2017 IL App (5th) 170046-U

NOS. 5-17-0046, 5-17-0047 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re M.B. and A.B., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee	)	
v.	)	Nos. 10-JA-49 & 13-JA-78
	)	
D.B.,	)	Honorable
	)	Walter C. Brandon, 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 trial court's finding that the respondent was unfit was not against the manifest weight of the evidence.

¶ 2 The respondent, D.B., appeals from the trial court's order terminating her parental rights to her minor children, M.B., born February 5, 2007, and A.B., born July 17, 2013. The respondent argues that the court's finding that she failed to make reasonable progress toward the return of the minors during two nine-month periods following their neglect adjudications was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In June 2010, in No. 10-JA-49, the State filed a petition alleging that M.B. was a neglected minor in that the respondent was exposing him to an environment that was injurious to his health and welfare. See 705 ILCS 405/2-3(1)(b) (West 2010). The petition alleged, among other things, that at a May 2010 meeting at the East St. Louis field office of the Department of Children and Family Services (DCFS), the respondent had stated that she wanted her children in foster care and then struck her paramour three times in the face with her fist after DCFS informed her that her "erratic behavior" and "observable mental health status" were putting her children at risk. The petition further alleged that the respondent had subsequently been arrested for domestic battery and that her "irrational behaviors" posed a substantial risk of harm to her children. Following a shelter care hearing on the State's petition, M.B. was placed in the temporary custody of DCFS, and the respondent was advised that if she failed to comply with the terms of any DCFS service plan, she risked termination of her parental rights to M.B.

¶ 5 In January 2011, the trial court adjudicated M.B. a neglected minor, and he was placed under the guardianship of DCFS. At the adjudication hearing, the respondent was again advised that if she failed to comply with the terms of any DCFS service plan, she risked termination of her parental rights to M.B.

¶ 6 In November 2012, the State filed a petition to terminate the respondent's parental rights to M.B., who we note was known as M.C. at the time. The State's petition alleged, among other things, that the respondent had failed to make reasonable efforts to correct the conditions that were the basis of M.B.'s removal, implicitly during the nine-month

period of January 18, 2011, through October 18, 2011. See 750 ILCS 50/1(D)(m)(i) (West 2010); *In re D.F.*, 208 Ill. 2d 223, 243 (2003).

¶ 7 In July 2013, in No. 13-JA-78, the State filed a petition alleging that the respondent's newborn daughter, A.B., was an anticipatorily neglected minor in that the respondent was anticipatorily exposing her to an environment that was injurious to her health and welfare. See 705 ILCS 405/2-3(1)(b), 2-18(3) (West 2012); *In re Arthur H.*, 212 Ill. 2d 441, 468 (2004). The petition alleged that A.B. was less than a week old and that four of the respondent's five other children, A.S., K.S., E.W., and M.B., had previously been abused or neglected. The petition specifically noted that after A.S. died from physical injuries in 1998, the respondent had been indicated for death by neglect; that in 2009, the respondent's parental rights to K.S. and E.W. had been terminated following incidents of abuse and neglect; and that in No. 10-JA-49, the State was seeking to terminate the respondent's parental rights to M.B. due to her noncompliance with her service plans. The petition further alleged that the respondent had "twice been unsuccessfully discharged from counseling services for failure to attend regularly and her unwillingness to address the psychological issues that brought her children into care." Following a shelter care hearing on the State's petition, A.B. was placed in the temporary custody of DCFS, and the respondent was advised that if she failed to comply with the terms of any DCFS service plan, she risked termination of her parental rights to A.B.

¶ 8 In October 2013, following a hearing on the State's petition to terminate the respondent's parental rights in No. 10-JA-49, the trial court found that the respondent was unfit in that she had failed to make reasonable efforts to correct the conditions that

led to M.B.'s removal. The court further found that it was in M.B.'s best interests that the respondent's parental rights be terminated.

¶ 9 In December 2013, in No. 13-JA-78, the trial court adjudicated A.B. a neglected minor, and she was placed under the guardianship of DCFS. At the adjudication hearing, the respondent was again advised that if she failed to comply with the terms of any DCFS service plan, she risked termination of her parental rights to A.B.

¶ 10 In February 2014, we reversed the trial court's judgment terminating the respondent's parental rights in No. 10-JA-49 due to insufficient evidence that she had failed to make reasonable efforts to correct the conditions that led to M.B.'s removal during the nine-month period of January 18, 2011, through October 18, 2011. See *In re M.C.*, 2014 IL App (5th) 130500-U. We noted that the respondent's anger management and mental health issues had been the basis for M.B.'s removal, that the respondent had attended counseling and completed a parenting class during the relevant nine-month period, and that the respondent's counselor at the time had reported that the respondent "had made progress with anger management." *Id.* ¶ 26. We did not disturb the trial court's judgment adjudicating M.B. a neglected minor, however, and encouraged the respondent to continue to comply with her service plans or risk having her parental rights terminated. *Id.* ¶ 27.

