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2018 IL App (3d) 170750-U

Order filed March 13, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re B.M.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
a Minor	)	Fulton County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0750
	)	Circuit Nos. 13-JA-16
v.	)	
	)	
C.P.,	)	
	)	Honorable Anthony W. Vaupel,
Respondent-Appellant).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The record sufficiently supported the trial court's fitness finding.

¶ 2 After a fitness hearing on July 6, 2017, the trial court found respondent father unfit to parent B.M. (born February 2009). After a best interest hearing on September 14, 2017, the court determined that the factors set forth in the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2016)) supported terminating respondent's parental rights. The court

filed its fitness and termination orders on October 10, 2017. Respondent appeals the trial court's fitness finding; he does not challenge the court's best interest finding. We affirm the trial court's fitness finding and termination order.

¶ 3 BACKGROUND

¶ 4 I. Adjudication

¶ 5 When this case began, B.M. resided with his mother and her paramour. B.M.'s mother and her paramour had three children together when the case began; they had another child while the case remained pending. The four children are B.M.'s half siblings.

¶ 6 On September 25, 2013, the State filed a petition for adjudication under the Juvenile Court Act (*Id.* § 2-3). The petition included three separate counts that alleged B.M.'s parents subjected the minor to an injurious environment (*Id.* § 2-3(1)(b)). Count I alleged that B.M.'s mother's paramour admitted to "watching pornography and masturbating while the minor was in the same room." Count II alleged unresolved domestic violence issues between B.M.'s mother and her paramour. Count III alleged that respondent (B.M.'s biological father) failed to show "a reasonable degree of care or concern regarding the minor child."

¶ 7 On January 23, 2014, the court adjudicated B.M. as neglected on counts I and II. The court declined to rule on count III because the State failed to serve respondent; he did not attend the hearing. The State published a notice to respondent in a local newspaper on March 26, 2014. A law enforcement officer served respondent in person on September 19, 2014. After receiving service, respondent failed to attend the subsequent permanency review hearing. The State published another notice in the newspaper on October 1, 2014.

¶ 8 Respondent appeared at the October 16, 2014, permanency review hearing. He refused to sign a voluntary acknowledgment of paternity. He emphasized that B.M.'s birth certificate did not list him as the father.

¶ 9 Respondent submitted deoxyribonucleic acid (DNA) samples for a paternity test. The test confirmed that respondent was B.M.'s biological father. On November 20, 2014, respondent filed a motion for paternity and temporary visitation. The court ordered respondent to undergo an integrated assessment and reserved judgment on respondent's motion.

¶ 10 At a permanency review hearing on May 21, 2015, the court found respondent unfit to parent B.M. The order recognized respondent's service plan and warned respondent that his failure to comply with the plan or the Department of Child and Family Services (DCFS) could result in the court terminating his parental rights. Respondent's plan required him to attend parenting education courses, undergo a mental health assessment, obtain employment or verify his current employment, submit clean drug tests, and regularly attend scheduled visits with B.M. to "build a father-son relationship with him."

¶ 11 On January 28, 2016, the State filed a petition to terminate B.M.'s mother's parental rights. Instead of opposing the petition, the mother elected to surrender her parental rights to B.M.'s maternal grandmother. The court accepted the mother's surrender on June 9, 2016.

¶ 12 The court held a permanency review hearing in respondent's case on April 6, 2017. The court found that respondent failed to make reasonable progress or reasonable efforts to complete the objectives that his service plan required. Although respondent claimed that he worked in construction, he failed to verify his employment. He also refused to submit drug tests at DCFS's request and moved out of state without notifying DCFS.

¶ 13 The State filed a petition to terminate respondent's parental rights on April 25, 2017. The petition cited sections 1(D)(m)(i) and 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i)–(ii) (West 2016)). Specifically, the State alleged that respondent failed to "make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication" or "make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication." The nine-month period relevant to the petition spanned from July 24, 2016, through April 24, 2017.

¶ 14 II. Fitness Hearing

¶ 15 The court held respondent's fitness hearing on July 6, 2017. B.M.'s caseworker, Ashlee Test, testified that she gave respondent a copy of his service plan and spoke with him about its objectives. Test prepared a report for the permanency review hearing on September 22, 2016. Respondent initially told Test that he "worked in construction," but he never verified his employment. In August 2016, respondent admitted that he used marijuana; he tested positive in his first drug screening.

¶ 16 Test's report also voiced her concerns regarding respondent's visits with B.M. Respondent lived with his mother and brother who both smoked cigarettes. Test worried that respondent's residence could not accommodate B.M.'s asthma condition. She also worried that respondent never helped B.M. with homework during visits. On one occasion, he neglected to pick B.M. up at the bus stop after school. B.M. panicked and walked to his grandmother's house. Finally, Test reported that B.M. regularly played inappropriate, R-rated video games with respondent.

