2018 IL App (4th) 170728-U

NOS. 4-17-0728, 4-17-0729 cons.

FILED
February 15, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re L.S., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0728) Amy Ewing, Respondent-Appellant).	)	Appeal from Circuit Court of Macon County No. 15JA104
In re R.T., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0729) Amy Ewing, Respondent-Appellant).	)	No. 15JA105 Honorable Thomas E. Little, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in terminating respondent's parental rights.

¶ 2 In July 2015, the State filed petitions for adjudication of wardship with respect to L.S. and R.T., the minor children of respondent, Amy Ewing. In September 2015, the trial court made the minors wards of the court and placed guardianship with the Department of Children and Family Services (DCFS). In April 2017, the State filed motions to terminate respondent's

parental rights. In September 2017, the court found respondent unfit and determined it was in the minors' best interests to terminate respondent's parental rights.

¶ 3 On appeal, respondent argues the trial court erred in terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2015, DCFS received a report about a domestic dispute between respondent and the minors' father, which became physical. The report also alleged respondent made verbal threats of violence to L.S. and had "pop[ped]" L.S. on her hands and legs, which did not leave bruises. Respondent had "pop[ped]" R.T. on his face, which left a handprint, but there were currently no marks on him. The report indicated respondent is bipolar, homeless, and "likes to drink."

¶ 6 In July 2015, the State filed two petitions for adjudication of wardship with respect to L.S., born in 2014, and R.T., born in 2013, the minor children of respondent. The State alleged the minors were neglected pursuant to section 2-3(1)(a) and section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a), (b) (West 2014)) because the minors were not receiving the proper and necessary care and were in an injurious environment, as evidenced by respondent's untreated mental-health issues, threatening and becoming aggressive with the children, and ongoing domestic-violence issues within the home. Additionally, the State alleged the minors were abused pursuant to section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2014)) because respondent created a substantial risk of physical injury to the minors due to ongoing domestic-violence issues, verbal threats to the minors, and becoming physically aggressive with the minors.

¶ 7 In April 2017, the State filed motions pursuant to section 2-13 of the Juvenile Court Act of 1987 (705 ILCS 405/2-13 (West 2016)) seeking a finding of unfitness and permanent termination of respondent's parental rights, alleging respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minors during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) make reasonable progress toward the return of the minors to respondent during the nine-month period of September 3, 2015, through June 3, 2016; June 4, 2016, through March 4, 2017; or July 19, 2016, through April 19, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 8 In July 2017, the adjudicatory hearing was held. Mandy Webb, a former visit supervisor at Youth Advocate, supervised visits between respondent and her children from the children's removal from respondent's home in July 2015 to February 2017. Of the 110 scheduled visits, Webb testified respondent missed 48 of them, either because she canceled or failed to show up. R.T. would be upset and cry whenever visits were canceled. Respondent's explanations for failing to appear were either she forgot to set an alarm or she had to work. Webb testified respondent would, on occasion, notify her a day or two in advance of a scheduled visit, informing Webb she could not make it because of work. Ten visits were ended early because respondent had work or was not feeling well. The visits were three times a week for one to two hours each. When adjusted for work, they were scheduled for twice a week for four hours. All visits took place in respondent's home. Webb described the visits as inconsistent. On some occasions respondent would feed, play, and even bathe her children. However, at other times she appeared tired or would simply sit watching her children. During those times she attempted to

have the children talk on the phone, however, she did not appear to comprehend they were too young to do so, and they would play instead. Respondent was also using her phone to either take pictures of or with the children, during the visits. This was of apparent concern to the caseworker because it was not the kind of interaction she was hoping to see from respondent. The nature and quality of the interaction between respondent and the children was not consistent from week to week. There were times when Webb feared respondent would fall asleep during the visit. When respondent was working the night shift, she was offered the option of changing the visitation time from 8:30 a.m. to a time more convenient with her schedule; however, respondent declined. Webb's primary concern with visitation was the lack of interaction with the children.