¶ 11 In September 2014, the trial court entered permanency orders finding that the respondent had been making reasonable efforts towards the minors' return to her care but that services were still needed. The court also ordered DCFS to obtain an updated psychological evaluation of the respondent. In February and August 2015, the court

entered additional permanency orders finding that the respondent had been making reasonable efforts but that services were still needed. We note that in response to reports regarding the respondent's behavior during her supervised visits with M.B. and A.B., the August 2015 orders provided for the termination of any visit that became "confrontational."

¶ 12 In February 2016, after receiving reports that the respondent had been exhibiting resistance toward her service plans, had not engaged in any services for months, and had recently been police-escorted away from a supervised visit after refusing to leave, the trial court entered permanency orders finding that the respondent had been failing to make reasonable efforts toward reunification. Additionally, the State filed a petition to terminate the respondent's parental rights to A.B. in No. 13-JA-78 and a second petition to terminate her parental rights to M.B. in No. 10-JA-49. Both petitions alleged, among other things, that the respondent had failed to make reasonable progress towards the return of the minors during any nine-month period following their neglect adjudications. See 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 13 In August 2016, the trial court entered additional permanency orders finding that the respondent had been failing to make reasonable efforts toward reunification. In October 2016, the State gave notice of three nine-month periods that it intended to rely on in support of its petitions to terminate the respondent's parental rights. See *id.* We note that the nine-month periods encompass the fifth, six, and seventh nine-month periods following M.B.'s adjudication and the first, second, and third nine-month periods

following A.B.'s. In November 2016, both causes proceeded to a joint hearing where the following evidence was adduced.

¶ 14 Katherine Whalen of Hoyleton Youth and Family Services (HYFS) testified that from August 2014 through August 2015, she had supervised the respondent's previous case worker, had personally met with the respondent "[a]t least every other month," and had periodically observed the respondent's supervised visits with M.B. and A.B. Whalen was also familiar with the DCFS service plans that had been in place during that time. The service plans, which were admitted into evidence as People's Exhibits 1 and 2, note, among other things, that the respondent had a history of mental health issues but failed to accept that she is mentally unstable and in need of constant psychiatric care. The desired outcomes of the plans included the respondent's achievement of an appropriate level of understanding of mental illness and its effects on parenting and relationships, her completion of domestic violence counseling and another round of parenting class, and her obtainment of employment to meet her children's basic needs. The mental health component of the plans, which was initially established in April 2010, specifically required the respondent to participate in mental health services, to cooperate with any attendant recommendations, and to not stop counseling without approval.

¶ 15 Whalen testified that when she evaluated the respondent's progress in October 2014 and April 2015, the respondent had been participating in mental health services and domestic violence counseling and had reported that she had completed a parenting class. The respondent had also been exhibiting positive parenting skills during her supervised visits with M.B. and A.B. The respondent's overall progress towards the mental health,

parenting, and domestic violence components of the service plans had therefore been rated satisfactory. Whalen explained that the respondent's attendance at the supervised visits had been "[s]poradic," however, and that some of the visits had to be ended early due to the respondent's "outbursts." Whalen testified that because the respondent had failed to obtain employment, her progress towards the employment component of the plans had been rated unsatisfactory.

¶ 16 We note that during Whalen's testimony, the respondent repeatedly disrupted the proceedings with interjected statements and remarks, many of which were not brief. The respondent suggested, among other things, that Whalen was being untruthful and disrespectful and that the trial judge was not taking the matter seriously and had "smirk on [his] face." The respondent also claimed that her mental health counselor had stated that there was nothing wrong with her. The respondent's attorney had to repeatedly calm her down, and at one point, the trial court called a recess so that the respondent and her attorney could talk.

¶ 17 Apryll Green of HYFS testified that she had been the respondent's primary case worker since August 2015 and was familiar with the DCFS service plans that had been in place since that time. Green indicated that the service plans, which were admitted into evidence as People's Exhibits 3 and 4, were generally the same as the respondent's previous plans and had incorporated the same components. The respondent was directed to obtain an updated psychological evaluation, however, and in February 2016, she was further directed to obtain suitable housing.

¶ 18 Green indicated that when she evaluated the respondent's progress in November 2015, the respondent had still been participating in mental health counseling. The respondent's progress toward the mental health component of the service plans had been rated unsatisfactory, however, because she had failed to obtain an updated psychological evaluation and in September 2015 had missed a scheduled appointment for one. Green further testified that the respondent had subsequently been "unsuccessfully discharged" from mental health counseling because "[s]he was not engaging with the counselor," and "[t]he counselor had to close her case."

