2018 IL App (3d) 170578-U

Order filed January 8, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re J.K. and R.K.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Minors	)	McDonough County, Illinois.
	)	
(The People of the State of Illinois,	)	Appeal Nos. 3-17-0578
	)	3-17-0579
Petitioner-Appellee,	)	3-17-0631
	)	3-17-0632
v.	)	Circuit Nos. 15-JA-14
	)	15-JA-15
N.M. & M.K.,	)	
	)	Honorable Patricia A. Walton and
Respondents-Appellants).	)	Heidi A. Benson,
	)	Judges, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly found respondents unfit to parent J.K. and R.K. (2) The trial court correctly determined that J.K. and R.K.'s best interests favored terminating respondents' parental rights.

¶ 2 On June 22, 2017, the trial court found respondents, N.M. (mother) and M.K. (father), unfit to parent their children, J.K. (born June 2010) and R.K. (born April 2011). After a best

interest hearing on August 8, 2017, the court entered an order terminating respondents' parental rights. Respondents appeal the court's order. We affirm.

¶ 3 BACKGROUND

¶ 4 On October 23, 2015, the State filed virtually identical adjudication petitions for each child pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2014)). The petitions alleged that respondents neglected J.K. and R.K. by subjecting them to an injurious environment.

¶ 5 The petitions cited several occurrences in September and October 2015. On September 15, police arrested respondent father for aggravated battery, domestic battery, and endangering the life of a child. J.K. told police that respondent "pushed him to the ground and struck him causing bruising around his nose, right eye and forehead."

¶ 6 On September 27, a neighbor reported that she found five-year-old J.K. and four-year-old R.K. outside her home at approximately 5 a.m. They intended to walk across a nearby highway to a gas station while their parents slept. On October 11, a 78-year-old neighbor reported that respondent mother frequently brought J.K. and R.K. over without notice. Respondent mother threatened to call the police if her neighbor refused to babysit the children. On October 14, a woman reported that R.K. randomly showed up at her home in a neighboring municipality. The woman "was not aware of [R.K.'s] identity."

¶ 7 On November 18, the State filed a petition for temporary custody. This petition cited another report on November 16 regarding a laceration on J.K.'s mouth. J.K. stated that respondent mother "threw a phone at his face" after an argument with respondent father. The court granted the State's petition and awarded the Department of Child and Family Services (DCFS) temporary custody over J.K. and R.K.

¶ 8 Respondents appeared with counsel at the adjudication hearing on December 14. The trial court granted the State's petition. The order found that respondents subjected J.K. and R.K. to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2014)) and substantial risk of physical abuse (705 ILCS 405/2-3(2)(ii) (West 2014)).

¶ 9 At the dispositional hearing on January 28, 2016, the court found respondents dispositionally unfit, deemed J.K. and R.K. wards of the court, and accepted DCFS's recommendations and service plan. The court admonished respondents to cooperate with DCFS and comply with their service plans. The order granted DCFS discretion to schedule respondents' visits with their children. The court also established a permanency goal to return J.K. and R.K. home within 12 months.

¶ 10 On March 22, 2017, the State filed a petition to terminate respondents' parental rights. The petition alleged that during the nine-month period between June 1, 2016, and March 1, 2017, respondents failed to make reasonable efforts to correct conditions that caused DCFS to remove J.K. and R.K. 750 ILCS 50/1(D)(m)(i) (West 2014). The petition also alleged that respondents failed to make reasonable progress toward returning J.K. and R.K. home during the same nine-month period. *Id.* § 1(D)(m)(ii). Respondents denied the petition's allegations.

¶ 11 I. Fitness Hearing

¶ 12 The court held a fitness hearing on June 22, 2017. Laura Jones, a Chaddock caseworker, testified that DCFS transferred respondents' case to Chaddock in February 2016. Jones worked as respondents' caseworker until July 2016.

¶ 13 Respondent mother's service plan required her to engage in mental health services, parenting classes, and domestic violence classes. She completed the parenting course in May 2016. Jones referred respondent mother to a domestic violence program and offered to pay a taxi

for her commute. She refused the taxi service because "she couldn't ride in a taxi with strangers." On June 23, 2016, respondent mother admitted to Jones that she abused prescription opioids. Chaddock added substance abuse treatment to her plan.

