2017 IL App (4th) 170365-U

NOS. 4-17-0365, 4-17-0366 cons.

FILED
October 6, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| In re: L.M., a Minor | ) | Appeal from |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Mason County |
| Petitioner-Appellee, | ) | No. 13JA11 |
| v. (No. 4-17-0365) | ) | |
| Aaron Mathany, | ) | |
| Respondent-Appellant). | ) | |
| | ) | |
| In re: G.M., a Minor | ) | No. 13JA12 |
| | ) | |
| (The People of the State of Illinois, | ) | |
| Petitioner-Appellee, | ) | |
| v. (No. 4-17-0366) | ) | Honorable |
| Aaron Mathany, | ) | Alan D. Tucker, |
| Respondent-Appellant). | ) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's decision to terminate respondent's parental rights to L.M. and G.M. was not against the manifest weight of the evidence.

¶ 2 On May 5, 2017, the trial court terminated respondent Aaron Mathany's parental rights to his children, L.M. (born June 15, 2013) and G.M. (born February 1, 2005). Respondent appeals the termination of his parental rights to both children. His appeals have been consolidated for purposes of our review. Respondent argues the court erred in terminating his parental rights because the State failed to establish he was an unfit parent or that it was in his children's best interest to terminate his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 3, 2013, the trial court entered a temporary custody order for L.M. and G.M. The court found an immediate and urgent necessity existed to remove the children from respondent's residence because leaving the children there would be contrary to their health, safety, and welfare.

¶ 5 Respondent and L.M.'s mother had been arrested on October 1, 2013, charged with armed violence, and were unable to post bond. G.M.'s mother had previously surrendered her parental rights. The court heard evidence from Mason County Sheriff's Deputy David Baker and Department of Children and Family Services (DCFS) Investigator Nancy Britton detailing the filth, marijuana, and drug paraphernalia present in the home in which the children had been residing. Food was rotting in the kitchen, dirty dishes covered the counter, and trash filled the residence which housed five adults, G.M., and L.M.

¶ 6 On October 29, 2013, the trial court entered an adjudicatory order, finding the children neglected because they were in an environment injurious to their welfare. The court based its ruling on drug activity and the lack of cleanliness, electricity, and running water at the home. On December 10, 2013, the court entered a dispositional order, finding respondent unfit for dispositional purposes.

¶ 7 On August 9, 2016, the State filed motions to terminate respondent's parental rights to G.M. and L.M., which were amended on November 30, 2016. The State alleged respondent was unfit because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility toward the children's welfare; (2) failed to make reasonable progress toward the children's return to respondent during any nine-month period after the end of the initial nine-month period following the adjudication of neglect, being December 10, 2013, through August 3,

2016; and (3) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children from him during a nine-month period following the adjudication of neglect, being December 10, 2013, and August 3, 2016.

¶ 8 On November 30, 2016, the trial court started a hearing on the State's petitions to terminate respondent's parental rights. Tracy Bauer testified she had been a caseworker for Lutheran Child and Family Services (LCFS) and was the caseworker in this matter beginning in September 2014. She prepared the April 2015 service plan, which recommended respondent complete substance abuse treatment, submit to random drug testing, and complete an anger management class. Respondent did not complete these recommendations while Bauer had his case.

¶ 9 Bauer visited respondent's residence in April 2015 after he was released from prison. Respondent lived in a trailer with another woman and the woman's children. Bauer described the trailer as being in a "pretty rough" state and not suitable for visits. Specifically, a rotted floor required work, the windows had issues, and the trailer was unsanitary. Respondent did make repairs sufficient to permit Bauer to allow visits there.

¶ 10 Respondent failed to complete any drug tests during Bauer's tenure on the case. He had problems with transportation, and the State lacked funding to provide transportation. According to Bauer, respondent did one assessment for her in July, but he did not start any services during that period. Her involvement with the case ended in August 2015. Bauer testified respondent made neither reasonable efforts nor progress while she was assigned to his case.

¶ 11 Lindsey Horcharik testified she worked for LCFS from July 2015 until the end of November 2015. When she took over the case, respondent's recommended services included substance abuse and anger management services through North Central Behavioral Health

Systems in Canton. During her involvement with respondent's case, respondent diligently worked on the trailer because he was unemployed. However, the trailer still was not suitable for the children to live there.

¶ 12 Horcharik testified respondent went to the wrong location for a drug screen in September 2015. He tested positive for marijuana in early October 2015, and he could not get a ride to his drug screen on October 15, 2015. She sent him for another screen on October 16, but she did not have the results when she wrote her report. According to her testimony, a missed drug test is usually considered a positive screen because it shows a lack of compliance.

