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2018 IL App (3d) 170791-U

Order filed March 22, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re L.A. and A.R.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Minors	)	McDonough County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0791 & 3-17-0792
	)	Circuit Nos. 15-JA-16 & 15-JA-17
v.	)	
	)	
Jacob A.,	)	Honorable
	)	Patricia Walton,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment terminating respondent's parental rights affirmed where trial court's findings regarding respondent's unfitness and the children's best interests were not against the manifest weight of the evidence.

¶ 2 Respondent, Jacob A., appeals from the judgment of the circuit court finding him to be an unfit parent of his minor children, L.A. and A.R., under section 1(D)(m)(i) and (ii) of the

Adoption Act (Act) (750 ILCS 50/1(D)(m)(i), (ii) (West 2016)) and terminating his parental rights. Respondent claims that the trial court's findings that (1) he failed to make reasonable efforts and reasonable progress toward the return home of his children and (2) it was in the children's best interests to terminate his parental rights were against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 Respondent is the father of L.A., born on October 30, 2011, and A.R., born on October 28, 2015. Respondent and the mother resided together when their son, L.A., was born, but separated in July of 2015, when the mother was pregnant with their daughter, A.R.

¶ 5 On November 2, 2015, the State filed petitions for adjudication of wardship of both L.A. and A.R. The petitions included allegations that L.A. and A.R. were living in an environmental injurious to their welfare because the mother, who is not a party to this appeal, used illegal drugs throughout her pregnancy with A.R. and admitted using illegal drugs during her pregnancy with L.A. The petitions also alleged that the children were living in an environment injurious to their welfare because respondent was arrested for domestic battery and aggravated battery of the children's mother. In addition, respondent was the victim of two criminal cases pending against the mother for domestic battery and criminal damage to property.

¶ 6 That same day, the trial court entered a temporary custody order, noting that parents had unresolved domestic violence issues. The court placed temporary custody of the children with the guardianship administrator of the Department of Children and Family Services (DCFS). The court also admonished respondent that he must cooperate with DCFS, comply with the terms of the service plan and correct the conditions that required the children to be in care, or risk termination of his parental rights.

¶ 7 On December 16, 2015, DCFS established a service plan for respondent. According to the plan, respondent needed to participate in (1) a domestic violence assessment and any treatment recommended, (2) trauma focused psychotherapy, (3) parenting education, and (4) any and all counseling services recommended by DCFS or Lutheran Social Services (LSS) to address his issues. He also needed to complete DNA testing and maintain stable housing.

¶ 8 In the adjudicatory orders filed on December 21, 2015, the trial court noted that respondent had been notified of the adjudicatory hearing but failed to appear. The court found the children were abused and neglected in that they were in an environment that was injurious to their welfare. The court noted its finding was based on the mother's unresolved drug abuse issues and respondent's domestic violence issues.

¶ 9 An integrated assessment report was filed on January 15, 2016. In the report, the caseworker noted that respondent had several arrests involving acts of aggressive behavior and domestic violence, particularly with the mother of L.A. and A.R. The report stated that his risk to commit domestic violence in the future was high and was compounded by his arrest for attempting to strangle the mother when she was six months pregnant. The report also stated that respondent's history of trauma and substance abuse impacted his behavior and his decision making abilities. The caseworker believed that respondent minimized his substance abuse history during the assessment interview, noting that respondent had eight drug charges on his record.

¶ 10 On January 21, 2016, the court entered a dispositional order, finding respondent unfit for dispositional purposes, and set a permanency goal of return home within 12 months. The court ordered respondent to cooperate with DCFS, comply with the terms of the service plan and continue supervised visitation.

¶ 11 The court held permanency review hearings on July 21, 2016, and January 19, 2017. At the conclusion of the first hearing, the court found that the goal of return home had not been achieved and that respondent had not successfully completed the service plan or the services required by the court. Following the January 19, 2017, hearing, the court entered a permanency review order changing the permanency goal to substitute care pending court determination on termination of parental rights. The court then concluded that respondent failed to make reasonable efforts or progress toward that goal.