¶ 14 Respondent father's plan recommended mental health services, parenting classes, domestic violence classes, and substance abuse treatment. He repeatedly told Jones that "he did not need mental health services." He also "didn't really see a problem with" drinking alcohol. Jones requested 10 drug screens between May and July 2016. Respondent father refused to submit three samples and two samples tested positive for THC.

¶ 15 Jones also described respondents' visits with J.K. and R.K. as "very hectic, very chaotic." Respondent mother "would attempt to set limits," then respondent father "would tell the boys they didn't have to comply with that." Chaddock's visitation supervisors unsuccessfully attempted to address respondents' parenting issues during visits. Respondent father attempted to verbally intimidate supervisors and caseworkers; he cussed and screamed at respondent mother and Chaddock employees

¶ 16 On cross-examination, Jones confirmed that respondents never progressed enough to earn unsupervised visits. During Jones's time as respondents' caseworker, J.K. and R.K. lived in the same foster home. On visit days, J.K. and R.K. acted "nervous, anxious" prior to seeing respondents. After visits, they "would throw fits, crying, screaming" for up to three hours. On one occasion, R.K.'s foster parents kept him home because he "became so disregulated" that he "wasn't safe to transport to the visit." After each visit, J.K. and R.K.'s foster parents spent at least a day trying to readjust the children to a structured, stable environment.

¶ 17 Jessica Fuller, respondents' caseworker from July 2016 forward, testified that respondents failed to abide by Chaddock's visitation plans. Supervisors created the plans to

structure the otherwise chaotic visits. On January 5, 2017, Chaddock suspended respondents' visits because J.K. and R.K.'s therapist believed "that the children were being re-traumatized during visits."

¶ 18 Fuller described respondent father as "very standoffish" and "very guarded" during visits. He sometimes became hostile with supervisors. He preferred not to interact with the children in front of the supervisors or caseworkers. Whenever a supervisor or caseworker made a suggestion, respondent father responded by saying "I know how to parent" or "don't tell *** me what to do as far as parenting goes." He also wrestled with J.K. and R.K. during visits despite the supervisors' rules against it.

¶ 19 Fuller also addressed respondent mother's substance abuse issues. Her first inpatient treatment provider unsuccessfully discharged her on Tuesday, August 23, 2016. The preceding Friday, she claimed that she suffered from an upper respiratory infection. After an ambulance transported her to the hospital, emergency room personnel administered fentanyl and a morphine drip. The hospital discharged respondent mother on Saturday morning; she returned by ambulance later that night. This time, her treating physician prescribed her hydromorphone and discharged her. On Sunday, respondent mother returned to the hospital by ambulance. Her treating physician gave her ibuprofen instead of opioids. Later that night, she returned to the hospital by cab to seek other pain medication. She later admitted to Fuller that she fabricated the ailments to obtain opioids.

¶ 20 Respondent mother submitted two positive drugs screens in September 2016. Respondent father told Fuller that he supplied respondent mother with his prescribed opioids. Fuller went to respondents' home unannounced to administer a drug screen on February 17, 2017. Respondents yelled at her and asked her to leave. Neither respondent submitted a drug screen. Based on

respondents' substance abuse issues and failure to implement proper parenting techniques during visits, Fuller opined that J.K. and R.K. could not return home in the near future.

¶ 21 A. Respondent Mother

¶ 22 Kimberley Laird, respondent mother's behavioral health therapist, testified that her treatment plan focused on regaining custody of her children. Respondent mother resisted treatment. She refused to honestly disclose her substance abuse issues or drug-seeking behavior. Her dishonesty "clearly was getting in the way of [the therapy] sessions *** to the point where it didn't seem like we were going to make any progress if she continued to use." Laird discharged respondent mother in September 2016. Laird also instructed her to complete inpatient substance abuse treatment before returning to therapy.

¶ 23 Respondent mother returned to therapy in November 2016. From November 2016 until the hearing date, she met with Laird seven times, cancelled three appointments, and "no-showed" three times. Laird encouraged respondent mother to terminate her "unhealthy" relationship with respondent father. She ignored Laird's suggestion.