¶ 9 Pamela Lindsay, a case aide at Youth Advocate, supervised the visits from February 2017 until the middle of April. According to Lindsay, she set up 20 visits for respondent, and respondent missed the first three. Respondent failed to show up for the first visit; did not confirm the second visit, resulting in its cancelation; and had a job interview on the day of the third visit. The third visit was the only one rescheduled. Visits had been rescheduled to twice a week for 2 ½ hours each. Lindsay testified that although little redirection was needed, there was one incident where respondent had to be told to secure L.S. in her high chair rather than simply telling L.S. to sit down. Lindsay described respondent's idea of discipline as yelling rather than attempting to explain why the children should comply. However, Lindsay said she did not see the need to step in when respondent was disciplining the children. Although there was a significant amount of yelling, Lindsay said she did not observe respondent ever physically harm the children. Lindsay saw very few positive interactions between the children and respondent. Two of the last four visits were outside the home at respondent's request—one at a park and the other at the zoo. During these visits, the interactions between respondent and the

children were better and the change of environment seemed to improve the visits. Lindsay witnessed no safety concerns.

¶ 10 Christina Walters, a DCFS Medicaid therapist, testified about her work with respondent on issues of anger management, communication skills, self-esteem, and protective parenting skills, while also addressing issues of depression and impulsive behaviors. In September 2016, she closed her case with respondent due to a consistent decline in respondent's performance during the last three months. She said respondent did not appear engaged and was frequently tired. Once Walters unsuccessfully discharged respondent from therapy a second time, she was referred to an outside mental-health provider. It was reported although respondent made progress, she failed to make sufficient progress to complete any recommended service successfully. Having initially engaged with mental-health services, her cooperation and participation were inconsistent. Walters testified her primary focus with respondent had been to attempt to assist respondent in maintaining self-control when confronted.

¶ 11 Christine Foster, a parenting educator for Youth Advocate, testified her initial assessment of respondent found her to fall within the range of "medium risk," which is considered normal for first-time parents. Based upon the assessment, decisions were made regarding the nature of services to be provided. Foster and respondent normally met weekly. Respondent attended most of her appointments; however, there were times when due to occasional miscommunications, appointments were rescheduled. In the second evaluation of respondent, Foster scored her as a "low risk." It appeared to Foster respondent was on her best behavior during visits when Foster was present; however, over time, she seemed unable to successfully apply the lessons learned during her appointments in parenting to her visitation experiences with her children.

¶ 12 Dawn McCoy was a family interventionist at Youth Advocate who had worked with respondent from July 2015 until the time of the hearing. During her involvement with respondent, McCoy helped her obtain funds for a rental deposit, find employment, pay library fines, and provided rides to job interviews. Respondent reported some employers were not willing to accommodate her visitation schedule, but she did not explain why. McCoy was present during several scheduled visits and was able to observe respondent's interaction, or lack thereof, with her children. According to McCoy, there were times during visits when respondent appeared more interested in her phone than her children, at one point asking a question which led McCoy to believe she was playing a game on her phone instead of engaging in any meaningful interaction with the children.

¶ 13 Lindsay Horcharik, a child welfare specialist with DCFS, began working with respondent in May 2016. The service plans under which she was operating at the time required mental-health counseling to address domestic violence, anger management, and a possible medication evaluation; parenting education; substance-abuse treatment; maintaining contact with DCFS; and maintaining adequate housing. Throughout her involvement with DCFS, respondent's goals remained the same. She was rated unsatisfactory in her client service plan measuring her progress from August 2015 through January 2016 because respondent was inconsistent in services and visits and had been discharged from counseling. When Horcharik became involved in respondent's case in May 2016, respondent was doing well and received "glowing" reports, which led to a satisfactory rating for the period from January 2016 through July 2016. As a result, in July 2016, DCFS moved from supervised to monitored visits. However, they began receiving reports respondent was allowing unscreened family members to be present for visits after being informed she was not to do so. Additionally, in August 2016, federal

authorities raided respondent's home, and she was arrested for harboring a fugitive, who was her paramour at the time. As a result, DCFS returned to supervised visitation. She was also discharged unsuccessfully from counseling with Youth Advocate, which was not willing to accept her a third time. Respondent was then referred to ABC Counseling, where her case was unsuccessfully discharged in March 2017 due to failure to attend consistently. According to Horcharik, respondent failed to maintain consistent attendance, and although she completed some of her services, her overall progress in applying what she was learning to her personal and family circumstances was lacking.

¶ 14 After the State rested, respondent presented no evidence. The trial court declared respondent unfit because she failed to maintain a reasonable degree of interest, concern, or responsibility; failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors during any nine-month period following the adjudication of neglect; and failed to make reasonable progress toward the return of the minors to respondent during the nine-month period of September 3, 2015, through June 3, 2016; June 4, 2016, through March 4, 2017; or July 19, 2016, through April 19, 2017. The court cited her lack of consistency in participation and failure to successfully complete relevant recommended services as a basis for the finding of unfitness. The best-interests hearing occurred in September 2017.