¶ 13 Shortly after Horcharik took over the case in September, respondent broke his foot, and his job search came to a standstill. She did not personally observe respondent interact with the two children. Based on reports from the case aide, G.M, and respondent, L.M. acted standoffish and took a while to warm up to respondent. G.M. was very fond of respondent, and respondent spoke very highly of her.

¶ 14 Horcharik testified respondent failed to make any "service progression" or reasonable efforts toward a return home of either of the children during her tenure as his caseworker. When she worked on respondent's case, respondent did not complete his evaluation at North Central Behavioral Health Systems. Although he had been ordered to participate in an anger management evaluation, he did not complete it. While it was ultimately his responsibility to get his services completed, Horcharik did say "several barriers *** prevented him from doing so that were out of his control."

¶ 15 Horcharik testified respondent took some recommended classes while in prison. When asked if anything in the DCFS manual says those prison classes are not acceptable classes

for services, Horcharik responded the prison classes were probably beneficial for respondent but did not satisfy the requirements of his service plan.

¶ 16 Leandra Tate testified she was assigned to respondent's case on January 16, 2016. According to Tate, respondent made no progress with regard to his service plan up to that point. She stated the trailer where respondent lived met minimum standards for visits with the children. However, she noted LCFS was moving toward not having visits at the trailer because the children were dirty when they returned to their foster homes after visits.

¶ 17 Up to that point, respondent had not engaged in any DCFS approved counseling. According to Tate, respondent "was to seek mental health and counseling, complete domestic violence classes, complete parenting and substance abuse and then go to random drug screens." Respondent did not comply with any of these directives. He completed one assessment in July 2015, which indicated he needed all the services indicated. He completed another assessment in January 2016 but was not forthright in providing the assessor with all relevant information. The assessor told Tate respondent needed to return for another assessment so he could receive the services he needed. Respondent failed to do so.

¶ 18 Further, respondent tested positive for marijuana in October and December 2015 and February, March, May, and June 2016. He missed drug tests on January 29, 2016, and March 4, 2016. Respondent did have three negative tests after testing positive in June 2016. At some point, while speaking with respondent about her May 5, 2016, report, respondent told Tate the State would not keep his kids just because he continued to smoke marijuana.

¶ 19 The trial court suspended respondent's visitation rights with his children in May 2016 because of his lack of compliance with his service plan, and his agitated behavior toward

the children during the visits. The children expressed they no longer wanted the visits before the court suspended them.

¶ 20 Tate did not believe respondent had made any reasonable progress or efforts toward returning the children home when she prepared the May 5, 2016, report. She also submitted a report to the court on August 2, 2016. Respondent had the same issues. He had failed another drug test in June, had not completed services, and had been arguing with Tate during June and July over his need to attend domestic violence classes. Respondent finally attended an appointment with LCFS on September 6, 2016, to do a counseling assessment.

¶ 21 As of the beginning of October 2016, respondent had refused to sign paperwork so he could participate in a domestic violence class (AWARE). According to Tate, he had not completed domestic violence counseling, obtained appropriate housing, or participated in individual counseling. Tate did not know if respondent had completed his substance abuse counseling at that time. As of the date of her testimony, Tate stated respondent made neither reasonable progress nor reasonable efforts at having his children returned.

¶ 22 Tate acknowledged respondent had maintained employment until the prior month. Maintaining employment was one of respondent's service goals. She also acknowledged he had taken a few one-time classes at DCFS approved facilities. Respondent also completed parenting classes in October 2016. However, she testified all of respondent's progress occurred in the 60 days before the fitness hearing, and after the State filed its petition to terminate respondent's parental rights. She noted the children had been in care for 1,149 days.

¶ 23 Tate knew respondent engaged in some anger management classes with a person named Rory Stoller in Havana in April 2016. However, she noted Stoller was not a DCFS provider. Tate told respondent to go to a provider approved by DCFS.

¶ 24 Amy Chase, who worked at The Parent Place in Springfield, testified respondent took and completed the first stage of a DCFS approved parenting program there. Respondent started on June 15, 2016, and graduated on October 12, 2016. He was unable to complete the second stage of the program because his visitation remained suspended.

¶ 25 Gina Braham, a counselor at LCFS, testified she met with respondent sometime after August 2016 to assess his individual and group counseling needs. She referred respondent to the 26-week AWARE program, which is a partner abuse intervention program addressing domestic violence, power, control, and communication issues. Respondent had an issue with the paperwork he needed to complete because he interpreted the paperwork as requiring him to admit he had committed domestic violence, which he denied. After Braham spoke with respondent's attorney, respondent signed the paperwork on the morning of October 5, 2016. Respondent started the AWARE program and actively participated in the class.

