2018 IL App (2d) 180248-U
No. 2-18-0248
Order filed August 9, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re S.W. and P.W., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 16-JA-96
	)	16-JA-97
	)	
(Paul W., Respondent-Appellant,	)	Honorable
v. People of the State of Illinois,	)	Francis M. Martinez,
Petitioner-Appellee).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that respondent was unfit and that severing his parental ties was in the minor's best interests were not against the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, Paul W., appeals from an order of the trial court finding him unfit as a parent as defined in sections (D)(g), (D)(m)(i) and (D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(g), (D)(m)(i), (D)(m)(ii) (West 2016)) and terminating his parental rights to his minor children, S.W. and P.W. We affirm the judgment of the trial court as to S.W.

¶ 3 We do not have jurisdiction over respondent's appeal as to P.W. The filing of a notice of appeal is jurisdictional and must be filed within 30 days of final judgment or within 30 days after

an order is entered "disposing of the last pending postjudgment motion directed against that judgment or order." Ill. S.Ct. R. 303(a)(1) (eff. Jan. 1, 2015). On February 23, 2018, final and appealable orders were entered terminating respondent's parental rights as to both S.W. and P.W. On March 6, 2018, a "corrected order" terminating parental rights was entered as to S.W. only. The corrected order also stated that it was a final and appealable order. Since respondent did not file his notice of appeal until March 30, 2018, it was effective only as to the corrected order of March 6, 2018.

¶ 4 Accordingly, we dismiss respondent's appeal as to P.W. for lack of jurisdiction and proceed to the merits of respondent's appeal with respect to S.W.

¶ 5 I. BACKGROUND

¶ 6 S.W. was born on May 30, 2012. On August 3, 2016, the State filed an amended neglect petition alleging, *inter alia*, that S.W. was a neglected minor and her environment was injurious to her welfare because both of her parents had substance abuse problems that prevented them from "properly parenting, thereby placing [S.W.] at risk of harm, pursuant to 705 ILCS 405/1-3(1)(b)." On August 26, pursuant to respondent's stipulation to the substance abuse allegation, S.W. was adjudicated neglected. On September 7, 2016, S.W. was made a ward of the court, and the Department of Children and Family Services (DCFS) was made her guardian with discretion to place her in traditional foster care or with a responsible relative. Respondent was admonished in writing and also orally that following a finding of neglected minor, cooperation with DCFS, or any other agency managing the case, during the ensuing nine months was essential to avoid termination of his parental rights.

¶ 7 Permanency review hearings were held on February 14, 2017, and June 28, 2017. Respondent failed to appear on time for the first hearing. In making its determinations at both

hearings, the court relied on reports of the Youth Services Bureau and CASA and testimony from their representatives. At the first hearing the court determined that respondent had not made reasonable efforts or progress toward reunification because he had not engaged in any DCFS services. However, in light of the contact respondent had maintained with the caseworker, the court left the permanency goal for S.W. at return home within twelve months. After the second hearing, at which respondent timely appeared, the court again found that respondent had not make reasonable efforts or progress toward reunification. Although respondent appeared to be willing to make reasonable efforts, he had not yet begun; for example, no drug tests or substance abuse assessment had been taken. The court changed the permanency goal for S.W. to substitute care pending court determination regarding parental rights.

¶ 8 The State then filed a petition asking the court to terminate parental rights and to appoint DCFS as S.W.'s guardian with the right to consent to her adoption. On December 28, 2017, a hearing was held regarding whether respondent is an unfit parent for S.W. Although notified of the hearing, respondent did not attend. The caseworker for S.W. testified, copies of the service plans were admitted, and attorneys for the State, CASA, and respondent presented argument. The court found that during the relevant time periods, August 26, 2016, to May 26, 2017, and/or October 24, 2016, to July 24, 2017, respondent had failed to protect S.W. from injurious conditions and failed to make reasonable efforts and progress toward the return of S.W. With respect to the latter, the court noted respondent's failure to complete any substance abuse services and his admission into treatment only three weeks prior to the hearing, "well outside the periods that were relevant to these petitions." The court concluded that the State had proven by clear and convincing evidence respondent's unfitness to be S.W.'s parent.

¶ 9 Dispositional and best interest hearings were held on February 23, 2018. Although notified of the hearing date and time, respondent did not appear; due to his absence, his attorney stated that she had no evidence to present. The case worker testified and was cross-examined by respondent's attorney. At the conclusion of the best interests hearing, the court noted its previous findings of parental unfitness, in particular respondent's unwillingness or inability to participate in the proceedings, and the "excellent" environment in the foster parents' residence. The court further found that S.W. was thriving and bonded with the foster parents and that the foster parents' commitment to adoption implied permanency, which was in S.W.'s best interest. The court concluded by a preponderance of the evidence that it was in S.W.'s best interests to terminate respondent's parental rights and to appoint DCFS as her guardian with the right to consent to her adoption.

¶ 10 II. ANALYSIS

¶ 11 To support a judgment of termination of a mother's or father's parental rights, there must first be a showing of parental unfitness based upon clear and convincing evidence, and a subsequent showing that the best interests of the child are served by severing parental rights based upon a preponderance of the evidence. *In re C. W.*, 199 Ill. 2d 198, 210 (2002); *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45.