¶ 15 Lindsey Horcharik, testifying for the State, informed the court the foster parents had given their 14-day notice for removal of the children from their care only the day before the best-interests hearing. This came about as a result of the foster mother learning she was not the paternal grandmother of L.S., as she believed. Because of the recency of this occurrence, DCFS had not yet been able to find an alternative placement, and once placed, if those foster parents indicated a willingness to provide permanency, the children would need to remain in their home

for six months before adoption could take place. The children were reported to be doing well. Horcharik said the reduced visitation schedule, which came as a result of the goal change, had resulted in several changes in respondent's behavior. There were fewer reminders needed regarding respondent's phone usage during visits and her attitude toward staff had improved. According to Horcharik, even with her recent improvement, respondent was still six to nine months away from any finding of consistent improvement. Horcharik testified the children had no developmental or medical issues. She also said the respite caretakers with whom the children had stayed on occasion were now at capacity and could not house the children. She stated only R.T. was eligible for play therapy to help with the transition, since he was the only child over three years of age. Horcharik also said the children had not been informed of the current status of the case.

¶ 16 Respondent called her mother, Carlisle Ewing, on her behalf. Ewing lived in a different residence than respondent but saw her every night and had observed about 10 visits. Ewing said respondent was a good mother who fed, cleaned, spent time with, and paid attention to her children. She said respondent was not on the phone unless she was using the phone to take pictures of the children.

¶ 17 Danae Kirby, respondent's sister, also testified for respondent. Danae could not remember how many visits she observed, but she saw respondent and the children getting along and playing. Respondent taught the kids "stuff," and Danae also never saw respondent on the phone.

¶ 18 Everett Kirby, respondent's brother, also testified on her behalf. According to him, on the few occasions when he was in a position to observe the interactions of respondent

and her children, she was good with the children, played outside with them, changed their clothes, and fed them.

¶ 19 Respondent testified she was 12 weeks into a 16-week anger-management course, which was making her a better person. She said at first she was upset and stressed about her children being taken but now she is recovering. Her treatment involves talking, writing, and learning different coping skills she can use. Respondent said she loves her children, would do anything to get them back, and was willing to participate in additional parenting classes. She indicated she was already attempting to enroll in Prime for Life. Although she said she did not believe she needed the parenting courses, she was willing to participate in any services necessary to obtain the return of her children. In attempting to explain her phone usage during visitation, respondent said she was using it to take pictures and videos to create memories, not to play games or use social media. She also had not learned of the recent development with the foster placement until the date of the best-interests hearing.

¶ 20 The trial court found it was in the best interests of the children to terminate respondent's parental rights, taking into consideration the factors listed in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)). In considering those factors, the court noted the unusual circumstances caused by the extremely recent decision by the long-term foster placement to no longer seek adoption. Until that time, the children had done very well, and all their needs were being met by the foster placement. The court noted the factor of primary concern or importance at this point was permanency for the children. The court reiterated the point made by Horcharik—even considering respondent's newfound desire to participate in services and cooperate with DCFS and the service providers, she was still six to nine months away from any finding of consistency. With regard to the fathers, who are not parties to this

appeal, one had never participated since the case's opening, and as to the other, the court found he never participated in the lives of the children, or any recommended services, and he was not a consideration in providing stability for the children. Under these circumstances, the court found the State met its burden and termination was in the best interests of the children. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Unfitness Finding

¶ 23 Respondent argues the trial court's finding of unfitness was against the manifest weight of the evidence. We disagree.

¶ 24 In a fitness hearing, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.' " *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

¶ 25 In this case, the trial court determined respondent was unfit based on her failure to make reasonable progress and reasonable efforts. The applicable periods were September 3,

2015, through June 3, 2016; June 4, 2016, through March 4, 2017; and July 19, 2016, through April 19, 2017.

¶ 26 "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

> "[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." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

¶ 27 "The law does not afford a parent an unlimited period of time to make reasonable progress toward regaining custody of the children." *In re Davonte L.*, 298 Ill. App. 3d 905, 921, 699 N.E.2d 1062, 1072 (1998). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). "[R]easonable progress" may be found "if the trial court can objectively conclude that the parent's progress is sufficiently demonstrable and is of such quality that the child can be returned to the parent within the near future." *In re E.M.*, 295 Ill. App. 3d 220, 226, 692 N.E.2d 431, 435 (1998).