¶ 26 Respondent testified he was in prison from January 2014 until April 2015. Before that, he was in the Mason County jail from September 2013 until being sent to the Department of Corrections (DOC). He received a service plan while in the county jail but did not receive a new plan while in prison. No caseworker visited him in prison. While incarcerated, he successfully completed some classes on interpersonal and parenting skills. After his release, he broke his ankle on September 30, 2015. This affected his ability to accomplish some of his service plan tasks because he could not put any weight on his foot. It also affected his ability to drive and to get employment. His doctor released him for light labor in March 2016, but he had started working for Labor Ready two weeks before because Tate told him his leg was not a good excuse for not providing for his children. He later got a job with his current employer, JP's Lawn Care in Springfield.

¶ 27 In April 2016, respondent contacted Rory Stoller for an anger management assessment. He paid for the initial assessment and the classes with his own money. He thought Stoller "was accepted through the courts around here." He said he was told he needed to go to anger management classes but was having issues trying to get into the classes to which LCFS referred him. After he finished the class with Stoller, Tate told him the class was not accepted through LCFS. After this, he went for an assessment for the AWARE program. Then, respondent remained in the AWARE program.

¶ 28 On March 14, 2017, the trial court entered a written order, finding respondent unfit for purposes of terminating his parental rights. The court noted in its order that services designed to correct the conditions which led to the children's removal had been recommended to respondent throughout this case. Respondent consistently resisted these recommendations.

> "The State has shown by clear and convincing evidence that the respondent has continued to engage in the abuse of illicit drugs, his angry outbursts and attempted intimidation of agents of the LCFS has shown that he has failed to engage in reasonable efforts at anger management, one of the reasons for the initial removal of the children. *** Not only has he failed to secure adequate and proper housing for the children, he has failed to take responsibility for the children's support. *** He has repeatedly delayed, denied and deferred engagement in substance abuse services, anger management or parenting classes. He has demonstrated a complete lack of insight as to the needs of the children as well as his need to provide for the children."

The court found the critical period in this case to be between April 2015, when respondent was paroled, and August 2016, when the goal for the children changed and the State filed its petition to terminate respondent's parental rights. The court found respondent consistently failed to participate in services recommended to him. According to the court, it could not find respondent progressed or complied with the service plans. The court ruled the State established by clear and convincing evidence respondent failed to (1) maintain a reasonable degree of interest, concern or responsibility toward the children's welfare; (2) make reasonable progress toward the children's return; and (3) make reasonable efforts to correct the conditions that were the basis for the removal of the children.

¶ 29 On June 5, 2017, at the best-interest hearing, Tate testified she was the caseworker until April 14, 2017, and authored the best interest report filed with the trial court. Services for respondent continued beyond the fitness hearing. However, the AWARE program staff felt respondent disrupted the class and made little to no progress. They discontinued him from the group class and offered him individual therapy. Respondent never completed the AWARE group class or the individual counseling. As far as Tate knew, respondent had not completed anything since the fitness hearing. After respondent was found unfit, she had one interaction with him when, at his request, she took him pictures of the children. During their last interaction, he accused her of lying during her testimony and yelled at her.

¶ 30 Tate testified G.M. received counseling several times throughout the case to deal with past trauma and did well. Although presently repeating 5th grade due to poor performance, G.M. currently had great grades, and no longer needed to take medication for attention deficit hyperactivity disorder (ADHD).

¶ 31 Once visits with respondent stopped, G.M. told Tate she wanted to be adopted. G.M. felt more secure after no longer being required to visit respondent. G.M. was now placed with Jimmy H., respondent's cousin, and his wife, Gennifer H. Tate stated the current placement was best for G.M. Tate visited Jimmy and Gennifer's home several times, which she described as very nice. In her observation, G.M. thrived, felt comfortable, and had a strong relationship with Jimmy. According to Tate, this family could meet all of G.M.'s needs. G.M. had not seen respondent for over a year. Tate stated it was in G.M.'s best interest to terminate respondent's parental rights.

¶ 32 Tate testified L.M., at almost four years old, had been in the same foster home since she was three months old. L.M. referred to her foster parents as mom and dad. The foster mother was a stay-at-home mom. L.M. went to preschool a few days per week. She also had a good relationship with the foster parents' children. Further, the foster parents did a good job with L.M.'s health concerns. Tate stated it was in L.M.'s best interest to terminate respondent's parental rights. The trial court found it to be in G.M's and L.M.'s best interest to terminate respondent's parental rights.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 A. Findings of Unfitness

¶ 36 Before a trial court can terminate parental rights, the State must prove by clear and convincing evidence (*In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001)) the parent is unfit as defined by the Adoption Act (750 ILCS 50/0.01 to 24 (West 2016)). A reviewing court will reverse a trial court's finding of unfitness only if it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940-41 (2002). A

decision is against the manifest weight of the evidence where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *In re Cornica J.*, 351 Ill. App. 3d 557, 566, 814 N.E.2d 618, 626 (2004). An individual's parental rights can be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005).