¶ 24 Amanda Bolte began substance abuse counseling with respondent mother after she completed her second attempt at inpatient treatment. At her initial assessment in November 2016, respondent mother stated that she remained sober. When Bolte asked for a urine sample, respondent mother admitted that she relapsed two days earlier; her sample tested positive for opiates. She stopped attending substance abuse counseling in February 2017. After Bolte sent her a "lack of contact letter" in late March 2017, respondent mother returned to counseling.

¶ 25 Respondent mother's domestic violence counselor, Nicole Royer, testified that their first appointment occurred on November 14, 2016. Royer scheduled seven out of the nine mandatory

course sessions between November 2016 and January 2017. Respondent mother attended two sessions, cancelled three, and "no-showed" twice.

¶ 26 Respondent mother testified that she never sought drugs during her first inpatient substance abuse treatment. Doctors prescribed her opioids for carpal tunnel issues, squamous cell carcinoma on her breast, and a tooth extraction. According to respondent mother, her positive drug tests reflected her legitimate medications, not illicit substance abuse. She also stated that she intended to leave respondent father and move to her parents' home in Iowa *if* that course of action furthered her children's best interests.

¶ 27 B. Respondent Father

¶ 28 Becky Derry, a behavioral health therapist, began treating respondent father in May 2016. Derry testified that he missed his initial assessment in May and his first scheduled appointment in June. He maintained poor attendance throughout his treatment. Respondent father blamed respondent mother for losing their children. He refused to fully cooperate with therapy, anger management, and domestic violence courses. Although he missed two classes, respondent father eventually completed his anger management course in September 2016. After the provider dismissed him from the group parenting course for poor attendance, Derry taught him the course material individually. He completed the parenting course in December 2016.

¶ 29 Derry also addressed respondent father's substance abuse issues. Derry asked him to submit periodic drug screens. He submitted only one, in November 2016. Derry referred him to a relapse prevention program in October or November 2016. After he enrolled, he submitted multiple positive drug tests. The provider suspended him until he could submit a negative test. He never submitted one.

¶ 30 As a last resort for substance abuse treatment, Derry offered respondent father a "30 for 30" program, which required him to attend a session for 30 consecutive days and submit one negative drug test within those 30 days. He submitted a positive test every week and failed to finish the program. He told Derry that he never stopped using illegal substances and "did not want to [stop]." Derry unsuccessfully discharged respondent father from substance abuse services on March 7, 2017.

¶ 31 On July 12, 2017, the court issued an order finding respondents unfit pursuant to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2014)). During the relevant nine-month period (June 1, 2016, through March 1, 2017), the court found that neither respondent made reasonable efforts to correct conditions leading to DCFS removing their children or reasonable progress toward returning their children home. The order highlighted respondent mother's positive drug tests, drug-seeking behavior, lack of responsibility, and failure to implement suggested parenting techniques during visits. The order also noted respondent father's incessant drug and alcohol use, failure to cooperate with Chaddock, lack of responsibility, aggressive behavior during visits, and failure to complete therapy and substance abuse treatment.

¶ 32 II. Best Interest Hearing

¶ 33 The court held a best interest hearing on August 8, 2017. Brooke Schreiner testified that she conducted weekly individual therapy sessions with J.K. and R.K. starting in September 2016. Their stress responses and behavior appeared less stable when they visited respondents. Schreiner opined that visits caused J.K. and R.K. to discuss and remember past traumatic experiences. Specifically, they remembered experiences where respondents abused them, threw things at them, ignored them, or neglected to supervise them. After Chaddock discontinued visits in January 2017, J.K. and R.K.'s behavior and emotional responses stabilized.

¶ 34 J.K. and R.K. also exhibited a good connection with their foster parents. They responded well to their structured foster homes; they felt safer and more stable. Schreiner voiced no objection to Chaddock permanently placing J.K. and R.K. with their foster parents. Although Schreiner admitted that all children J.K. and R.K.'s age struggle with transitioning through foster care and adoption, she believed their best interests favored terminating respondents' parental rights.

¶ 35 Jessica Fuller testified that R.K.'s foster parents agreed to adopt him if the court terminated respondents' parental rights. She opined that R.K.'s best interest favored adoption. DCFS initially placed J.K. and R.K. in the same foster home. Chaddock placed J.K. with a different foster parent after each of his two hospitalizations. J.K.'s current foster father agreed to retain guardianship until J.K.'s therapist and caseworker deemed him stable enough for adoption. J.K. thrived with his foster father; however, the foster father's advanced age dissuaded him from adopting J.K.

