2018 IL App (2d) 180145-U
Nos. 2-18-0145 & 2-18-0146, cons.
Order filed July 5, 2018

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MICHAEL G., and SEBASTIAN G., Minors,	)	Appeal from the Circuit Court of Ogle County.
	)	Nos. 15-JA-27 16-JA-4
(The People of the State of Illinois, Petitioner-Appellee v. Michael S.G, Respondent-Appellant).	)	Honorable John B. Roe, IV, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding the respondent unfit or terminating his parental rights to his minor children

¶ 2 The respondent, Michael S.G., appeals from the judgment of the circuit court of Ogle County finding him to be an unfit parent to his sons Michael (born June 11, 2014) and Sebastian (born January 26, 2016) and terminating his parental rights. On appeal, the respondent argues that the trial court's determination was against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 Appeal No. 2-18-0145 (Michael)

¶ 5 On July 27, 2015, the State filed a four-count neglect petition against the respondent, asserting that Michael was living in an environment injurious to his welfare. Count I of the petition alleged that on June 30, 2015, in Michael's presence, the respondent attacked Michael's mother and threatened to kill her. Count II alleged that, despite the respondent's acts of domestic violence against her, Michael's mother continued to allow the respondent to have contact with Michael. Count III alleged that the respondent had crashed his vehicle while he was intoxicated and while Michael was a passenger in that vehicle. Count IV alleged that Michael has a substance abuse problem that prevents him from properly parenting Michael.

¶ 6 That same day, the trial court entered a temporary custody order granting temporary custody of Michael to the Department of Children and Family Services (DCFS). The trial court admonished the respondent that he had to comply with the DCFS service plan and correct the conditions that resulted in him losing custody of Michael, otherwise he risked having his parental rights terminated. DCFS subsequently developed service plans for the respondent that required him to address concerns about his substance abuse, domestic violence, parenting, and mental health.

¶ 7 On October 13, 2015, the trial court entered an adjudicatory order finding Michael neglected for living in an environment injurious to his welfare.

¶ 8 On November 10, 2015, the trial court set a permanency goal for Michael to return home within 12 months. The trial court again ordered the respondent to cooperate with DCFS and to complete the terms of its service plan.

¶ 9 On April 26, 2016, October 4, 2016, and June 27, 2017, the trial court conducted permanency review hearings. At each hearing, the trial court found that the goal of return home had not been achieved and that the respondent had not successfully completed the service plan.

Following the June 2017 hearing, the trial court changed the permanency goal to substitute care pending determination on the termination of parental rights.

¶ 10 On August 7, 2017, the State filed a petition to terminate the respondent's parental rights to Michael. The petition alleged that the respondent was unfit because he had (1) failed to protect Michael from injurious conditions within his environment; (2) failed to make reasonable progress towards Michael's return; and (3) failed to make reasonable efforts to correct the conditions which were the basis of Michael's removal. The alleged time frames that the respondent had failed to make reasonable efforts or reasonable progress were the nine-month periods of October 13, 2015, through July 13, 2016; July 13, 2016, through April 13, 2017; and April 13, 2017, through January 13, 2018. The petition further alleged that it was in Michael's best interests to terminate the respondent's parental rights.

¶ 11 Appeal No. 2-18-0146 (Sebastian)

¶ 12 In late January 2016, following Sebastian's birth, the State filed a petition to adjudicate Sebastian neglected on the basis of the same conditions that caused Michael's removal. On February 1, 2016, the State obtained a temporary custody order placing Sebastian in DCFS care. The trial court subsequently adjudicated Sebastian neglected.

¶ 13 On August 7, 2017, the State filed a petition to terminate the respondent's parental rights as to Sebastian. The termination petition set forth the same reasons for termination as in Michael's case, except the respondent's alleged failures to make reasonable progress or exert reasonable efforts were limited to two rather than three distinct nine-month periods: April 26, 2016, through January 26, 2017; and January 26, 2017, through October 26, 2017.

¶ 14 Termination of Parental Rights Hearing

¶ 15 On January 4, 2018, the trial court conducted a fitness hearing on the termination petitions relating to both Michael and Sebastian. Caseworker Kimberly Versetto testified that she had prepared three updates to the respondent's initial September 2015 service plan. These updates were prepared on July 5, 2016; December 28, 2016; and June 29, 2017. Versetto testified that the respondent had been continuously incarcerated in either the Ogle County jail or the Illinois Department of Corrections from his 2015 arrest until September 2017, except for 53 days in the summer of 2016 when he was briefly released on parole. He returned to the IDOC after a three-day alcohol binge and violation of an order of protection as to the children's mother. As a result of his incarceration, the respondent only completed service plan goals during that time he was out of jail, which consisted of obtaining a mental health assessment from Sinnissippi Center and passing random drug tests. While he was out of custody in 2016, he did not engage in any parenting or domestic violence programs or mental health counseling. Versetto further testified that, because the respondent had not made progress with his service plans, he was never able to have unsupervised visits with his children.

¶ 16 The respondent testified that he had not been able to complete the DCFS-recommended programs because of his time in prison. Since being released from prison in September 2017, he had obtained full-time employment in Rochelle, became actively involved in Alcoholics Anonymous meetings, began participating in Sinnissippi Center's 26-week domestic violence program, and was waiting for an opening in a substance abuse rehabilitation program.

