2017 IL App (5th) 160473-U

NO. 5-16-0473

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re M.D.D., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Marion County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14-JA-10
	)	
Douglas W. D.,	)	Honorable
	)	Allan F. Lolie, Jr.,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly terminated father's parental rights in juvenile proceeding.

¶ 2 The respondent, Douglas W. D., appeals the order entered by the circuit court of Marion County terminating his parental rights to his minor child, M.D.D. On appeal, Douglas argues that the circuit court erred in finding him unfit and in finding that it was in M.D.D.'s best interest to terminate his parental rights. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Douglas is the biological father of M.D.D., who was born on April 5, 2014. On May 19, 2014, M.D.D. was taken into temporary custody on the basis that her mother, Rebecca O., was incarcerated with the Illinois Department of Corrections and Douglas was incarcerated in the Marion County jail on methamphetamine charges. Accordingly, the State filed a petition for adjudication of wardship (705 ILCS 405/2-13 (West 2014)), alleging that M.D.D. was neglected in that she was in an environment injurious to her welfare because Douglas's drug use made him periodically unable to care for her (705 ILCS 405/2-3(1)(b) (West 2014)). The petition also alleged that M.D.D. was dependent because both of her parents were incarcerated (705 ILCS 405/2-4 (West 2014)).

¶ 5 On May 20, 2014, the circuit court entered an order for temporary custody (705 ILCS 405/2-10 (West 2014)), granting temporary custody of M.D.D. to the Illinois Department of Children and Family Services (DCFS). On August 6, 2014, the circuit court adjudicated M.D.D. dependent in that M.D.D. was without a parent, guardian, or legal custodian because both parents were incarcerated. 705 ILCS 405/2-4(1)(a) (West 2014); 705 ILCS 405/2-21 (West 2014). On September 3, 2014, the circuit court entered its dispositional order finding it consistent with M.D.D.'s health, welfare, and safety, and in her best interest, to make her a ward of the court. The court awarded custody and guardianship to DCFS.

¶ 6 DCFS submitted its initial service plan on June 26, 2014, wherein it listed M.D.D.'s permanency goal as "[r]eturn [h]ome [w]ithin 12 [m]onths." DCFS evaluated the permanency goal progress as "[u]nsatisfactory," noting that M.D.D.'s parents had not

completed any services. The DCFS service plan required Douglas to: (1) provide for his child financially through employment or public benefits, which included presenting pay stubs or proof of public benefits and advising his caseworker of any change in employment or public benefits within seven days; (2) provide an adequate home free and safe of all hazards, which included removing from M.D.D.'s reach all medications, sharp objects, and other safety threats, maintaining utilities in the home, submitting to a home safety inspection, and allowing service providers full access to his home; and (3) complete a substance abuse assessment and follow all recommendations, which included submitting to random drug testing, attending substance abuse counseling if recommended, signing a release of information for his substance abuse provider, and following the recommendations of a substance abuse assessment. Douglas's progress in each area was marked as unsatisfactory, as he was incarcerated in the Marion County jail.

¶ 7 In November 2014, Douglas was released from the Marion County jail, and the charges for possession of methamphetamine were eventually dismissed. Nevertheless, on May 25, 2016, the State filed a petition for termination of parental rights. In the petition, the State alleged that Douglas was unfit for, *inter alia*, his failure to make reasonable efforts to correct the conditions that were the basis for M.D.D.'s removal during the nine-month period following M.D.D.'s adjudication (August 6, 2014 through May 6, 2015) (750 ILCS 50/1(D)(m)(i) (West 2014)) and his failure to make reasonable progress toward the return of M.D.D. to him within the nine-month period following M.D.D.'s adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 8 On July 27, 2016, at the hearing on the petition to terminate parental rights, Tiffany Short Kelly, a foster care case manager with CARITAS Family Solutions, testified that she was assigned M.D.D.'s case from May 2014 until September 2014. Tiffany testified that she developed Douglas's June 26, 2014, service plan, which required him to perform a substance abuse evaluation and follow all recommendations, complete parenting education, and provide safe and appropriate housing. Tiffany testified that by September 2014, Douglas had failed to complete any of the services required in his service plan. Tiffany acknowledged that both parents were incarcerated from May through September 2014 and that neither a substance evaluation nor a parenting class was available to Douglas in the Marion County jail.

