2018 IL App (3d) 170865-U

Order filed April 24, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re A.J.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
a Minor	)	McDonough County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0865
	)	Circuit No. 16-JA-15
v.	)	
	)	
S.J.,	)	
	)	Honorable Patricia Walton,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence supports the trial court's fitness and best-interest findings.

¶ 2 Respondent, S.J., appeals the trial court's termination of the parental rights to his minor child, A.J. (born Aug. 11, 2016). He challenges both the court's fitness and best-interest determinations. The parental rights of the minor's mother, A.H., were also terminated; however, she is not a party to this appeal. We affirm.

¶ 3 FACTS

¶ 4 I. Events Preceding the State's Petition for Termination of Parental Rights

¶ 5 On August 11, 2016, the Department of Children and Family Services (DCFS) received a hotline call informing them that A.J.'s mother, A.H., gave birth to him and that he may be at risk of harm. A.H., who is not a party to this appeal, had previously been found unfit in a juvenile case involving her six other children.

¶ 6 On August 15, 2016, the State filed petitions for temporary custody of A.J. and for adjudication of wardship alleging that (1) A.J.'s environment was injurious to his health because DCFS indicated his mother failed to provide adequate supervision to A.J.'s siblings in December 2015 and that she "is currently unfit as to [A.J.'s] siblings who remain in the care of DCFS" and (2) respondent, the putative father, "is unwilling to participate in the integrated assessment and to complete any services in [A.J.'s] siblings pending juvenile cases." Following a shelter-care hearing the next day, the trial court found probable cause that A.J. was a neglected minor and placed him into the custody of DCFS. In addition, the court ordered DCFS to arrange DNA testing for respondent.

¶ 7 On September 14, 2016, A.H. and respondent met with the screener for their integrated assessments but both refused to complete them. Respondent informed the screener that he would not participate until his paternity was established. He also told the screener he did not want a background check ran on him "because it would be used against him." At a September 22, 2016, status hearing, A.H. admitted the allegations in the State's petition and the trial court adjudicated A.J. abused/neglected.

¶ 8 On October 11, 2016, respondent completed paternity testing. The results showed he is A.J.'s biological father. He completed the integrated assessment on November 7, 2016, and

informed the caseworker he would cooperate. At an October 13, 2016, dispositional hearing, the trial court found both A.H. and respondent unfit. The permanency goal remained return home in 12 months.

¶ 9 At a December 22, 2016, status hearing, the court continued to find respondent unfit and ordered him to complete domestic violence counseling, a mental health assessment, a substance abuse evaluation, parenting classes, and to obtain a legal source of income and maintain stable housing.

¶ 10 A February 14, 2017, CASA report indicated that respondent resided with A.H. and that he obtained employment in January 2017. Respondent felt he "has been excluded from whole family visits because of his caseworker." He denied any responsibility in the delay of deoxyribonucleic acid (DNA) testing. He reported being dissatisfied with social services, and specifically, the miscommunications and delays he experienced. He also voiced his concern that arrest reports failed to confirm some of the allegations against him. The caseworker noted that respondent "is eager to have [A.J.] in his life.

¶ 11 At a February 23, 2017, permanency review hearing, the trial court changed the permanency goal for A.J.'s siblings to substitute care pending court determination on termination of parental rights, but A.J.'s goal remained return home within 12 months.

¶ 12 An August 10, 2017, CASA report indicated that the caseworker last had contact with respondent in February 2017. Since then, respondent was arrested twice: once on April 25, 2017, for domestic battery and again on May 29, 2017, for domestic battery and for violating an order of protection. He was no longer employed. "At the time of [his] arrest he was participating in his service plan." Both respondent and A.H. denied any issues of domestic violence between them.

¶ 13 In anticipation of the August 17, 2017, permanency review hearing, A.J.'s caseworker submitted a report for consideration. She indicated that respondent was currently unemployed and "had been in jail *** for the majority of May 2017 through early August 2017." Although respondent continuously denied the presence of domestic violence issues between him and A.H., he recently pled guilty to domestic battery charges and was incarcerated from May 2017 through early August 2017. The caseworker referred respondent for mental health services, anger management, domestic violence education and parenting classes. He underwent a mental health assessment in March 2017, but was eventually discharged from mental health counseling due to him "being in jail and not participating or attending services." She reported that since his release from jail, respondent "has made efforts to call service providers and begin the assessments" by scheduling an appointment with a counselor for August 25, 2017. At the hearing, the trial court changed A.J.'s permanency goal to substitute care pending court determination on termination of parental rights. The court found that neither A.H. nor respondent made reasonable progress or reasonable efforts toward achieving the selected goal.

