on cross-examination, spending time with Gordon following his release would not be detrimental to S.G.

¶ 18 The State argued Gordon's parental rights should be terminated because S.G. is in an adoptive placement. This placement is meeting her educational, medical, and social needs. S.G. had never received any contact from Gordon, and S.G. deserves a chance at permanency. The State argued any cooperation during the service plan does not outweigh "the great responsibility that we have to provide for the long-term permanence for [S.G.]."

¶ 19 Gordon's counsel opined S.G.'s current placement might not work out because her prior placements had not worked out. Counsel asserted if this placement does not work out and Gordon's rights are terminated, S.G. would have a "worse chance of permanency than it would be if Mr. Gordon's rights remains in tact [*sic*]." Counsel argued Gordon's incarceration prevented him from "really being a parent," and he has a fundamental interest in retaining his parental rights. Counsel argued he had not been recommended for any services by Family Services to correct any potential issues. For these reasons, counsel argued it was premature to terminate Gordon's parental rights.

¶ 20 The trial court held as follows:

> "With regard to James Gordon, I understand that his release date is fast approaching, but he's had little to no contact with his child, not developed any sort of relationship with this child of any sort over the course of her life.
>
> So, I do find that it is in her best interest *** that the parental rights of James Gordon be terminated, again, to give this child a chance for permanence to maintain the placement that she is in. I have heard no evidence to make me think that it will not work out in this home, but there is nothing about her either that I hear that even if this were—if this placement didn't work out, there is nothing about her that is un-adoptable, but I have no reason to believe this placement won't work out. Her needs are being met there. She is stable there and developing a bond with the foster parents."

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, Gordon argues the trial court's unfitness finding and best-interest analysis are against the manifest weight of the evidence.

¶ 24 A. Termination of Parental Rights and the Standard of Review

¶ 25 When considering whether to terminate parental rights, the trial court must make two distinct findings:

> "(1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are 'unfit persons' within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proven, by a preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. [Citations.]" *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20, 45 N.E.3d 1107 (citing 704 ILCS 405/2-29(2) (West 2014)).

¶ 26 We will not reverse a trial court's fitness finding or best interest finding unless they are against the manifest weight of the evidence. *Id.* ¶ 22. "A finding is against the manifest weight of the evidence only if it is 'clearly evident,' from the evidence in the record, that respondent's conformance to the statutory definition in question was unproven." *Id.* Even "[i]f reasonable minds could disagree whether a given statutory definition was proven by clear and convincing evidence, we will uphold the trial court's finding." *Id.*

¶ 27 B. Unfitness Finding

¶ 28 A person is unfit if clear and convincing evidence indicates he or she failed "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2014); see also *In re Adoption of Syck*, 138 Ill. 2d 255, 273-74, 562 N.E.2d 174, 182 (1990). "[T]he parent's past conduct in the then-existing circumstances" is

under scrutiny at this point in the proceeding. *Id.* at 276, 562 N.E.2d at 184.

> "Circumstances that warrant consideration when deciding whether a parent's failure to personally visit his or her child establishes a lack of reasonable interest, concern or responsibility as to the child's welfare include the parent's difficulty in obtaining transportation to the child's residence [citations], the parent's poverty [citation], the actions and statements of others that hinder or discourage visitation [citation], and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child [citation]. If personal visits with the child are somehow impractical, letters, telephone calls, and gifts to the child or those caring for the child may demonstrate a reasonable degree of concern, interest and responsibility, depending upon the content, tone, and frequency of those contacts under the circumstances. [Citations.] Also, mindful of the circumstances in each case, a court is to examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts. [Citations.]" *Id.* at 278-79, 562 N.E.2d at 185.

¶ 29 The basis of Gordon's argument on appeal focuses on his cooperation with Family Services in completing the DNA testing and integrated assessment. "Completion of service plans may *** be considered evidence of a parent's interest, concern, or responsibility." *In re*

B'Yata I., 2013 IL App (2d) 130558, ¶ 35, 999 N.E.2d 817. Though Gordon did timely comply with Family Services' request for DNA testing, Johnson indicated he was rated "unsatisfactory" for communication with Family Services. Gordon asserts he should have been afforded more time to complete services based upon the outcome of the integrated assessment, and he "did nothing to interfere with or delay the integrated assessment." To the contrary, it appears from the record the assessment was delayed because of Gordon's lack of communication.