¶ 19 Green indicated that the mental health component of the respondent's service plans was particularly important in light of the respondent's history of mental illness. Green further noted that the respondent had not been psychologically evaluated since 2012. Green acknowledged that the respondent had undergone mental health assessments since 2012, but she explained that a mental health assessment is not as "in-depth" as a psychological evaluation. Green testified that HYFS wanted "something current to show [the respondent's] mental state currently."

¶ 20 We note that People's Exhibit 4 indicates that following a February 2016 mental health assessment, it was recommended that the respondent receive psychotropic medication monitoring. Following a second assessment, individual therapy and mental health case management were also recommended. Exhibit 4 further indicates that as of February 2016, the respondent was "on the waiting list for a psychological evaluation" and had expressed "frustration" over having to obtain a new one. As of April 2016, the respondent had still "not engaged in on-going counseling" and had still not obtained an

updated psychological evaluation. She was also having "a difficult time managing her anger in front of her children," was "easily agitated," and often accused the staff at HYFS "of having poor intentions toward her children." On April 29, 2016, the respondent's progress toward the mental health component of the service plans was again rated unsatisfactory.

¶ 21 Green indicated that the respondent's progress towards the domestic violence and parenting components of her service plans had also been rated unsatisfactory when evaluated on April 29, 2016. Green explained that although the respondent had attended the required number of domestic violence counseling sessions, she had not yet completed the "final project," which required her to write a letter to her victim and formulate a plan to not reoffend in the future. With respect to the parenting component, Green testified that the respondent had failed to reenroll in parenting classes. Green further testified that the respondent had not been demonstrating appropriate parenting skills in front of M.B. and A.B. during her supervised visits and had missed approximately half of her visits. Green stated that the respondent was prone to outbursts and would yell at the minors. Additionally, the respondent sometimes believed that HYFS was "trying to poison her and the kids."

¶ 22 Green testified that although the respondent had provided pay stubs from four different jobs that she had worked in 2015, her progress towards the employment component of the service plans had been rated unsatisfactory because she was still unemployed. Green indicated that the respondent had also failed to obtain suitable housing and was chronically homeless. Green testified that HYFS had attempted to help

the respondent obtain employment and housing. Green acknowledged that she had requested a legal screening of the respondent's case in November 2015.

¶ 23 We note that during Green's testimony, the respondent repeatedly disrupted the proceedings as she had done during Whalen's testimony. The respondent openly voiced her disagreement with Green on numerous points and suggested that Green was lying. The respondent further suggested that people in the courtroom were disrespecting her. The respondent also exclaimed that Green had directed her to obtain an updated psychological evaluation just to "mess with [her]."

¶ 24 Following a brief recess, the respondent testified that although she had completed parenting classes through Lutheran Family Services, HYFS had ordered her to attend additional parenting classes after A.B. was born. The respondent stated that ordering the additional classes "didn't make any sense to [her] because [she] already knew how to raise kids." The respondent testified that she had participated in mental health services and had been seen by a doctor whose sole diagnosis was that she was suffering from depression because she was worried about the minors returning home. The respondent also explained that her most recent mental health counselor had "dismissed" her because "there wasn't any use for [her] coming." The respondent testified that she had not seen the need to obtain the psychological evaluation that HYFS had ordered her to obtain. She further testified that she had not seen the need to remove the minors from her care in the first place.

¶ 25 With respect to the domestic violence component of her service plans, the respondent explained that she had attended "40 some" domestic violence classes in "[a]

couple of weeks," just wanting to "get it done and over with." She also indicated that she had completed the final project of the domestic violence counseling and that HYFS should have received notice that she had done so. The respondent testified that she had worked as a housekeeper at several different hotels since 2011 and had also taken social work courses at a community college. She acknowledged that she was presently not employed, however, and had not worked in "a month or so." She further acknowledged that her recent jobs had been "temporary agency jobs." The respondent testified that she was presently staying in a hotel but was on a waiting list for public housing.

¶ 26 We note that the respondent was admittedly "irritated" while testifying, and she indicated that she was having problems "focusing." We further note that the State opted to not cross-examine the respondent but specifically referenced her behavior during the course of the hearing as being demonstrative of her need for mental health services.

¶ 27 In December 2016, the trial court entered an order finding that the State had proven by clear and convincing evidence that the respondent had failed to make reasonable progress toward the return of the minors during the nine-month periods of November 28, 2014, through August 25, 2015, and August 29, 2015, through May 29, 2016. In January 2017, after the court determined that it was in M.B.'s and A.B.'s best interests that the respondent's parental rights be terminated, the respondent filed a timely notice of appeal.