¶ 17 Test prepared another report for the next hearing on October 13, 2016. Despite Test encouraging respondent to attend B.M.'s Cub Scout and tennis activities, respondent never

attended. He also violated visitation rules by bringing his brother to a visit without prior approval. Test remained concerned that respondent failed to acknowledge B.M.'s homework, school routine, or the content of video games that he played with B.M. The report also indicated that respondent submitted a second positive drug test in October 2016.

¶ 18 Respondent refused to submit a single drug test between October 2016 and Test's next report on January 12, 2017. As a policy, DCFS considered each missed drug test to be a positive test. Test estimated that respondent missed 24 or 25 tests during the nine-month period. DCFS reduced respondent's visits from three to two days per week because of respondent's refusal to submit drug tests and the occasion where respondent failed to pick B.M. up from the bus stop after school.

¶ 19 Test's report also stated that respondent failed to show up for visits on several occasions between October 2016 and January 2017. Respondent told B.M. that he would not visit "if B.M. had not been good at home." B.M. became upset and blamed himself each time respondent missed a visit. DCFS further reduced respondent's visits to once per week because he missed several visits and used his visits as a way to punish B.M.

¶ 20 Test submitted another report on March 2, 2017. She reported that she lost contact with respondent. On B.M.'s birthday in February, respondent told B.M. that he planned to move to Ohio. Respondent never contacted Test or DCFS about moving out of state. After B.M.'s birthday, respondent never attended another visit during the relevant nine-month period (approximately two months of absences).

¶ 21 Test testified that she diligently attempted to locate respondent. She sent letters to the addresses in his file and called the phone numbers that he provided. He never responded. Based

on her personal knowledge of the case, Test opined that respondent failed to make reasonable efforts or reasonable progress toward returning B.M. home over the relevant nine-month period.

¶ 22 Respondent testified on his own behalf at the fitness hearing. Although he could not provide a W-2 or other proof of employment, he worked as a roofer for an independent contractor. He made "at least $9 an hour." He was working when he missed visits and failed to pick B.M. up from the bus stop. He could not base his work on a certain schedule "because with an open roof, you never know when it's gonna rain, so you don't know when you're gonna have to hurry up and close that roof up so you are not destroying somebody else's property." He also claimed that "it [was] just not possible" for him to obtain other employment because of his record.

¶ 23 Respondent also testified that he used marijuana to treat scoliosis in his back. However, no doctor prescribed him marijuana. He "didn't see what relevance [smoking marijuana] had to do with [his] case because it had nothing to do with [B.M.]." Respondent smoked marijuana throughout this case. After October 2016, he decided to ignore DCFS's required drug tests: "I know it's gonna come back positive, so why show up if it's gonna come back positive?"

¶ 24 Finally, respondent testified that he moved to Ohio for a job opportunity that allowed him to better provide for B.M. He left B.M. and DCFS his telephone number, but he did not leave a forwarding address. Nor did he discuss moving out of state with DCFS before accepting the job. He left in February 2017 and returned in June. He called B.M. once from Ohio, approximately three weeks after he moved, but he never visited B.M. after he moved.

¶ 25 III. Fitness Finding and Termination

¶ 26 The court took its fitness determination under advisement. On September 14, 2017, the court held a best interest hearing. On October 10, the court filed its fitness and termination

orders. The court deemed respondent unfit pursuant to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m)(i)–(ii) (West 2016). In its termination order, the court found that B.M.'s "best interests would be served by remaining with the minor's grandmother." The court terminated respondent's parental rights. Respondent now appeals the court's fitness determination.

¶ 27 ANALYSIS

¶ 28 Each case involving terminating parental rights must be decided on the particular facts and circumstances that the parties present. *In re D.D.*, 196 Ill. 2d 405, 422 (2001). To justify termination, the State must present clear and convincing evidence that a parent is unfit. *Id.* at 417. On review, we must give the trial court's findings great deference because the trial court viewed and evaluated the witnesses' testimony. *In re K.H.*, 346 Ill. App. 3d 443, 456 (2004). We will not reverse the trial court's fitness determination unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417. A determination is against the manifest weight of the evidence if the opposite result is clear from our review of the record. *Id.*

¶ 29 The State's termination petition alleged that respondent failed to make reasonable efforts or reasonable progress under section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2016)). Although listed in the same section of the Adoption Act, reasonable efforts and reasonable progress are two distinct grounds. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. Where the State alleges a parent is unfit on multiple grounds, proving any one ground is sufficient to prove a parent unfit. *In the Interest of D.J.S.*, 308 Ill. App. 3d 291, 295 (1999). To determine whether a parent made reasonable progress or reasonable efforts, courts must limit their review to evidence showing events that occurred within the relevant nine-month period stated in the termination petition. *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 30 I. Reasonable Efforts

¶ 31 Section 1(D)(m)(i) of the Adoption Act deems parents who fail "to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of [the minor]" unfit. 750 ILCS 50/1(D)(m)(i) (West 2016). Courts judge the reasonableness of parents' efforts by a subjective standard based on each particular parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006).