¶ 9 Kaci Beal, a foster care case manager with CARITAS Family Solutions, testified that she was assigned M.D.D.'s case in September 2014 and had continued with the case since. She testified that a new service plan was developed on January 15, 2015, but no changes were made to the goals previously established for M.D.D.'s parents. Kaci testified that although Douglas was no longer incarcerated as of November 2014, he nonetheless failed to meet the requirements of his service plan as of May 2015. Kaci testified that Douglas provided proof of income and attempted to find stable housing, but he did not submit to a drug and alcohol evaluation or begin treatment, did not enroll in parenting classes, and did not sign a release for his medical records. Kaci testified that she had visited his current, one-bedroom home, which, she opined, was not appropriate for a child. Kaci testified that M.D.D.'s bedroom, where her crib was placed, was located in the bathroom/laundry room. Kaci testified that Douglas did not participate in any

services from August 2014 to May 2015. Kaci acknowledged that the recommended services were not available to Douglas at the Marion County jail.

¶ 10 Kaci testified that when Douglas was initially released from jail, he lived with his mother and did not have his own home. Kaci testified that his visitation with M.D.D. was also inconsistent. Kaci acknowledged that Douglas's medical issues caused him to be hospitalized and miss visitation with M.D.D. Kaci testified that she had difficulty contacting Douglas because he did not answer his telephone and she was unable to leave a voicemail.

¶ 11 Kaci testified that Douglas indicated to her that because the criminal charges against him were dismissed, he did not have to complete any services regarding drug use. Kaci noted, however, that when M.D.D. was taken into care, there were drug paraphernalia items in her diaper bag and that on December 1, 2015, Douglas tested positive for methamphetamines. Kaci further testified that although Douglas told her he would not comply with services unless a judge ordered him to, the trial judge repeatedly advised Douglas that he must cooperate and fulfill the requirements of the service plan.

¶ 12 Kaci testified that Douglas did not complete a drug and alcohol evaluation until January 2016. At that time, the counselor recommended weekly group sessions and at least one or more individual sessions. Kaci testified that Douglas had signed a release for her to speak with the drug and alcohol counselor, who indicated that Douglas completed the assessment but was inconsistent with attending treatment. Kaci testified that Douglas did not follow the recommendation to consistently attend all sessions until the middle of May 2016. Kaci testified that he began consistently attending parenting classes in March

2016. Kaci testified that at the time of the hearing, Douglas had not finished parenting classes, and he had not provided an updated proof of income.

¶ 13 At the hearing, the circuit court took judicial notice of the permanency hearing reports, in addition to the service plans in the record. In its order filed on August 9, 2016, the circuit court found Douglas unfit for failing to make reasonable efforts to correct the conditions that were the basis for the removal of M.D.D. within the nine-month period following the adjudication of dependency (750 ILCS 50/1(D)(m)(i) (West 2014)) and for failing to make reasonable progress toward the return of M.D.D. within nine months following the adjudication of dependency (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 14 In its order, the circuit court noted that Douglas had failed to seek a substance abuse assessment until January 28, 2016, and did not begin attending counseling services until March 3, 2016. The court also found that Douglas did not make himself available for drug tests requested by the caseworker. The circuit court further noted that Douglas had not completed parenting classes. In its order, the circuit court *sua sponte* shifted the post-adjudication nine-month period to begin when Douglas was released from jail on November 5, 2014.

¶ 15 On August 24, 2016, Douglas filed a motion to reconsider, arguing that he had not been properly notified that he was required to provide a defense for the time period of November 2014 through August 2015. In response to Douglas's motion, the State agreed that the court improperly modified the time period and that the statutory nine-month period created no exception for time spent in prison to determine whether a parent made reasonable progress toward return of the minor. The State argued, however, that the

circuit court's order finding Douglas unfit was proper and based on clear and convincing evidence presented at the hearing. The trial court denied the motion to reconsider, modified its order to include the proper nine-month post-adjudication period, and otherwise affirmed its original finding of unfitness.