¶ 14 II. Petition to Terminate Parental Rights

¶ 15 On September 18, 2017, the State filed a petition to terminate respondent's and A.H.'s parental rights to A.J. The petition alleged, in relevant part, that respondent (1) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any nine-month period following the adjudication of neglect, particularly between October 31, 2016, and July 31, 2017, and (2) failed to make reasonable progress toward the return home of the child during any nine-month period following the adjudication of neglect or abuse, particularly between October 31, 2016, and July 31, 2017.

¶ 16 A. The Fitness Hearing

¶ 17 The fitness hearing commenced on November 2, 2017. Macomb police officer Todd Tedrow testified that he investigated an incident involving respondent and A.H. and their involvement with stolen mail packages in July 2017. He located respondent and A.H. together at the hospital.

¶ 18 Becky Derry, a licensed behavioral therapist, testified that she treated respondent following a referral from DCFS. She met with him twice; once for a mental health assessment and the other where she referred him to the parenting group facilitator for a screening. She reported respondent arrived to the second appointment 20 minutes late. She eventually discharged respondent after he failed to show up for multiple appointments and "just was not returning for services" after numerous attempts to contact him by telephone and mail.

¶ 19 Rosemary Waelder, a caseworker for Chaddock, testified that she has "been with the family since December 2015" and became A.J.'s caseworker in August 2016. A.J.'s siblings were in care but they were not respondent's biological children. Waelder expressed her concerns of domestic violence between respondent and A.H. because visitation specialists reported seeing A.H. "covered up in bruises and—and marks, heavy makeup on her." She also had concerns because A.J.'s siblings appeared fearful of respondent. Neither respondent or A.H. ever acknowledged any domestic violence issues even though respondent was arrested for domestic violence upon A.H. Waelder further testified that respondent and A.H. denied living together, but she found them living together in September 2016. Respondent and A.H. refused to participate in an integrated assessment scheduled in September. When he finally completed the assessment in November 2016, he admitted to living with A.H.

¶ 20 Waelder further testified that between October 2016 and March 2017, respondent participated in visitation but not any of the services ordered for him, including parenting classes,

domestic violence classes, a mental health assessment, and a substance abuse assessment. Waelder stated respondent initiated his mental health assessment, but she never received confirmation that he ever successfully completed any other services. She referred respondent to McDonough Mental Health Services for parenting, mental health and anger management but they unsuccessfully discharged him. Waelder stated that in the spring of 2017, respondent called DCFS's child advocacy network to appeal the requirement in his service plan that he participate in domestic violence counseling because he denied any issues with domestic violence between he and A.H. However, between October 31, 2016, and July 31, 2017, the State charged respondent with domestic battery against A.H. and resisting a peace officer. The court took judicial notice of defendant's domestic battery convictions in two separate McDonough County cases.

¶ 21 Waelder described respondent's cooperation with her between October 31, 2016, and July 31, 2017, as "combative," confrontational, and "verbally aggressive" during the first several months. Even in the months before A.J.'s birth, respondent refused to accept that he needed to engage in services or risk A.J.'s removal. Waelder stated respondent "was slow to return [her] phone calls." After establishing his paternity, respondent visited A.J. once per week. He missed scheduled visits while incarcerated; Waelder could not recall if he missed visits while he was not incarcerated. During visits, respondent talked and played with A.J., but he did not change his diaper.

¶ 22 Waelder stated that respondent's participation in the service plan implemented in December 2016 and evaluated in June 2017 was unsatisfactory and the only services he started included mental health and parenting classes from which he was later unsuccessfully discharged.

¶ 23 Respondent testified on his own behalf. He admitted that he was uncooperative until the results of his paternity test were revealed. He explained that until that point, "he really didn't even understand that I—I've done anything wrong." He and A.H. lived together until his incarceration in April 2017. Prior to his incarceration, he completed a mental health assessment but did not complete the program as a result of his incarceration. He "never had a chance to" engage in other services. He testified that Macomb does not have a domestic violence program so he tried to get a hold of Waelder to set up an anger management class, but that never happened also due to his incarceration. After his release from jail on July 19, 2017, he started a parenting class and visited A.J. every week. He felt that he responded to his caseworker's phone calls appropriately. On cross-examination, respondent admitted that he bonded out of jail on May 9, 2017, only to be arrested again on May 30, 2017.