¶ 37 In this case, the trial court found the State proved respondent was unfit on three separate grounds. We first address respondent's argument the court erred in finding he failed to make reasonable progress. For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011) (quoting *L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)). This is an objective standard. *In re L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1385. In this case, the court's finding respondent had not made reasonable progress is not against the manifest weight of the evidence presented to the court.

¶ 38 Respondent implies his problems in this case started when Leandra Tate became his caseworker in January 2016. Respondent argued he had a good working relationship with his two prior caseworkers, Tracy Bauer and Lindsey Horcharik. According to respondent, "the biasness [*sic*] and prejudicial nature of this case began to emerge" when Tate took over his case, and the progress he made for the other caseworkers no longer seemed satisfactory. Respondent states in his brief that "the court was swayed by the prejudice of the third caseworker and failed

to take into consideration the positive evidence provided by the testimony of the first two workers, the two counselors or the [r]espondent but rather based its opinion on the statements and reports of Ms. Tate." Respondent also mentions how the trial court praised him at the April 28, 2015, permanency hearing for the services respondent took while in DOC for the benefit of his children.

¶ 39 However, each of respondent's caseworkers testified respondent failed to make reasonable progress during her respective time working on respondent's case. Bauer testified respondent's service plans as early as April 2015 recommended respondent complete substance abuse treatment, submit to random drug testing, and complete an anger management class. Respondent did not complete these recommendations while Bauer worked his case. Bauer testified respondent made neither reasonable efforts nor reasonable progress during her time as his caseworker.

¶ 40 In addition, Horcharik testified respondent did not make any "service progression" toward returning either of the children home during her involvement in the case. She testified reasonable progress would have been "[s]ervice participation and progression as well as negative drug screens." Horcharik noted defendant missed two drug tests while she handled his case, and tested positive for marijuana in early October 2015. She testified a missed drug test is usually treated like a positive screen because it shows a lack of compliance. He also did not complete the recommended evaluations.

¶ 41 While respondent might have had a more civil relationship with his first two caseworkers, he also failed to make reasonable progress while they worked on his case. As a result, respondent's argument Tate's assessment that he was not making reasonable progress

stemmed from her personal bias against him is meritless. Respondent's argument the trial court made its unfitness finding on biased evidence is also without merit.

¶ 42 Defendant did participate in some programs to better himself as a father while in prison. After he was released from prison, other than making the trailer where he lived safe enough for his children to visit, respondent did little to accomplish having the children returned to his care. He smoked marijuana, failed multiple drug tests, and made no attempts at real progress until the State filed its motion to terminate his parental rights on August 9, 2016. Considering his children were found to be neglected in October 2013 and made wards of the court in December 2013, his efforts were too little and too late.

¶ 43 As we have found the trial court did not err in finding respondent unfit based on his failure to make reasonable progress during any nine-month period following adjudication, we need not examine the court's other findings regarding respondent's parental unfitness.

¶ 44 B. Best-Interest Finding

¶ 45 Once a parent has been found unfit in a termination proceeding, "the parent's rights must yield to the best interests of the child. " *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). The State has the burden of proving termination is in the best interest of the child by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 46 "A trial court's finding termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence. " *M.F.*, 326 Ill. App. 3d at 1115-16, 762 N.E.2d at 706. Under this standard, a reviewing court gives the trial court deference because it is in a better position to observe the parties' and witnesses' conduct and demeanor. *M.H.*, 196 Ill. 2d at 361, 751 N.E.2d at 1139. We will not substitute our judgment for

that of the court regarding witness credibility, the weight to be given witness testimony, or inferences to be drawn from the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008).

¶ 47 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 2016). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

Based on the evidence presented to the trial court in this case, the court's decision was not against the manifest weight of the evidence presented.

¶ 48 With regard to G.M., the trial court heard evidence G.M. was doing very well in her foster placement with a paternal cousin and his family. G.M. also stated she wanted to be

adopted by her father's cousin and his wife. She was doing well in school, living in a safe neighborhood, and involved in various activities.

¶ 49 As for L.M., she had been living with the same foster family since she was an infant and did not even know she was in foster care. L.M. called her foster parents "mom" and "dad." L.M's foster mother was a "stay-at-home mother" with a degree in education. The foster mother had devoted her time to ensure L.M. remained developmentally "on target."

¶ 50 Although respondent had started to engage in some counseling after the State filed its petition to terminate his parental rights, he had been removed from the recommended domestic violence classes because of his inability to make progress and his continuous classroom disruptions. Further, respondent had not visited with the children over the prior year. In addition, both G.M.'s and L.M.'s respective mothers had surrendered their parental rights. Based on the evidence in this case, it was in the best interest of both children to terminate respondent's parental rights.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated above, we affirm the trial court's decision to terminate respondent's parental rights to G.M. and L.M.

¶ 53 Affirmed.