¶ 12 On March 13, 2017, the State filed petitions to terminate respondent's parental rights as to both L.A. and A.R. The termination petitions alleged respondent was an unfit parent as defined under the Act in that, during the nine-month period from April 20, 2016, through January 20, 2017, respondent failed to make reasonable efforts to correct the conditions that led to the removal of the children (750 ILCS 50/1(D)(m)(i) (West 2016)) and failed to make reasonable progress toward the return home of the children (750 ICLS 50/1(D)(m)(ii) (West 2016)). The petition also alleged that it was in the children's best interests to terminate respondent's parental rights.

¶ 13 On July 17, 2017, the trial court held a fitness hearing on the termination petitions. Respondent did not attend the hearing. Samantha Wike testified that she is a child welfare specialist with LSS. Wike was the caseworker on respondent's case from May 2016 to July 2016. Respondent had been referred for domestic violence, parenting and counseling services. When she was assigned to the case in May 2016, respondent had not completed any of the services. In May of 2016, the prior caseworker scheduled a home visit between respondent and Wike. Wike went to his home, but respondent was not there. He said he forgot the meeting. Wike had respondent's cell phone number. However, that number generally did not work and

her communication with him was minimal. At the beginning of her term as a caseworker, Wike successfully contacted respondent but was unable to schedule a meeting. Respondent told Wike he would call her back, but he did not call her. Respondent did not provide updates on his contact information. He changed his phone number a few times and did not provide the new numbers to Wike. During her time as his caseworker, she only had contact with him on one occasion.

¶ 14 Ashley Curtiss testified that she became respondent's caseworker in July 2016. Respondent was required to complete domestic violence counseling, parenting classes and individual counseling. When she took the case, he had not completed any services. At one point, Respondent's counselor informed her that respondent had bloodshot eyes and smelled of marijuana during a counseling session. As a result, Curtiss added drug screens to respondent's service plan in August 2016. Curtiss had to ask respondent to complete drug screens through letters because he did not respond to her calls. Curtiss sent letters requesting drug screens on August 18, October 13, November 5, and December 29, 2016. Respondent never completed a drug drop.

¶ 15 Curtiss testified that respondent successfully completed domestic violence counseling, but he was unsuccessfully discharged from individual counsel in the fall of 2016. He asked to restart individual counseling in January of 2017, and he reengaged in counseling in February of 2017. However, Curtiss never received notice that respondent had successfully completed individual counseling. In addition, respondent did not complete his parent education.

¶ 16 Curtiss created respondent's service plan in December of 2015. When the service plan was evaluated in April of 2017, respondent was rated unsuccessful in parenting classes,

individual therapy, cooperation with LSS and drug screening. He was rated successful in domestic violence counseling, visits and housing.

¶ 17 During Curtiss's tenure as respondent's caseworker, respondent had recurring domestic violence issues. Officers arrested him in 2017 for domestic violence against the children's mother after he had successfully completed domestic violence counseling. Curtiss took over the case in July 2016, and she was still respondent's caseworker at the time of the hearing. She never recommended that the children be returned to respondent's care.

¶ 18 On cross-examination, Curtiss acknowledged that she had written the December 2016 permanency review report. In that report, she had not recommended that respondent complete drug screens and she did not review the service plan with respondent. She affirmed that respondent completed domestic violence counseling, regularly attended supervised visitation, and had appropriate housing. However, she noted that respondent had been out of individual counseling for the last few months of the nine-month period. Curtiss also admitted that she did not know if respondent changed addresses, but she testified that his phone number changed several times and he did not update his contact information. During his supervised visits, respondent was engaged and played with the children appropriately. Curtiss did not know respondent's work hours but she did not believe they negatively impacted his ability to attend services. Respondent was not required to complete drug screens at a specific time. He could complete them any time between 8:30 a.m. and 4 p.m. during Help at Home's regular business hours.

¶ 19 On redirect, Curtiss confirmed that respondent had been unsuccessfully discharged from individual counseling. She again indicated that it was difficult to contact respondent by phone. His phone was typically shut off or disconnected or the calls went directly to voicemail. Due to

her inability to reach respondent, she was only able to complete one home visit. She did not feel respondent had been cooperative. She admitted that respondent requested one drug screen. She authorized it, and respondent did not complete it.