¶ 36 J.K. and R.K.'s maternal grandparents informed the court and Chaddock that they wished to remain in their grandchildren's lives. They admitted that they could not raise them, but they sought visitation privileges regardless of respondents' rights.

¶ 37 Based on the testimony, the court determined that J.K. and R.K.'s best interests favored terminating respondents' parental rights. The court's August 9, 2017, termination order also granted Chaddock discretion to allow J.K. and R.K.'s maternal grandparents to visit their grandchildren on the condition that respondents never attend a visit. This appeal followed.

¶ 38 ANALYSIS

¶ 39 Courts employ a two-step process when the State files a petition to terminate parental rights. First, the State must prove by clear and convincing evidence that the parents are "unfit"

under one or more grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re D.T.*, 212 Ill. 2d 347, 352 (2004). If the court finds the parents unfit, then it must determine whether the children's best interest favors terminating parental rights. *Id.*; 705 ILCS 405/2-29(2) (West 2014).

¶ 40 Respondents argue that the State failed to present sufficient evidence to carry its burden at either stage. They claim that the State's evidence at the fitness hearing demonstrated that respondents made "reasonable efforts" and "reasonable progress" under the Adoption Act (750 ILCS 50/1(D)(m) (West 2014)) during the relevant nine-month period (June 2016 through March 2017). Respondents also argue that the court erred in finding that termination comported with J.K. and R.K.'s best interests. Primarily, they contend that J.K.'s best interest is speculative because his adoption status and emotional stability remain uncertain. We reject respondents' contentions and affirm the trial court's order.

¶ 41 I. Respondents' Fitness

¶ 42 To reverse a fitness finding, "the reviewing court must conclude that the trial court's finding was against the manifest weight of the evidence." *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Under this standard, the evidence must clearly support the opposite conclusion. *Id.*; *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 141–42 (1986). Each parental fitness case presents unique circumstances; courts gain little insight from other parental fitness cases decided on different underlying facts. See *In re Adoption of Syck*, 138 Ill. 2d 255, 279 (1990); *In re T.D.*, 268 Ill. App. 3d 239, 245 (1994). Trial courts sit in the best position to judge each case's unique circumstances; we accord great deference to the trial court's determinations. *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999).

¶ 43 The State's termination petition alleged that respondents failed to make reasonable efforts to correct conditions that prompted DCFS to remove J.K. and R.K. from their home (750 ILCS 50/1(D)(m)(i) (West 2014)). The petition also alleged that respondents failed to make reasonable progress toward returning their children home (750 ILCS 50/1(D)(m)(ii) (West 2014)). Either ground is sufficient to support an unfitness finding. See *In re D.T.*, 212 Ill. 2d at 352; *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). We address each respondent's fitness individually.

¶ 44 A. Respondent Father's Fitness

¶ 45 The State presented clear and convincing evidence that respondent father failed to make reasonable efforts to correct conditions that caused DCFS to remove his children. Most notably, respondent father refused to participate in a substance abuse program because he "didn't really see a problem" with drinking alcohol and "did not want to" stop abusing illicit substances. He either refused to submit requested drug screens or submitted positive samples far more often than he submitted negative samples over the nine-month period. When his therapist provided him with a final opportunity for substance abuse treatment (the "30 for 30" program), he failed to submit a single negative drug screen.

¶ 46 Although respondent father completed a parenting course in December 2016, he refused to implement the course's techniques or techniques that Chaddock's supervisors suggested during visits. Instead, he told Chaddock's caseworkers and visitation supervisors: "I know how to parent" or "don't tell *** me what to do as far as parenting goes." He attempted to verbally intimidate Chaddock employees. He also instructed respondent mother to ignore Chaddock employees' parenting advice.

¶ 47 As the trial court noted, the evidence strongly suggested that the "likelihood of abuse of children remains." The record clearly demonstrates that respondent father failed to make

reasonable efforts to correct the abusive and unstructured conditions that caused DCFS to remove J.K. and R.K. We agree with the trial court that respondent father failed to make reasonable efforts; we need not address his lack of reasonable progress.

