2017 IL App (4th) 170427-U

NOS. 4-17-0427, 4-17-0428 cons.

FILED
October 16, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.M., a Minor	)	
	)	Appeal from
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Coles County
v. (No. 4-17-0427)	)	No.14JA29
Chasta Price,	)	
Respondent-Appellant).	)	
	)	
In re: J.M., a Minor	)	
	)	No. 14JA30
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0428)	)	Honorable
Chasta Price,	)	Matthew Sullivan,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent's counsel did not render ineffective assistance by stipulating to the evidence presented at the fitness hearing and the best-interest hearing, as respondent could not demonstrate prejudice in light of the overwhelming evidence of unfitness.

¶ 2 Respondent, Chasta Price, appealed from the trial court's order finding her to be an unfit parent and terminating her parental rights with respect to her minor children, C.M. and J.M. The State proceeded in the adjudication of neglect proceedings with regard to these minors by filing two separate juvenile cases in the circuit court. Respondent filed an appeal in both of

the trial court cases, and we consolidated those cases here. Respondent's only argument on appeal is that she was denied the effective assistance of counsel. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 10, 2014, the State filed two petitions for the adjudication of neglect—one for the minor, J.M., born April 20, 2012 (Coles County case No. 14-JA-30), and one for the minor, C.M., born June 13, 2013 (Coles County case No. 14-JA-29). Each petition alleged respondent provided inadequate supervision enabling J.M. to inflict injuries on C.M. Supporting the petition was a shelter-care report prepared by the Illinois Department of Children and Family Services (DCFS). According to this report, in August 2014, the minors' father, Richard Sidener, was charged with domestic abuse to C.M. Sidener is not a party to this appeal.

¶ 5 The allegations in the State's petition were based on the following. On October 3, 2014, DCFS received a hotline call from the hospital emergency room. The staff treated injuries to C.M. that were suspicious and indicative of child abuse. Respondent reported she had left C.M. and J.M. with her niece around 4 a.m. that morning while she delivered newspapers. When she returned at approximately 7 a.m., she noticed the injuries to C.M. that, according to her, were not there when she left. She believed J.M. had inflicted the injuries, as J.M. had started biting recently. She believed J.M.'s biting was a result of witnessing the father's abuse to C.M. in August. The treating physician admitted C.M. to the hospital for "abuse and safe haven."

¶ 6 During the police investigation of the injuries, respondent admitted that some of the marks on C.M. had been inflicted several days earlier. She told investigators she had made a doctor's appointment for J.M. to have his aggressive behavior evaluated. (The DCFS investigator determined this was not true. No appointment had been made.) The detectives interviewed respondent's niece, who had been asked to babysit the boys that morning. She said she fell asleep

and did not know how C.M. was injured. There were seven adults living in the household and no one could provide any explanation.

¶ 7 Photographs of C.M. taken at the hospital appear in the record. These photographs show an approximately one-year-old boy with multiple bloody scrapes, cuts, puncture wounds, and abrasions on his face; multiple abrasions and, what appear to be bite marks, on his left arm, torso, right shoulder, and back; an abrasion behind his right ear; and a bloody left ear. The DCFS investigator noted no injuries on J.M., which seemed unusual to her "based on the extensive injuries on [C.M.] and the likelihood that [C.M.] would have attempted to protect himself." While at the hospital, J.M. attempted to bite respondent and the investigator. Respondent admitted she had once slapped J.M. in the mouth so hard she "busted his lip." Respondent commented to hospital staff that J.M. "is a dick, he's a jerk." The treating physician was doubtful the injuries had occurred that morning, as they looked as if they had been inflicted earlier. DCFS took the minors into protective custody and placed them in separate traditional foster homes until J.M.'s behavior could be evaluated and treated.

¶ 8 On November 20, 2014, the trial court entered an order of adjudication, finding both minors neglected based upon respondent's failure to adequately supervise and protect C.M. from J.M.'s alleged physical abuse. On January 15, 2015, the court entered a dispositional order, finding respondent unfit, for reasons other than financial circumstances alone, to care for, protect, train or discipline the minors; making the minors wards of the court; and placing custody and guardianship with DCFS.