¶ 12 A. Unfitness

¶ 13 Although section 1(D) of the Adoption Act sets forth numerous, discrete grounds under which a parent may be deemed "unfit," "any one ground, properly proven, is sufficient to enter a finding of unfitness and support a subsequent termination of parental rights." (Internal quotation marks omitted.) *In re C.W.*, 199 Ill. 2d 198, 210, 217 (2002); see 750 ILCS 50/1(D) (West 1998) (providing that the "grounds of unfitness are *any one or more* of the following" enumerated

grounds (emphasis added)). "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings and we will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. For this reason, the trial court's finding of unfitness is entitled to great deference, and we will not disturb its finding unless it is against the manifest weight of the evidence. *In re D.F.*, 332 Ill. App. 3d 112, 124 (2002). The trial court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001).

¶ 14 Here, the trial court determined the State had proven respondent's unfitness by clear and convincing evidence on multiple statutory grounds. Count 3 of the State's termination petition alleged that respondent was unfit for failing to make reasonable progress toward the return of S.W. See 750 ILCS 50/1(D)(m)(ii) (West 2016). We agree.

¶ 15 Section 1(D)(m)(ii) of the Adoption Act provides that a parent is unfit for failing "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication [of neglect]." 750 ILCS 50-1(D)(m)(ii) (West 2016). "Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. At a minimum, reasonable progress requires "'measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child.'" *A.S.*, 2014 IL App (3d) 140060, ¶ 17 (quoting *In re M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991)). "'[T]he 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.'" *A.S.*, 2014 IL App (3d) 140060, ¶ 17 (quoting *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001)). "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." *A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 16 Respondent argues that he made reasonable progress because he was consistent in his visits with S.W., maintained contact with his caseworker, and "never appeared to be intoxicated during his visitations." Respondent states, "[t]he only reason he had not progressed further was that he had not finished his drug treatment, which prohibited him from going further in his services." Respondent ignores the fact that he did not begin substance abuse services until December 2018, months after the 9-month time periods during which he needed to show reasonable progress. He did not engage in any required services during the relevant time periods. See 750 ILCS 50/l(DXm)(i)(ii) (West 2016) (stating that "reasonable progress" toward the return of the child to the parent within nine months of an adjudication of neglected minor includes the parent's failure to substantially fulfill his or her obligations under a service plan). See also *In re C.W.*, 199 Ill. 2d 198, 213 (2002) (" 'reasonable progress' includes a parent's compliance with service plans and court directives"). As for visitation with S.W., respondent may have been consistent, but because he had not yet begun substance abuse treatment, he was unable to progress beyond supervised visits.

¶ 17 Respondent contends that the trial court failed to make sufficient findings of fact with respect to his unfitness to allow for proper review. The court found, however, that respondent made no efforts toward reasonable progress until a time that was outside the relevant periods at issue in the neglect petition. Respondent does not contest this finding, which was dispositive and

not against the manifest weight of the evidence. We conclude that the trial court did not err in determining that respondent was unfit under section 1(D)(m)(ii).

¶ 18 B. Best Interests

¶ 19 The focus shifts to the child after a finding of parental unfitness. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The issue is no longer whether parental rights can be terminated; the issue is whether, in light of the child's needs, parental rights should be terminated. *Id*.

¶ 1 In making a best interests determination, section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1–3(4.05) (West 2016)) requires a trial court to consider certain factors within "the context of the child's age and developmental needs"; these include: (1) the physical safety and welfare of the child, including food, shelter, health and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including where the child actually feels love, attachment, and a sense of being valued ***; the child's sense of security and familiarity; continuity of affection for the child; and the least disruptive placement alternative for the child; (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, which includes 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. *In re D.T.*, 212 Ill. 2d 347, 354 (2004) (proceeding for termination of parental rights).

¶ 20 The trial court's finding with respect to best interests lies within its sound discretion, especially when it considers the credibility of testimony presented at the best interests hearing, and its determination will not be disturbed on appeal unless it is against the manifest weight of

the evidence or the court has abused its discretion. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.* (citing *In re Arthur H.*, 212 Ill.2d 441, 464 (2004)). A court abuses its discretion where its findings are arbitrary or fanciful (*Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)), or where no reasonable person would agree with its position (*In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)).

¶ 21 Respondent argues that terminating his parental rights in not in S.W.'s best interest because when this case began she was in his care. Respondent ignores crucial facts: S.W. was removed from his care after he stipulated to the State's allegation that his substance abuse problem prevented him from "properly parenting, thereby placing [S.W.] at risk of harm," and he took no steps to address this problem during the prescribed time periods. Respondent also points out his consistency in visiting S.W. However, because he did nothing about his substance abuse problem, his visits had to be supervised. Finally, respondent asserts: "It was noted that [S.W.] had problems when [she] was told [she] would not be returning to [her] parents." It is unclear from the report of proceedings, however, whether S.W.'s "problems" were related to her being told about her parents not returning. In any event, the caseworker credited the foster parents with helping S.W. resolve whatever problems she was having. The caseworker's testimony additionally indicated that there were no "detachment issues" at the end of S.W.'s visits with respondent.

¶ 22 It is apparent from the caseworker's testimony that S.W. loves her foster parents and wants to live with them; as the trial court found, she is thriving and bonded with them, and the permanency they offer is in S.W.'s best interest Respondent's "interest in maintaining the

parent-child relationship must yield to [S.W.'s] interest in a stable, loving home life." *In re D.*, 212 Ill. 2d 347, 364 (2004).

¶ 23 The court's determination that it was in S.W.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County as to S.W. and dismiss the appeal as to P.W.

¶ 26 Affirmed in part, dismissed in part.