¶ 32 Respondent argues that section 1(D)(m)(i) does not apply to this case. He points out that DCFS removed B.M. because of domestic violence issues and sexual abuse—both bases for removal related to B.M.'s mother and her paramour. Respondent argues that he bore no responsibility to correct these conditions.

¶ 33 Respondent's argument ignores count III of the State's petition for adjudication and misinterprets section 1(D)(m)(i). The State's petition alleged that respondent neglected B.M. by failing to demonstrate "a reasonable degree of care or concern regarding the minor child." Although the trial court never ruled on count III, respondent *could not* demonstrate a reasonable degree of care and concern for B.M. prior to the adjudication—he denied that B.M. was his biological child until a DNA test confirmed it. The record contains no evidence that respondent played any role in B.M.'s life prior to this case.

¶ 34 Respondent's motion for paternity sought custody of B.M. and stated that respondent agreed "to undergo an integrated assessment and follow all recommendations and services provided." To obtain custody of B.M., respondent needed to demonstrate that he was willing and able to show a reasonable degree of care and concern for B.M. He needed to comply with DCFS's service plan. He failed to put forth reasonable efforts toward accomplishing the plan's objectives.

¶ 35 During the relevant nine-month period, respondent needed to accomplish three tasks to complete DCFS's service plan—obtain verifiable employment, pass drug tests, and attend scheduled visits with B.M. Although respondent testified that he could not possibly obtain verifiable employment, the record contains no evidence that he ever tried. Respondent admitted that he never stopped smoking marijuana. He stopped participating in the drug tests that DCFS required: "I know it's gonna come back positive, so why show up [for a drug test] if it's gonna come back positive?" Finally, respondent missed several scheduled visits and, on at least one occasion, failed to pick B.M. up at the bus stop after school. Respondent stopped attending visits altogether when he decided to relocate to Ohio without notifying DCFS. He never saw B.M. during the last two months of the relevant nine-month period.

¶ 36 This evidence clearly and convincingly shows that respondent failed to make reasonable efforts pursuant to section 1(D)(m)(i). The record sufficiently supports the trial court's determination.

¶ 37 II. Reasonable Progress

¶ 38 Another ground for unfitness is 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." 750 ILCS 50/1(D)(m)(ii) (West 2016). Courts gauge the reasonableness of a parent's progress by the amount of movement toward reunification during the relevant nine-month period. *In the Interest of D.J.S.*, 308 Ill. App. 3d at 294-95. The touchstone that courts use to determine reasonable progress is the parent's compliance with the service plan and court directives, in light of the conditions that gave rise to the child's removal and other conditions that would prevent the court from returning the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001).

¶ 39 Respondent argues that to be unfit under section 1(D)(m)(ii), his lack of reasonable progress must span the entire nine-month period cited in the State's termination petition (July 24, 2016, through April 24, 2017). Respondent does not dispute that he failed to make reasonable progress during the final six or seven months of the relevant period. However, he claims the State failed to show his lack of reasonable progress during the first two or three months. In other words, respondent interprets section 1(D)(m)(ii) to require a *constant* lack of reasonable progress over nine consecutive months.

¶ 40 Respondent misinterprets section 1(D)(m)(ii). "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." *In re Daphnie E.*, 368 Ill. App. 3d at 1067. This standard emphasizes and encourages parents' consistent progress throughout each case. It does not place a burden on the State to demonstrate parents failed to make progress each and every day over a nine-month period.

¶ 41 The State bore no burden to prove respondent's lack of reasonable progress each day or month of the nine-month period. At the end of the nine-month period, B.M. was no closer to returning home with respondent than at the beginning. Respondent ignored DCFS's request to stop using illicit drugs. He missed approximately 24 or 25 drug tests; he admitted that each test would have been positive for marijuana. Respondent also missed several scheduled visits before he moved to Ohio; he missed every visit after relocating with two months remaining in the nine-month period. When respondent attended visits, Test noted no improvement or progress with his parenting skills. Finally, the record shows no indication that respondent ever attempted to obtain employment or verify that worked as a roofer as he claimed.

¶ 42 Based on this record, we find that the State presented clear and convincing evidence that respondent failed to make reasonable progress over the relevant nine-month period. Respondent

presented no evidence that B.M. could have returned home in the near future. See *In re Daphnie E.*, 368 Ill. App. 3d at 1067. We affirm the trial court's fitness finding and termination order.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, we affirm the judgment of the circuit court of Fulton County.

¶ 45 Affirmed.