¶ 24 Following closing arguments, the trial court found respondent and A.H. unfit by clear and convincing evidence. Specifically, the court found respondent unfit for failing to make (1) reasonable efforts to correct the conditions that brought A.J. into care between October 31, 2016, and July 31, 2017 (750 ILCS 50/1(D)(m)(i) (West 2016)) and (2) reasonable progress toward the return home of the child between October 31, 2016, and July 31, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 25 B. Best-Interest Hearing

¶ 26 The best-interest hearing commenced on November 30, 2017. In anticipation of the hearing, Waelder submitted a best interest report which the court took into consideration. The report indicated that A.J. had been in his foster home since April 2017 and that his foster parents were committed to providing permanency for him. It further stated that since being released from jail, respondent visited A.J. at least twice per month.

¶ 27 Thereafter, Waelder testified as follows. A.J. has been in foster care since he was two days old. His initial foster mother passed away and he has been with his current foster family since April 2017. A.J.'s foster family consists of mom, dad, their three biological children, A.J., and two of his biological siblings whom the foster family is in the process of adopting. They live in a large ranch style home with a basement, four bedrooms, a large kitchen and living room and a big backyard. The house has adequate space for eight people and they are currently working on making a fifth bedroom. Waelder expressed no safety concerns or issues with the living arrangements. A.J. is very bonded to his foster parents. He looks to them for comfort and does not like to leave his foster mom. "[H]e's happy and safe and he's well provided for." A.J. calls his foster parents "mama" and "dada." His foster parents are willing to provide permanency for A.J. and, even following his adoption, they will continue contact with his other biological siblings that reside in Quincy.

¶ 28 Waelder further testified that respondent "was uncomfortable caring for [A.J.]." Although he visited A.J. many times, he only changed his diaper once. He became easily frustrated with the children crying and would hand A.J. to his mother when he got fussy. Respondent and A.H. continued to have unaddressed issues of "domestic violence, fighting, alcoholism, mental health, things that had never been addressed."

¶ 29 In Waelder's opinion, moving A.J. from his foster home would be "detrimental." He is bonded to his foster family, with whom he has lived with for the last seven months, and they take care of his needs. She recommended that respondent's parental rights be terminated so that A.J. can be adopted by his foster family.

¶ 30 A.J.'s foster father, David, testified that his wife is a stay-at-home mom who runs a daycare out of the home. He works outside the home and has been with his employer for 27

years. They live in a one level home with a full basement, four bedrooms, two full baths, a large living room, kitchen and dining area, and a two-car garage. He and his wife have three biological children, ages 15, 7, and 6, and then A.J. and two of A.J.'s biological siblings. A.J. sleeps in the room with his half brothers. He has "gobs" of toys and lots of clothes. The children get along "wonderfully." The family is involved with the Methodist church. David and his wife also have family nearby who interact with A.J. and accept him as part of the family. They are willing to provide permanency for A.J. and have an alternative care plan in place in case of an emergency. A.J. is healthy and up to date on immunizations. He is reaching his milestones and has no delays. He and his wife are in the process of adopting two of A.J.'s half siblings. They continue to allow the children to visit with their older siblings and would continue sibling visits even after adopting A.J. They are also willing to provide transportation to and from the visits.

¶ 31 Respondent testified that he currently lives in Springfield. Up until two months ago, he lived with A.H. Other than court hearings, he last met with Waelder in December 2016. Since his release from jail in July 2017, he visits A.J. twice a month for two hours at a time. He changes A.J.'s diaper during every visit. Respondent's sister is willing to care for A.J. but Chaddock refuses to place him with her because placements with siblings come before placements with family. He is currently taking parenting classes in Springfield. He wants to raise A.J. and be his father.

¶ 32 Following arguments, the trial court stated it considered the best interest factors set forth in the statue and found it in A.J.'s best interest to terminate respondent's and A.H.'s parental rights. In rendering its decision, the court noted A.J.'s bond and attachment to his foster family, who were considered fictive kin and with whom he resided with for the last eight months. He also lives with two of his biological half siblings. The court opined that A.J.'s foster family

provides him with affection, love, and everything he needs and that it would not be in his best interest to "rip him out of that placement where he is safe and secure" to go live with an aunt he does not even know. It further noted that despite respondent and A.H.'s insistence that they were no longer in a relationship and that there were no issues with domestic violence, respondent was convicted of domestic battery against A.H. Before the court completed its findings, respondent stated, "I'll just leave then," and he left the courtroom.