¶ 16 On September 14, 2016, at the best-interest hearing, Kaci testified that when M.D.D. was taken into protective custody, she was placed with Mark and Kimberly Jornd and remained with them thereafter. Kaci testified that M.D.D. was placed with the Jornds when she was six weeks of age, and at the time of the hearing, she was two years old. Kaci testified that she visited the Jornd home once a month. Kaci testified that M.D.D. demonstrated an attachment to the Jornd family. Kaci testified that when she returned M.D.D. to the Jornd home after a visit with Douglas, M.D.D. would run to the Jornds and was excited to be home.

¶ 17 Kaci testified that M.D.D. had done "amazing[ly]" well and was above average in her development. Kaci testified that M.D.D. attended a curriculum-based day care and had undergone developmental screens, scoring impressively. Kaci testified that M.D.D. communicated effectively for her age and correctly identified her shapes and numbers.

¶ 18 Kaci testified that M.D.D. was most attached to her foster parents. Kaci testified that M.D.D. had bonded with her foster parents and referred to them as "mommy" and "daddy." Kaci testified that Douglas consistently missed about one or two weekly visits per month, but during the visits, Douglas interacted appropriately with M.D.D.

¶ 19 Mark Jornd testified that he had been married to his wife, Kimberly, for almost 19 years and that they were in good health. Mark testified that he and Kimberly had two

sons living in their household: Luke, who was 16 years old, and Logan, who was 13 years old. Mark testified that he was employed as a tenured associate professor, teaching business at Rend Lake College, and earned approximately $75,000 annually. Mark testified that Kimberly worked at Outcome Services of Illinois, as a health care facility consultant, earning $45,000 annually. Mark testified that their home was located on 55 acres and encompassed 6,500 square feet of living space, including four bedrooms, so each child had his or her own bedroom. Mark testified that M.D.D. had her own bedroom and her own bathroom.

¶ 20 Mark testified that during the day, while her foster parents were working, M.D.D. attended a day care facility at Rend Lake College, which employed day care teachers with master's degrees and operated a high-quality program. Mark stated that he did not work in the summers and was free to spend all day with M.D.D. Mark testified that, when not in Florida, his parents lived in a guest house on his property, and they, along with Kimberly's parents, were available to babysit M.D.D. Mark testified that his family, including his two sons, loved M.D.D., and she loved them. Mark testified that if parental rights were terminated, he and Kimberly hoped to adopt M.D.D.

¶ 21 Kimberly testified that she was a consultant for nursing homes. Kimberly testified that Luke had a genetic condition that involved an intolerance to sunlight and that he was also mildly developmentally delayed. Kimberly testified that M.D.D. felt very safe with her family and that she loved M.D.D. Kimberly expressed a desire to adopt M.D.D.

¶ 22 Douglas testified that he was 59 years old and had six living children and a step-child, in addition to M.D.D. Douglas testified that all but two of the younger children

had met M.D.D. Douglas testified that his 82-year-old mother also had a good relationship with M.D.D. Douglas testified that because M.D.D.'s bedroom/laundry room was insufficient, he moved his bedroom into the living room and gave her his bedroom. Douglas testified, however, that he often stayed overnight at his mother's home to care for her. Douglas testified that M.D.D. called him "Daddy" and never spoke of her foster parents.

¶ 23 Douglas testified that as a result of a back injury, he received disability payments as income. Douglas testified that he had also been infected with MRSA (Methicillin-resistant Staphylococcus aereus) at the jail, which interfered with some of his visits with M.D.D. Douglas testified that he was hospitalized about six months prior to the hearing. Douglas further testified that the strap on his prosthetic leg had been defective, and as a result, he had broken his stump. Douglas testified that he had been fitted with a new prosthesis.

¶ 24 Douglas testified that he maintained a clean home and understood that M.D.D. would need her own bedroom. Douglas testified that he stocked his home with enough clothes for M.D.D. to last until she was seven years old and that he gave her toys and a cookie at visitations.