¶ 9 According to respondent's case plan, she was to undergo a psychiatric evaluation, a mental-health assessment, a parenting course, and domestic-violence counseling. In February 2015, she was arrested for manufacture or delivery of cannabis in Cumberland County. She

pleaded guilty and was sentenced to two years' probation. After that, her case plan was amended to require her participation in a substance-abuse assessment and follow any treatment recommendations. In March 2015, C.M. was moved into the home with J.M.

¶ 10 On September 25, 2015, the State filed a motion to terminate respondent's parental rights, alleging she was an unfit parent in that she failed to (1) maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minors during any nine-month period following adjudication (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) make reasonable progress toward the return of the minors during any nine-month period following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 11 In January 2016, the DCFS caseworker, Melissa Sanborn, filed a permanency review report stating respondent was residing in her own home in Effingham. Respondent had four positive drug screens in August and September 2015 and had discontinued her substance-abuse treatment. As a result, the State had filed a petition to revoke her probation in her Cumberland County criminal case. She had engaged in substance-abuse treatment at Heartland Human Services in July 2015, but she immediately missed two appointments and was unsuccessfully discharged. She reengaged in November 2015 but again missed appointments. Without participating in substance-abuse treatment, she was prohibited from participating in her required psychiatric evaluation or mental-health counseling. Respondent was "very inconsistent in attending her parenting classes," as she had reportedly missed half. DCFS asked the trial court to change the goal from "return home" to "substitute care pending a determination on termination of parental rights."

¶ 12 At the February 25, 2016, permanency review hearing, respondent testified as follows. She stated she lived with her fiancé Gavin Peterson in Effingham. She was working part-time cleaning commercial offices. She was currently involved with revocation-of-probation proceedings due to her positive drug screens. She said she was engaged in substance-abuse counseling at Heartland Human Services in Effingham and would successfully complete the program in March 2016. She planned to engage in domestic-violence counseling at HOPE beginning in March. She said she will engage in mental-health assessments after her completion of the substance-abuse program. She said she had missed her parenting classes either because of work or some other reason. She said there "is usually something." She said she was willing to work with Sanborn because she wanted her children home. However, she admitted she failed to advise Sanborn that Peterson had been residing with her for approximately two months.

¶ 13 After considering respondent's testimony, the trial court declined to change the goal from "return home." The court stated:

> "I am not going to change this goal today, but I am going to make a finding that you have not made reasonable and substantial efforts or progress. *** I am going to go to that date. And if on that date, I don't hear from Ms. Sanborn [of a] remarkable turn around [sic] that you have had, I will adopt new goals. *** There is no excuse for not visiting with her. I don't care if you hate her, think she is the worst person on Earth. Here is what you should look at her as, the person who is largely going to be your voice in this courtroom, other than your attorney, of course, to tell me how things are going. And if you are seriously wanting your children back—and right now, you are not telling me—you may be telling me—you are showing me that you are not seriously wanting your children back. She is

> going to be the person who explains that to me. *** Go to your classes. Most importantly, start with, speak to your DCFS caseworker. That there is someone living in your house that she doesn't even know about, I am sure makes them wonder, and certainly to some extent, makes me wonder why am I not just changing this goal today. But, because you are here, and I take sincerely that you may be turning [this] disastrous ship around, and it may take you a little bit of time, but you have got three months to prove to me that you are planning to do that. *** Don't come back in May, crying to me that I didn't understand, or things were tough, or I accidentally smoked pot one more time, whatever it is, because I am not going to listen to it."

¶ 14 On May 13, 2016, Sanborn filed a DCFS permanency review report, indicating respondent moved to Newton into an "appropriate and clean" home with Peterson. The petition seeking revocation of her probation had not yet been resolved. Respondent had two negative drug screens in March and April 2016. Respondent's substance-abuse therapist at Heartland Human Services reported she had no contact with respondent between November 2015 and March 2016. She participated in an assessment on March 24, 2016, but she was discharged for a "lack of contact." Sanborn contacted HOPE to confirm respondent was on a waiting list; however, HOPE personnel informed Sanborn they have never had a waiting list for services. Respondent told Sanborn she was scheduled to complete services as of May 9, 2016, and she would provide the documentation of completion. Sanborn had not received the documentation.

¶ 15 On May 13, 2016, the court-appointed special advocate (CASA) filed a report indicating both minors were doing well in their current placement. J.M.'s behavior had improved

in his current placement. He was diagnosed with autism and his case was transferred to One Hope United for specialized foster-care case management.