¶ 30 Though Gordon asserts on appeal he kept in contact with Johnson, the record indicates the only communication initiated by Gordon was one letter he sent to Johnson in December 2015, despite the fact Johnson testified she sent him letters every two to three months. Gordon complains on appeal the caseworker did not contact him once a month as was required by the service plan, and he states, "It is difficult to contemplate how [he] could have asserted any additional effort in this matter." Gordon concedes he was available at any time between July 2015 and January 2016. He could have easily called, or at the very least, sent letters to Johnson, especially if he was concerned about the fact he was not receiving a letter or a call from her every month. The focus of the fitness finding is Gordon's actions, not Johnson's, and the record indicates Gordon maintained minimal contact with Family Services, which evinces a lack of interest in the proceedings.

¶ 31 Regardless of whether Gordon cooperated with Family Services, the fact remains, prior to Family Services' intervention, he had not shown any interest, concern, or responsibility at all with respect to S.G., who was eight years old at the time. Not once during S.G.'s life did Gordon call, send a letter, request visitation, or otherwise make an effort to contact S.G. or develop any sort of relationship with her. The fact Gordon was incarcerated throughout

the course of S.G.'s life did not prevent him from making an effort to develop a relationship with her. It does not appear from the record Gordon's failure to show interest in S.G. stemmed from him being unaware S.G. was his child, and he makes no such claim. In fact, the only evidence on this point was Johnson's testimony Gordon was unsurprised by the DNA results. We therefore conclude the manifest weight of the evidence supported the trial court's finding Gordon failed to maintain a reasonable degree of interest, concern, or responsibility as to S.G.'s welfare.

¶ 32 C. Best-Interest Finding

¶ 33 Once a person is found unfit, the trial court may terminate the person's parental rights if the court finds, by a preponderance of the evidence, termination is in the best interests of the child. 705 ILCS 405/2-29(2) (West 2014); see also *M.H.*, 2015 IL App (4th) 150397, ¶ 20, 45 N.E.3d 1107. At this stage in the proceeding, the focus is on the child, and "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). Section 1-3 of the Juvenile Act states:

> "Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:
>
> (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) (West 2014).

¶ 34 Gordon's argument focuses on his circumstances rather than on S.G.'s interests, and he asserts his actions "must be evaluated in the context of the circumstances in which they occurred," citing *Syck*, 138 Ill. 2d at 278, 562 N.E.2d at 185, and *In re K.B.*, 314 Ill. App. 3d 739, 753, 732 N.E.2d 1198, 1210 (2000). The parent's conduct applies to the fitness finding, not the best-interest analysis. Gordon's cooperation with Family Services, or lack thereof, is irrelevant to the best-interest analysis.

¶ 35 Gordon concludes his argument by stating, "It is against the manifest weight of the evidence to determine that the best interests of the child are served by terminating [his] parental rights when his incarceration was nearly complete, and he would be available for services and to care for his child." We disagree. This argument ignores the fact S.G. is already in a loving foster home with her biological sister and a family with whom she has developed a bond. Provost testified S.G. is quite attached to her foster family. Her foster home is meeting her educational, social, and medical needs. The foster parents have offered S.G. permanency and a stable environment. Conversely, Gordon has virtually no relationship with S.G., and the child has no attachment to him. At the time of the hearing, Gordon was still incarcerated, meaning he could not care for S.G. Gordon has pointed to no statutory factors indicating it would be in S.G.'s best interest for his parental rights to remain intact. We conclude the manifest weight of the evidence supports the trial court's best interest-analysis and the court did not err by

terminating Gordon's parental rights.

¶ 36 III. CONCLUSION

¶ 37 We affirm the trial court's judgment.

¶ 38 Affirmed.