¶ 28 In this case, the trial court found respondent did not make reasonable progress between June 2016 and April 2017. The evidence during this time period reveals a narrative of missed visits and a failure to meaningfully interact with her children during those visits she attended. Respondent's lack of reasonable progress was also demonstrated by her inconsistency in engaging in counseling with Youth Advocate and her failure to follow DCFS directives. In one instance, she was noted to be allowing unscreened adults to have access to the children during visitations after specifically being told it was not permitted. The reasonableness of those concerns was further evidenced when federal agents raided the home and arrested respondent for harboring a fugitive. Horcharik testified to a decline in respondent's engagement in recommended services beginning in July 2016. The "unsatisfactory" findings in the third service plan were, in part, the result of respondent's unwillingness or inability to incorporate what she was being taught in her parenting training into the parenting of her own children. Therefore, while she may have made some progress in the past, her most recent actions up to the fitness hearing failed to show any significant progress toward the goal of reunification. Accordingly, the finding of unfitness is not against the manifest weight of the evidence. Because the grounds of unfitness are independent, we need not address the remaining grounds as to reasonable efforts and a reasonable degree of interest, concern, or responsibility. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds."). However, the same evidence presented to show a failure of reasonable progress was also sufficient to show a lack of reasonable efforts.

¶ 29 "Whether a parent's *efforts* to correct the conditions which were the basis for removing her children are reasonable involves a subjective judgment based upon the amount of

effort which is reasonable for a particular person." (Emphasis in original.) *In re Allen*, 172 Ill. App. 3d 950, 956, 527 N.E.2d 647, 651 (1988).

¶ 30 Considering the reasons the children came into care, the failure of respondent to show any significant progress in her individual counseling or parenting education would be a major factor in assessing her progress. She had been terminated from counseling services several times due to her lack of consistent attendance. She had been terminated from parenting classes for the same reason. Her visitations were not consistent and her time during visitations was not spent showing evidence of putting what she learned in classes into practice. Although not necessary for purposes of this appeal, the trial court's finding respondent failed to make reasonable efforts to improve the conditions which caused the children to come into care in the first place was not against the manifest weight of the evidence.

¶ 31 B. Best-Interests Finding

¶ 32 Respondent argues the trial court's finding that it was in the best interests of the minors to terminate her parental rights was against the manifest weight of the evidence. We disagree.

¶ 33 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These include the following:

> "(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 attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *Daphnie E.*, 368 Ill. App. 3d at 1072.

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2016).

¶ 34 A trial court's finding termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 35 While the trial court was faced with a unique situation where the foster parent the day before the hearing decided not to adopt the children, the court analyzed the applicable statutory factors. The factor of permanence was deemed the most important. Although lack of an adoptive placement is a factor to consider, "it [does] not necessarily preclude a finding that terminating respondent's parental rights would be in [the minors'] best interest." *In re F.P.*, 2014

IL App (4th) 140360, ¶ 92, 19 N.E.3d 227. Horcharik testified the earliest an adoption could take place was six months from the court ruling to terminate parental rights, but restoring custody to respondent would take the same length of time or longer. However, if the court decided to give respondent time to show consistency and she failed, the minors would have to wait an additional length of time from the date of respondent's failure before they could be adopted. Properly considering respondent's performance to date, the possibility of successful compliance was not likely. The court heard testimony about how respondent was a good mother, which is irrelevant to what is in the best interests of the minors. "Following a finding of unfitness, however, the focus shifts to the child." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). " '[T]he child[ren's] interest in a loving, stable[,] and safe home environment' might best be served by 'freeing [them] for adoption,' even if no one had offered, as of yet, to adopt them." *F.P.*, 2014 IL App (4th) 140360, ¶ 92 (quoting *D.T.*, 212 Ill. 2d at 363-64). The trial court was in the best position to listen to respondent and her witnesses and make credibility determinations regarding their testimonies. See *In re Jay. H.*, 395 Ill. App. 3d 1063, 1070, 918 N.E.2d 284, 290 (2009). Respondent failed to present any evidence sufficient to mitigate against the court's best-interests finding, and thus the court's finding was not against the manifest weight of the evidence.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment.

¶ 38 Affirmed.