¶ 33 Respondent appeals.

¶ 34 ANALYSIS

¶ 35 On appeal, respondent challenges both the court's fitness and best-interest determinations.

¶ 36 I. Fitness Determination

¶ 37 Respondent first asserts that the trial court erred by finding him unfit where he "was making progress to obtain fitness" and "had made reasonable efforts and made reasonable progress considering his current struggle of learning how to parent."

¶ 38 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re D.D.*, 196 Ill. 2d 405, 417 (2001).

¶ 39 "A trial court's finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 15. A reviewing court will not disturb a trial court's unfitness finding unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417. "A decision

regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *Id.*

¶ 40 A. Failure to Make Reasonable Progress

¶ 41 The trial court found respondent unfit under section 1(D)(m)(ii) of the Adoption Act for failing to make reasonable progress toward the return of his child during any nine-month period following the adjudication of neglect, and specifically between October 31, 2016, and July 31, 2017. See 750 ILCS 50-1(D)(m)(ii) (West 2014).

¶ 42 "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.' " *Id.* (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." (Internal quotation marks omitted.) *Id.* "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.*

¶ 43 The record shows that during the period at issue, respondent made virtually no progress toward completing any of his services. He refused to complete the integrated assessment until November 2016, after the DNA test established his paternity. Following the completion of the assessment, the court ordered him to complete domestic violence counseling, a mental health

assessment, a substance abuse evaluation, parenting classes, obtain a legal source of income, and maintain stable housing. However, during the review period, he completed no services, lost his job, and committed two acts of domestic violence against A.H. that resulted in his incarceration. While he visited A.J. and initiated a mental health assessment following his second release from jail in late July, this does not demonstrate a measurable or demonstrable movement toward the return of A.J. within the relevant period of time. Thus, the evidence supports the trial court's determination that respondent failed to make reasonable progress.

¶ 44 B. Failure to Make Reasonable Efforts

¶ 45 The trial court also found respondent unfit under section 1(D)(m)(i) of the Adoption Act for failing to make reasonable efforts to correct the conditions that brought A.J. into care between October 31, 2016, and July 31, 2017 (750 ILCS 50/1(D)(m)(i) (West 2016)). Although evidence of unfitness based on any ground enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) is enough to support a finding of unfitness (see *In re D.L.*, 326 Ill. App. 3d 262, 268 (2001)), we find that the same evidence noted above supports the trial court's finding that respondent failed to make reasonable efforts.

¶ 46 II. Best-Interest Determination

¶ 47 At the best-interest stage of the proceedings, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). In particular, "the parent's interest in maintaining a parent-child relationship yields to the child's interest in a stable, loving home life." *Id.* At this point, the State must prove by a preponderance of the evidence that termination of parental rights is in the child's best interest. *Id.*

¶ 48 In considering the child's best interests, the court takes into account (1) the safety and welfare of the child, (2) the development of the child's identity, (3) the child's background and

ties, (4) the child's sense of attachment, including where the child feels loved, has a sense of security and familiarity, continuity of affection, and where the least-disruptive placement alternative would be, (5) the child's wishes and goals, if applicable, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of each family and child, (9) the risks of being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). A trial court's finding regarding a child's best interests will not be reversed on appeal unless it was against the manifest weight of the evidence. *In re I.B.*, 397 Ill. App. 3d at 340.

¶ 49 Here, our review of the record reflects that A.J. has been in foster care since his birth. At the time of the best-interest hearing, he had been with his current foster family for approximately eight months. He is bonded with his foster family, which includes two of his biological siblings, and he is accepted as one of their own. His foster family loves and cares for him and provides him with safety and comfort. His foster parents are in the process of adopting two of his half siblings. A.J.'s foster family has strong community and family ties and he will stay home with his foster mom during the day as she runs an at-home daycare. A.J.'s foster parents have expressed a desire to adopt A.J. and provide him permanency while continuing to promote visits with his older siblings who reside elsewhere.

¶ 50 On the other hand, respondent appears no closer to having A.J. placed into his care now then when the case first opened. During the relevant review period, respondent failed to complete any services and committed domestic violence upon A.J.'s mother on two separate occasions resulting in his incarceration. Further, the record is devoid of any indication that A.J. has any kind of attachment or child-parent relationship with respondent.

¶ 51 Based on the above evidence, we find that the evidence supports the trial court's decision to terminate respondent's parental rights.

¶ 52 CONCLUSION

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

¶ 54 Affirmed.