¶ 20 The trial court took judicial notice of the integrated assessment report, the petition for adjudication of wardship, the adjudicatory and dispositional orders and the permanency review orders and found that the State had shown by clear and convincing evidence that respondent was unfit. The court found that respondent failed to make reasonable efforts and failed to make reasonable progress during the nine-month period from April 20, 2016, through January 20, 2017.

¶ 21 The best interest hearing was held on August 15, 2017. Respondent did not attend. China R. testified that she is the mother of Chelsey R., the children's mother. L.A. and A.R. have lived with her for two years; L.A. was five and A.R. was almost two at the time of her testimony. China stated that she is willing to adopt both of her grandchildren. She testified that L.A. and A.R. have separate bedrooms, and L.A. shares a room with her son. China's family supports her decision to adopt the children. L.A. and A.R. have no medical issues, but L.A. does receive speech therapy. China will continue to take him to speech therapy if it is recommended.

¶ 22 China testified that L.A. exhibits separation anxiety after his visits with respondent. She put him in counseling to address the issue. However, since respondent moved to Moline, the anxiety L.A. exhibits has decreased and it has gotten easier. She believes "he's just finally gotten used to it." China stated that respondent visits the children regularly. Although he has moved out of town, he still visits the children every weekend. He has only missed one weekend visit.

¶ 23 On cross-examination by the guardian *ad litem*, China stated that respondent comes to the house to visit the children and he gets along with them very well. Respondent has never challenged her authority regarding the children, and she has no concerns about his visits. She testified that L.A. views respondent as his father and loves him, and A.R. is attached to and appears to love him. A.R. follows him around during visits. China does not plan to separate the children from respondent if she adopts them; he will still be allowed to visit them at her house.

¶ 24 Curtiss testified that she was the children's caseworker for one year and had been to China's home. She has no concerns about the house. The children have clothes and toys, and China takes care of their daily needs. China is the children's grandmother so they are attached to her. She believed it was in the children's best interests that respondent's parental rights be terminated despite his bond with them. She noted that he failed to correct the conditions that caused the children to be placed into care. Curtiss authored the best interest hearing report, and she stood by her recommendation to terminate respondent's parental rights. Curtiss had no concerns about China adopting L.A. and A.R. China was financially able to care for them, they had bonded with her, they showed her love and affection, and she loved them. On cross-examination by the GAL, Curtis affirmed that a guardianship does not create the same level of permanency as a termination, which would allow for an adoption.

¶ 25 The trial court determined that the case was not an appropriate guardianship case given that the children were young and the case had been pending for two years. Considering the testimony and the best interest report, the court found that the State had proved by a preponderance of the evidence that the termination of respondent's parental rights was in the children's best interests.

¶ 26 ANALYSIS

¶ 27 I. Unfitness Finding

¶ 28 Respondent first argues that the trial court erred in finding him unfit for failing to make reasonable efforts and progress toward the return of L.A. and A.R.

¶ 29 Parental rights may be involuntarily terminated where (1) the State proves, by clear and convincing evidence, that a parent is unfit pursuant to grounds set forth in section 1(D) of the Act (750 ILCS 50/1(D) (West 2016)), and (2) the trial court finds that termination is in the child's best interests. *In re Donald A.G.,* 221 Ill. 2d 234, 244 (2006). The State is not required to prove every ground it has alleged for finding a parent unfit. *In re Gwynne P.,* 215 Ill. 2d 340, 349 (2005). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *Id*.

¶ 30 Pursuant to the Adoption Act, a parent is unfit if he or she failed "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). Reasonable progress under section 1(D)(m) requires demonstrable movement toward the goal of reunification. *In re C.N.*, 196 Ill. 2d 181, 211 (2001). Failure to make reasonable progress 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." 750 ILCS 50/1(D)(m) (West 2016). On review, the trial court's fitness determination will not be disturbed unless it is against the manifest weight of the evidence. *Gwynne P.,* 215 Ill. 2d at 354. A court's decision is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *Id.*