¶ 28 DISCUSSION

¶ 29 The respondent argues that the trial court's finding that she failed to make reasonable progress toward the return of M.B. and A.B. during the nine-month periods of

November 28, 2014, through August 25, 2015, and August 29, 2015, through May 29, 2016, was against the manifest weight of the evidence. Because we may affirm the court's finding of unfitness based on the respondent's failure to make reasonable progress during any single nine-month term (*In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7), we will focus our attention on the latter.

¶ 30 Section 1(D)(m)(ii) of the Adoption Act provides as grounds of unfitness a parent's 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 2016). Section 1(D)(m)(ii) further provides:

> "If a service plan has been established *** 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." *Id.*

¶ 31 "Reasonable progress is measured by an objective assessment of a parent's progress in a given nine-month period toward reunification with the child, which includes compliance with service plans and court directives." *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7. "A parent will be found to have made reasonable progress if and only if his or her actions during that period indicate that the court will be able to order that the child

be returned home in the near future." *Id.* A parent's progress toward reunification must be assessed "in light of the condition which gave rise to the removal of the child." *In re C.N.*, 196 Ill. 2d 181, 216 (2001).

¶ 32 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). When we review the trial court's determination that a parent is unfit, "[o]ur standard of review is deferential since the trial court was in the best position to assess the credibility of the witnesses as well as the weight given to the evidence and the inferences drawn from the evidence." *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 6. "Accordingly, we will not disturb the trial court's ruling on appeal unless it was against the manifest weight of the evidence, *i.e.*, unless the opposite result was clearly warranted." *Id.*

¶ 33 Here, we cannot conclude that the trial court's finding that the respondent was unfit for failing to make reasonable progress toward the return of M.B. and A.B. during the nine-month period of August 29, 2015, through May 29, 2016, was against the manifest weight of the evidence. The State's evidence established that the respondent has a history of mental illness, that she refuses to accept that she requires constant psychiatric care, and that her mental health issues were the basis of the minors' removal. Since 2010, the respondent's service plans have included directives designed to address her needs and her lack of insight regarding the same. The plans specifically required the respondent to participate in mental health services, cooperate with any attendant recommendations, and not stop counseling without approval.

¶ 34 The State's evidence established that when the respondent's compliance with her service plans was evaluated in October 2014 and April 2015, she had been engaged in services, and her overall progress toward achieving the mental health, domestic violence, and parenting components of the plans had all been rated satisfactory. During the nine-month period of August 29, 2015, through May 29, 2016, however, the respondent was unsuccessfully discharged from mental health counseling, missed a scheduled appointment for an updated psychological evaluation, expressed frustration that she was having to obtain one, and ultimately failed to do so. During the same period, the respondent also failed to reenroll in parenting classes, failed to complete the final project of her domestic violence counseling, missed approximately half of her supervised visits with M.B. and A.B., and exhibited inappropriate behavior in front of the minors during visits that she did attend. The respondent had also been unable to maintain steady employment and was chronically homeless. As of April 2016, the respondent had still not engaged in ongoing mental health counseling despite recent recommendations that she receive psychotropic medication monitoring, individual therapy, and mental health case management. On April 29, 2016, her progress toward all of the goals of her service plans had been rated unsatisfactory. The State's evidence thus established that during the relevant nine-month periods with respect to both minors, the respondent had failed to substantially fulfill her obligations under the service plans and had not been working to correct the conditions that led to the minors' removal. The evidence thus established that the respondent was unfit pursuant to section 1(D)(m)(ii).

¶ 35 We lastly note that the respondent's testimony and conduct at the unfitness hearing further supported the trial court's finding that she was unfit. The respondent testified that she had attended domestic violence counseling just to "get it done and over with" and had not reenrolled in parenting classes "because [she] already knew how to raise kids." She also indicated that she no longer required mental health counseling and that M.B. and A.B. should not have been removed from her care in the first place. The respondent interrupted the proceedings numerous times with accusatory outbursts and had to repeatedly be calmed down. Given the respondent's history, the trial court could have readily concluded that her denial of her need for services demonstrated her lack of insight into the conditions that led to the minors' removal (see *In re April C.*, 345 Ill. App. 3d 872, 890 (2004)) and that her behavior during the course of the hearing demonstrated her continuing need for treatment (see *In re C.M.*, 319 Ill. App. 3d 344, 359-60 (2001)).

¶ 36 As previously stated, measuring reasonable progress is an objective assessment, and "[a] parent will be found to have made reasonable progress if and only if his or her actions during [the relevant] period indicate that the court will be able to order that the child be returned home in the near future." *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7. Here, an objective assessment of the respondent's progress during the nine-month period of August 29, 2015, through May 29, 2016, reveals that her progress was not reasonable and that the trial court's unfitness determination was not against the manifest weight of the evidence.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, the trial court's determination that the respondent was unfit for failing to make reasonable progress toward the return of M.B. and A.B. during the nine-month period of August 29, 2015, through May 29, 2016, is hereby affirmed.

¶ 39 Affirmed.