¶ 25 After hearing evidence at the best-interest hearing, the circuit court reviewed the statutory factors (705 ILCS 405/1-3(4.05) (West 2014)) and found it was in M.D.D.'s best interest that her parents' rights be terminated. In its October 4, 2016, order, the court found that M.D.D. was 30 months old and had been placed in foster care in the Jornds' home when she was six weeks old. The court found that M.D.D. was currently residing

in an ample home with the Jornds and that she had bonded with them and their two biological children. Accordingly, on October 4, 2016, the circuit court entered an order terminating Douglas's parental rights. On November 3, 2016, Douglas filed his notice of appeal.

¶ 26 ANALYSIS

¶ 27 In Illinois, the authority to involuntarily terminate parental rights is found in the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2014)). *In re E.B.*, 231 Ill. 2d 459, 463 (2008). The Juvenile Court Act of 1987 delineates a two-stage, bifurcated process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). Initially, the court must find that a parent is an unfit person as defined in section 1 of the Adoption Act. 705 ILCS 405/2-29(2), (4) (West 2014); 750 ILCS 50/1(D) (West 2014); *In re E.B.*, 231 Ill. 2d at 472. Because the termination of parental rights constitutes a complete severance of the parent-child relationship, proof of parental unfitness must be clear and convincing. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, any one of the grounds, if proven, is sufficient to enter a finding of unfitness. *In re C.W.*, 199 Ill. 2d at 210. "[O]nce a finding of parental unfitness is made under section 1(D) of the Adoption Act, the court considers the 'best interest' of the child in determining whether parental rights should be terminated." *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010); 705 ILCS 405/2-29(2) (West 2014). "Section 1-3 of

the Juvenile Court Act lists the relevant 'best interest' factors to be considered." *In re J.L.*, 236 Ill. 2d at 338; 705 ILCS 405/1-3(4.05) (West 2014).

¶ 28 Unfitness

¶ 29 Section 1(D)(m)(ii) of the Adoption Act provides as grounds of unfitness the parents' failure "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 of 1987 or dependent minor under Section 2-4 of that Act." 750 ILCS 50/1(D)(m)(ii) (West 2014). This section further provides:

> "If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987." 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 30 Where the State charges lack of parental fitness under section 1(D)(m)(ii), a parent's conduct must be assessed based solely on the reasonable progress made by the parent within the nine-month period following the adjudication of neglect or dependency. See *In re Haley D.*, 2011 IL 110886, ¶ 88. "[T]he date on which to begin assessing a parent's efforts or progress is the date the trial court enters its order adjudging the minor

neglected, abused, or dependent, rather than the date the trial court enters its dispositional order." *In re D.F.*, 208 Ill. 2d 223, 243 (2003).

¶ 31 "[T]he benchmark for measuring a parent's progress under section 1(D)(m) of the Adoption Act must take into account the dynamics of the circumstances involved; the reality that the condition resulting in removal of the child may not be the only, or the most severe, condition which must be addressed before custody of the child can be returned to the parent; the appropriate role of service plans in addressing these conditions; and the overriding concern that a parent's rights to his or her child will not be terminated lightly." *In re C.N.*, 196 Ill. 2d at 216. "Accordingly, *** the 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 become known and which would prevent the court from returning custody of the child to the parent." *Id.* at 216-17. "[T]ime spent incarcerated is included in the nine-month period during which reasonable progress must be made under section 1(D)(m)(iii)." *In re J.L.*, 236 Ill. 2d at 343. "The statute contains no exception for incarcerated parents." *Id.*

¶ 32 "[R]easonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of

reunification." *Id.* "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Id.*

¶ 33 Because the circuit court is in the best position to assess the credibility of witnesses, a reviewing court may reverse a circuit court's finding of unfitness only where it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d at 208. A decision regarding parental unfitness is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id.* Each case concerning parental unfitness is *sui generis* and requires a close analysis of its unique facts. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010).

¶ 34 Douglas argues that the trial court erred in finding him unfit. He argues that the circuit court placed too much emphasis on his failure to follow the recommendations of the service plan. He argues that the circuit court should have considered factors outside of his service plan, such as his release from jail, his receipt of public benefits, his regular attendance at court proceedings, his personal health issues that resulted in hospitalization, and his need to care for his elderly mother. He argues that when these other factors are considered, the circuit court's finding of unfitness is shown to be against the manifest weight of the evidence. We disagree.