¶ 31 Here, the State alleged respondent was an unfit parent because he failed to make reasonable progress during the nine-month period from April 20, 2016, through January 20, 2017. At the fitness hearing, evidence demonstrated that L.A. and A.R. were originally removed

from respondent's care based on respondent's issues with domestic violence and his need for individual counseling and parent education. The only reasonable progress respondent made in the nine-month period involved visitation and housing. However, his issues with domestic violence and individual therapy were the most important issues he needed to resolve before L.A. and A.R. could be returned to his care. As respondent notes, he successfully completed domestic violence counseling in 2016. Yet respondent fails to acknowledge that he subsequently engaged in domestic violence against the mother of L.A. and A.R. in 2017, shortly after he completed counseling. Moreover, respondent was unsuccessfully discharged from individual counseling in the fall of 2016. Although he asked to reengaged in counseling in February 2017, the record does not indicate that he successfully completed those counseling services. The caseworkers' testimony further demonstrates that respondent did not cooperate with DCFS or LSS in that he failed to provide accurate contact information and refused to respond to their communication attempts. As a result, the trial court's decision to find him unfit for termination purposes based on his failure to make reasonable progress for the period between April 2016 and January 2017 was not against the manifest weight of the evidence.

¶ 32 Because we find the trial court did not err in finding respondent unfit based on this failure to make reasonable progress, we need not address the court's other unfitness finding. See *In re Gwynne P.*, 215 Ill. 2d at 349.

¶ 33 II. Best Interest Determination

¶ 34 Respondent also argues that the trial court's finding that it was in L.A. and A.R.'s best interests to terminate his parental rights was against the manifest weight of the evidence.

¶ 35 A trial court's ruling that a parent is unfit does not automatically mean that it is in the child's best interest to terminate parental rights. *In re B.B.,* 386 Ill.App.3d 686, 698 (2008).

Still, during the best interests hearing, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.,* 2011 IL App (3d) 110184, ¶ 34. In determining a child's best interest, the trial court is required to consider several factors in light of the child's age and developmental needs, including: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachment, including love, sense of security, sense of familiarity, continuity of affection of the child, and least disruptive placement for the child; (5) the child's wishes and goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re S.K.B.,* 2015 IL App (1st) 151249, ¶ 48.

¶ 36 The State must show by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Curtis W., Jr.,* 2015 IL App (1st) 143860, ¶ 53. We will not disturb a trial court's determination that it is in the child's best interest to terminate parental rights unless the ruling is against the manifest weight of the evidence. *Id.* ¶ 54.

¶ 37 Respondent argues that the statutory best interest factors favor him retaining his parental rights. He argues that he has demonstrated that L.A. and A.R. have a strong bond with him and that L.A. clearly has a sense of attachment, including love and familiarity with respondent.

¶ 38 In this case, the trial court's finding, that the State had proven by a preponderance of the evidence that it was in the children's best interests to terminate respondent's parental rights, was

not against the manifest weight of the evidence. As the trial court appropriately noted, there was evidence that L.A. and A.R. felt affection for respondent. However, the caseworker's testimony also described a loving bond and a stable relationship between the children and their grandmother. Moreover, L.A. was five years old and A.R. was almost two at the time of the hearing, and they had been living in China's home for two years. Thus, it is likely a change in placement would negatively impact their emotional and psychological well-being.

¶ 39 We do not agree with respondent's argument that the bond between respondent and his children outweighs the permanency afforded by adoption and that guardianship would achieve essentially the same outcome. The finality of an order terminating parental rights should be of primary concern since the termination order is the first step in the adoption process. See *In re M.M.,* 226 Ill. App. 3d 202, 210 (1992). And once adopted, a child attains the status of a natural child of the adoptive parents, and the adoptive parent is vested with care, custody and control of that child. *In re M.M.*, 156 Ill. 2d 53, 62 (1993). China has demonstrated that she is willing to adopt the children, and she has provided for their care for the majority of their life. Given their age and the need for permanency, L.A. and A.R. deserve the stability the adoption process will provide.

¶ 40 The child's best interest is paramount during the best interest hearing. See *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. Here, we cannot say that the trial court's ruling that it is in L.A. and A.R.'s best interests to terminate respondent's parental rights was against the manifest weight of the evidence.

¶ 41 CONCLUSION

¶ 42 The judgment of the circuit court of McDonough County is affirmed.

¶ 43 Affirmed.