¶ 17 On January 29, 2018, the trial court orally found that the respondent was unfit for failing to make reasonable efforts towards correcting the conditions which were the basis of his children's removal and for failing to make reasonable progress towards their return home. On

January 29, 2018, the trial entered its written order that additionally found that the respondent was unfit for failing to protect the children from injurious conditions in their environment.

¶ 18 On January 31, 2018, following a hearing, the trial court determined that it was in the children's best interests that the respondent's parental rights to them be terminated. The respondent thereafter filed a timely notice of appeal.

¶ 19 ANALYSIS

¶ 20 The respondent contends that the trial court erred in finding that he was unfit to parent his children. Relying on *In re Gwynne P.*, 346 Ill. App. 3d 584, 589-96 (2004), the respondent argues that, as DCFS programs were not readily available to him while he was incarcerated, his failure to comply with those programs cannot serve as a basis for terminating his parental rights. The respondent further argues that the trial court's finding that he was unfit for failing to protect the children from conditions within their environment was unsupported by any analysis or evidence presented at the termination hearing.

¶ 21 Before addressing the respondent's argument, we review the principles applicable to termination proceedings. The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 et seq. (West 2016)) provides a two-step process for the involuntary termination of parental rights. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). First, the State must prove that the parent is unfit by clear and convincing evidence. *Id.* Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) lists the grounds under which a parent may be found unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Second, if the court makes a finding of unfitness, the court then considers whether it is in the best interest of the minor to terminate parental rights. *Deandre D.*, 405 Ill. App. 3d at 953. The State has the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *Id.* A trial court's determination of unfitness will

not be overturned unless the finding was against the manifest weight of the evidence. *In re Michael M.*, 364 Ill. App. 3d 598, 606 (2006). Further, this court will reverse a best-interest finding only where it is against the manifest weight of the evidence or where the trial court abused its discretion. *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 22 Section 1(D)(m) of the Adoption Act contains two separate grounds, either of which can serve as a basis for a finding of unfitness. 750 ILCS 50/1(D)(m) (West 2016). Subsection (i) deals with a parent's failure to make "reasonable efforts" to correct the conditions that were the basis for the minor's removal; subsection (ii) deals with a parent's failure to make "reasonable progress" toward the return of the minor during "any 9-month period" following the adjudication of neglect. 750 ILCS 50/1(D)(m)(i)-(ii) (West 2016). Only one ground needs to be proven in order to uphold an unfitness finding. *In re Brandon A.*, 395 Ill. App. 3d 224, 238 (2009).

¶ 23 Reasonable progress is an objective standard focusing on the amount of progress toward the goal of reunification that can be reasonably expected under the circumstances. *In re A.A.*, 324 Ill. App. 3d 227, 236 (2001). The standard by which progress is to be made is parental compliance with the service plan, the court's directives, or both. *Id.*

¶ 24 Reasonable progress requires demonstrable or measurable movement toward the goal of reunification. The standard for measuring the parent's progress is to consider the parent's compliance with the service plans and the court's directive in light of the conditions that led to the child's removal, and the subsequent conditions that would prevent the court from returning custody of the child to the parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1068 (2006). 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.* at 1067.

¶ 25 Here, in particular, the trial court found that the respondent failed to make reasonable progress towards the return of Michael during the period of July 13, 2016, to April 13, 2017. The trial court found that the respondent failed to make reasonable progress towards the return of Sebastian during the period of April 26, 2016 to January 26, 2017. The trial court's findings were consistent with Versetto's testimony. She testified that the respondent had not made progress with any of his service plans during the applicable periods. Even when he was out of jail during the applicable periods, he failed to engage in programs required by his service plans. Further, to the extent that he made any progress with his substance abuse while out of jail, he quickly relapsed, which led to his return to prison. Because of his lack of progress, she testified that the respondent had never been able to have unsupervised visits with his children. As such, it is clear that the respondent would not be able to regain custody of his children again in the near future. See *id.* Accordingly, the trial court's determination that the respondent was unfit for failing to make reasonable progress was not against the manifest weight of the evidence.

¶ 26 In so ruling, we reject the respondent's argument that it was unfair to expect him to make progress when he was incarcerated. In making this argument, the respondent minimizes the fact that he was not incarcerated during the entire applicable periods that the trial court found he was not making progress. The respondent's actions while he was out of jail—getting drunk and violating his parole and not engaging in any parenting or domestic violence programs or mental health counseling—undermines his implicit contention that his failure to make any progress was based solely on his incarceration.

¶ 27 For this same reason, we reject the respondent's reliance on *Gwynne P.* There, the reviewing courting found that the minor's mother, even though incarcerated during the entire relevant time period, had taken several steps towards completing her service plan. *Gwynne P.*,

346 Ill. App. 3d at 595-96. Here, the respondent did not make similar progress, even though he was incarcerated almost two months less than the mother in *Gwynne P.*

¶ 28 Accordingly, as we have determined that the trial court's decision was not against the manifest weight of the evidence as to the respondent's failure to make reasonable progress toward the return of his children within the relevant nine-month periods, we need not consider the other grounds on which the trial court found the respondent unfit. See *Brandon A.*, 395 Ill. App. 3d at 238.

¶ 29 Finally, based on our review of the record, there is nothing to indicate that the trial court erred in determining that it was in Michael's and Sebastian's best interest that the respondent's parental rights be terminated. Thus, the trial court's decision to terminate the respondent's parental rights was not against the manifest weight of the evidence nor did it constitute an abuse of discretion. See *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of Ogle County is affirmed.

¶ 32 Affirmed.