¶ 35 Here, the circuit court adjudicated M.D.D. dependent on August 6, 2014, so the relevant nine-month period to assess the respondent's progress following adjudication ended on May 6, 2015. During this nine-month period, despite his release from jail, Douglas did not attend any parenting classes, initiate a drug and alcohol evaluation, or obtain follow-up treatment. Although Douglas sought housing while he lived with his

mother, he did not acquire housing suitable for M.D.D.'s return during this nine-month period. Douglas demonstrated no measurable or demonstrable movement toward the goal of reunification. Accordingly, after carefully reviewing the record, we conclude that the circuit court's finding of unfitness was not against the manifest weight of the evidence.

¶ 36 We thereby affirm the circuit court's finding of unfitness based on Douglas's failure to make reasonable progress toward M.D.D.'s return to him during the nine-month period following the adjudication of dependency. 750 ILCS 50/1(D)(m)(ii) (West 2014). Having concluded that the circuit court's finding of unfitness was proper on the grounds of Douglas's failure to make reasonable progress, we need not address the remaining grounds alleged and proven. See *In re C.E.*, 406 Ill. App. 3d at 107 (any one grounds of unfitness, if proven, is sufficient to enter a finding of unfitness).

¶ 37 Best Interest

¶ 38 Douglas also argues that the circuit court erred in finding that it was in M.D.D.'s best interest that his parental rights be terminated.

¶ 39 The goals of a proceeding to terminate parental rights are: (1) to determine whether the natural parent is unfit, and if so, (2) to determine whether adoption will best serve the child's needs. *In re M.M.*, 156 Ill. 2d 53, 61 (1993). Once parental unfitness has been established, the parent's rights must yield to the child's best interest. See 705 ILCS 405/2-29(2) (West 2014); *In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002). The court focuses upon the child's welfare and whether termination would improve the child's future financial, social, and emotional atmosphere. *In re Adoption of Syck*, 138 Ill. 2d 255, 276-77 (1990). A separate hearing and determination of the child's best

interest is mandatory to ensure that the court properly focuses on those interests. *In re D.R.*, 307 Ill. App. 3d 478, 484 (1999). To determine the child's best interest, the circuit court is required to consider, in the context of the child's age and developmental needs: (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 where she feels love, attachment, valued, 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, including church, school, and friends; (7) the child's need for permanence, including the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014); *In re Daphnie E.*, 368 Ill. App. 3d at 1072.

¶ 40 "Because the best interest determination focuses on what is in the *child's* best interest, the child's likelihood of adoption is an appropriate factor for the trial court's consideration." (Emphasis in original.) *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). "Evidence of a bond or lack thereof between parent and child is [also] relevant to the trial court's best-interest determination." *In re M.R.*, 393 Ill. App. 3d 609, 615 (2009). Other important considerations include the nature and length of the child's relationship with the present caretakers and the effect that a change of placement would have upon the child's emotional and psychological well-being. *In re Austin W.*, 214 Ill. 2d 31, 50 (2005).

¶ 41 The State must prove, by a preponderance of the evidence, that termination of parental rights is in the child's best interest. *In re D.W.*, 214 Ill. 2d 289, 315 (2005). A circuit court's finding that termination is in the child's best interest will not be reversed unless it is contrary to the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495 (2002).

¶ 42 The evidence at the best-interest hearing revealed that although Douglas loved M.D.D., M.D.D. had bonded with the Jornd family, with whom she had resided since she was six weeks old. M.D.D. felt safe in the Jornds' home, she enjoyed her own room, and she was loved and well cared for by the Jornds, whom she considered her family. The evidence further revealed that M.D.D. had developed well for her age and was receiving quality educational day care. Additionally, the Jornd family hoped to adopt M.D.D. The statutory factors support the circuit court's decision that termination of Douglas's parental rights was in M.D.D.'s best interest. 705 ILCS 405/1-3(4.05) (West 2014). Accordingly, we conclude that the circuit court properly terminated Douglas's parental rights.

¶ 43 CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment of the circuit court of Marion County.

¶ 45 Affirmed.