¶ 16 The next scheduled hearing was continued several times. On August 25, 2016, the parties convened for a hearing. This would have been respondent's first chance to report back to the trial court regarding her progress. However, respondent did not appear. Respondent's counsel asked the court to continue the matter instead of changing the goal. Despite respondent's position, the court changed the goal to "substitute care."

¶ 17 In preparation for the August 25, 2016, hearing, Sanborn filed a DCFS permanency review report. This report indicated respondent and Peterson continued to reside together in Newton in an "appropriate and clean" home. Respondent had again tested positive for cannabis on June 6, 2016, and July 6, 2016. As a result of a probation search, officers found a "large quantity" of drug paraphernalia, including methamphetamine, in her home. However, Peterson was arrested, as he "agreed to take the charge" for respondent. After officers consulted with the prosecutor, respondent was arrested on July 13, 2016. She was reportedly attending Jasper County Counseling Center for mental-health and substance-abuse services but Sanborn had not been able to confirm her participation. Respondent was reportedly engaged in parenting classes at Addus Health Care.

¶ 18 On February 9, 2017, Sanborn prepared and filed a DCFS permanency review report in preparation for the next status hearing. In the report, Sanborn noted respondent was serving terms of probation in both Cumberland and Jasper Counties. In January 2017, respondent pleaded guilty to the Jasper County offense of possession of methamphetamine. Cumberland County had filed a second petition to revoke her probation, which remained pending. Although she had engaged in substance-abuse counseling services at Jasper County Counseling Center, her

attendance had been sporadic and, according to the providers, if she did not reengage soon, she would be discharged unsuccessfully.

¶ 19 On April 20, 2017, the parties convened for a fitness hearing. Respondent's counsel advised the trial court respondent was "willing to proceed by way of a stipulation to evidence." The prosecutor advised the court the "stipulation would be that the court will take notice of its own orders in this matter, including the dispositional order of January 15, 2015; the permanency orders of September 10, [20]15, August 25, [20]16, February 16, [20]17; and all other orders that appear of record, including the family service plans that appear of record, and the reports that appear of record in this matter." No further evidence was presented. Respondent's counsel stated respondent had no response to the State's request for the court to grant "the two motions that [were] set for hearing." The court asked respondent if that was her "understanding of how [they are] proceeding [there] today." She indicated it was. The court took notice of the documents indicated and found the record established respondent had failed to maintain a reasonable degree of interest, concern, or responsibility as to each minors' welfare and failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal during the nine-month period following adjudication.

¶ 20 The trial court immediately proceeded to the best-interest hearing. The prosecutor asked the court to take judicial notice of the reports in the record, "which would show the thriving of the child or the children in their current placement in lieu of offering testimony." Respondent's counsel stated respondent "would stipulate to evidence pertaining to best interest as [the prosecutor] outlined." The counsel for CASA indicated he had no objection to the stipulation of judicial records and presented no evidence. He stated: "We do believe it is in the

best interest, based on the reports." The court found it was in the minors' best interest to terminate respondent's parental rights as to each minor.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Respondent claims she received the ineffective assistance of counsel when her attorney proceeded at both the fitness hearing and the best-interest hearing by stipulating to evidence without presenting any evidence or argument. Admitting she could find no case law holding that proceeding by stipulation constituted ineffective assistance, she asks this court to "establish a new 'bright line' rule that[,] when dealing with rights as important as a parent's right to her or her children[, f]undamental fairness and due process requires that 'unfitness' be proven in a true adversarial proceeding." We decline to do so.

¶ 24 It is well established that a parent's interest in maintaining a parental relationship with her children is a fundamental liberty interest protected by the due-process clause of the fourteenth amendment. *Santosky v. Kramer*, 455 U.S. 745 (1982); U.S. Const., amend. XIV. Indeed, the Supreme Court recognized that a parent's desire for and right to the companionship, care, custody, and management of her children is an interest far more precious than any property right. *Santosky*, 455 U.S. at 758-59. Thus, "[w]hen the state initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. *** Few forms of state action are both so severe and so irreversible." *Santosky*, 455 U.S. at 759. See also *In re D.R.*, 307 Ill. App. 3d 478, 482 (1999).