¶ 48 B. Respondent Mother's Fitness

¶ 49 Arguably, the evidence demonstrates that respondent mother made more efforts than respondent father to correct the injurious conditions that prompted DCFS to remove J.K. and R.K. from their home. However, the evidence clearly shows that she failed to make sufficient progress toward returning her children home during the relevant nine-month period (June 2016 through March 2017). The "benchmark" for measuring progress under section 1(D)(m)(ii) "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." *In re C.N.*, 196 Ill. 2d at 216.

¶ 50 Respondent mother's substance abuse continuously inhibited her progress. In September 2016, her therapist required her to complete inpatient substance abuse treatment before returning to therapy. In respondent mother's first attempt at inpatient treatment, the provider unsuccessfully discharged her for seeking opioids. After she successfully completed her second inpatient treatment attempt, she relapsed days later.

¶ 51 Despite overwhelming evidence that respondent mother sought opioids during her first inpatient treatment, she denied it when she testified. She also maintained that her positive drug screens resulted from opioids that doctors prescribed her to manage legitimate medical conditions. She refused to take responsibility for, or strive to correct, her substance abuse issues.

¶ 52 Aside from her substance abuse, respondent mother failed to make progress toward completing her service plan goals during the nine-month period. After her therapist resumed treatment, respondent mother cancelled or missed nearly half of her scheduled appointments. She attended two of her seven scheduled domestic violence classes—she needed nine classes to complete the course. She stopped attending her substance abuse counseling in February 2017, the same month that she kicked her caseworker out of her home and failed to submit a requested drug screen. She also ignored her therapist's suggestion to terminate her relationship with respondent father.

¶ 53 This evidence sufficiently supported the trial court's fitness finding. We find nothing in the record that clearly undermines the court's determination. We affirm the fitness order.

¶ 54 II. Best Interest

¶ 55 Like with fitness findings, we reverse a trial court's determination that the children's best interest favors terminating the parents' rights only if the determination conflicts with the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). Once the court finds the parents unfit, all further considerations must yield to the children's best interest. *In re D.M., W.M., & L.L.*, 298 Ill. App. 3d 574, 581 (1998). It is not in any child's best interest to remain without a permanent home for an extended period of time. *In re D.L.*, 191 Ill. 2d 1, 13 (2000).

¶ 56 In making a best interest determination, the trial court must consider the following factors in the context of each child's age and developmental needs: the child's physical safety and welfare; development of the child's identity; the child's background; the child's attachments; the child's wishes and long-term goals; the child's community ties; the child's needs for permanence; the uniqueness of every family and child; the risks inherent to substitute care; and

the preferences of the people available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). The trial court need not explicitly address each factor in rendering its decision. *In re Jaron Z.*, 348 Ill. App. 3d 239, 263 (2004).

¶ 57 Respondents' primary argument is that J.K.'s best interest favors reversing the trial court's termination order because his permanency is uncertain. Respondents also claim that placing J.K. and R.K. in separate homes weighs against their best interest. We disagree.

¶ 58 Brooke Schreiner, J.K. and R.K.'s therapist, testified that J.K. stabilized and progressed well in his third foster home. However, he needed more therapy and time in a structured home before she could recommend permanent placement. She opined that terminating respondents' parental rights suited J.K. and R.K.'s best interest; after Chaddock suspended respondents' visits in January 2017, J.K. and R.K. thrived in their foster homes. They experienced fewer nightmares, night terrors, and mood swings. She believed that respondents' visits "re-traumatized" the children. According to Schreiner, contact with respondents would likely cause the children to regress and have further difficulty adjusting to their foster homes or permanent placements.

¶ 59 The hearing testimony established that respondents' visits hindered both children's progress toward structure and stability. After Chaddock suspended visits, the children thrived. The record clearly established that contact with respondents hurt the children more than it helped them. Regardless of J.K. or R.K.'s permanency status or therapy progress, respondents failed to demonstrate that either child could return home in the foreseeable future. While J.K. and R.K. continue to progress toward stable and structured lives, their parents remain closer to the starting block than the finish line. We agree with the trial court that the children's best interests favored terminating respondents' parental rights.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, we affirm the judgment of the circuit court of McDonough County.

¶ 62 Affirmed.