¶ 25 Recognizing the significant interest at issue in termination of parental rights cases, the Supreme Court held that the state's proceedings against a parent must meet the requirements of the due process clause. *Lassiter v. Department of Social Services*, 452 U.S. 18, 27 (1981). "If

anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs." *Santosky*, 455 U.S. at 753. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

¶ 26 A parent's right to counsel in termination proceedings derives from the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 through 7-1 (West 2012)), not the constitution. *In re C.C.*, 368 Ill. App. 3d 744, 748 (2006). As such, in determining whether respondent's counsel was effective, we apply the standard provided in *Strickland v. Washington*, 466 U.S. 668 (1984). That is, respondent must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's unprofessional errors, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687.

¶ 27 This court has previously addressed a similar issue. *C.C.*, 368 Ill. App. 3d at 747. There, the respondent mother raised as her only claim on appeal that her counsel was ineffective during the termination of parental rights proceedings. *C.C.*, 368 Ill. App. 3d at 747. In the respondent mother's absence at the fitness hearing, her counsel stipulated to 27 requests to admit filed by the guardian *ad litem*. *C.C.*, 368 Ill. App. 3d at 746. The stipulation was based on four permanency-review reports filed by caseworkers. Counsel also stipulated the authors of the reports would testify, if called, consistently with the information contained in those reports. *C.C.*, 368 Ill. App. 3d at 746. Counsel presented no evidence or argument. *C.C.*, 368 Ill. App. 3d at 746. Based upon the admitted facts, the trial court found the respondent mother unfit. *C.C.*, 368 Ill. App. 3d at 746.

¶ 28 The respondent mother also failed to attend the best-interest hearing. *C.C.*, 368 Ill. App. 3d at 747. The State presented reports from DCFS and a social service agency. The respondent mother presented no evidence and no argument. *C.C.*, 368 Ill. App. 3d at 747. The trial court terminated the respondent mother's parental rights. *C.C.*, 368 Ill. App. 3d at 747. She appealed, claiming only that her counsel was ineffective. *C.C.*, 368 Ill. App. 3d at 747.

¶ 29 This court found the State had presented overwhelming evidence of the respondent mother's unfitness. *C.C.*, 368 Ill. App. 3d at 749. We found "no winning argument could be made to dispute" the grounds of unfitness alleged in the State's petition to terminate. *C.C.*, 368 Ill. App. 3d at 749. Likewise, we found it "difficult to see how the result of the best-interest hearing would be any different, regardless of counsel's performance." *C.C.*, 368 Ill. App. 3d at 749.

¶ 30 Here, as we did in *C.C.*, we choose to resolve respondent's ineffective-assistance claim by reaching only the prejudice prong of the *Strickland* test, because lack of prejudice renders irrelevant the issue of counsel's performance. *C.C.*, 368 Ill. App. 3d at 748. Respondent's counsel stipulated, not to respondent's unfitness but, to the introduction of the evidence presented in the various reports. Counsel still held the State to its burden of proof by relying on the trial court to weigh the information contained in the reports to determine whether the State sufficiently proved the statutory grounds of unfitness as alleged in the petition.

¶ 31 The information in the reports stated respondent failed to successfully complete any task in her service plan. For almost three years, she was unable to consistently participate in any of her required services. The trial court gave her ample opportunity to prove that her desire to have her children returned to her care was legitimate. She failed to do so. She continued to test positive for drugs and failed to successfully engage in parenting classes and substance-abuse and

domestic-violence counseling. She was not even close to having the minors returned to her care, as she was required to successfully complete substance-abuse treatment prior to addressing her mental-health issues. The reports admitted into evidence were replete with overwhelming evidence supporting respondent's parental unfitness. Respondent cannot demonstrate she was prejudiced as a result of counsel's stipulation to the introduction of the evidence.

¶ 32 Further, it was not unreasonable for counsel not to call respondent as a witness. At the permanency review hearing, respondent provided inculpating testimony on cross-examination by the State. She testified she was living with her fiancé, a fact she had not revealed to the caseworker previously. She provided untruthful testimony on the witness stand regarding her excuses for missing classes. If respondent had testified, she may have provided even more damaging evidence.

¶ 33 Likewise, the evidence presented in the reports clearly suggested the best interests of the minors would be best served by terminating respondent's parental rights. The minors were thriving together in their foster home. Both were receiving the necessary care, especially J.M., who required special treatment due to his diagnosis of autism. The minors' were in a safe, loving, and stable environment. Again, respondent cannot demonstrate prejudice based upon counsel's performance.

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.