2018 IL App (4th) 180077-U

NOS. 4-18-0077, 4-18-0078 cons.

FILED
June 28, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re P.H., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Macon County
Petitioner-Appellee,	)	No. 15JA151
v. (No. 4-18-0077)	)	
Bobbi Jo Hoyer,	)	
Respondent-Appellant).	)	
	)	
_____	)	No. 15JA152
In re Z.H., a Minor	)	
	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0078)	)	Honorable
Bobbi Jo Hoyer,	)	Thomas E. Little,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: By finding that respondent was an "unfit person" and that terminating her parental rights would be in the bests interests of the children, the trial court did not make findings that were against the manifest weight of the evidence.

¶ 2 Respondent mother, Bobbi Jo Hoyer, appeals the termination of her parental rights to her two sons: P.H., born November 6, 2008, and Z.H., born October 30, 2006. Specifically, she challenges the findings of the Macon County circuit court that she was an "unfit person" (see 750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2016)) and that terminating her parental

rights would be in the best interests of the children. (The father, Alonzo Hoyer, whose parental rights likewise were terminated, does not appeal.) We conclude, from our review of the record, that it was not against the manifest weight of the evidence to find that respondent had failed to make reasonable progress toward the return of her children (750 ILCS 50/1(D)(m)(ii) (West 2016)) and that terminating her parental rights was in their best interests. Therefore, we affirm the judgments in the two cases.

¶ 3 I. BACKGROUND

¶ 4 A. The Petitions For the Termination of Parental Rights

¶ 5 On September 13, 2017, the State petitioned for the termination of parental rights in P.H.'s case, Macon County case No. 15-JA-51, and Z.H.'s case, Macon County case No. 15-JA-52. Paragraph 4 of the petitions in both cases alleged that, for five reasons, respondent was an "unfit person" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)).

¶ 6 First, paragraph 4(B) alleged she had failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. See 750 ILCS 50/1(D)(b) (West 2016).

¶ 7 Second, paragraph 4(D) alleged that, during a nine-month period after the adjudication of neglect, she failed to make reasonable efforts to correct the conditions that had been the basis for removing the minor. See *id.* § 1(D)(m)(i).

¶ 8 Third, paragraph 4(E) alleged that from February 27 to November 27, 2016, she failed to make reasonable progress toward the return of the minor during the nine-month period following adjudication of neglect. See *id.* § 1(D)(m)(ii).

¶ 9 Fourth, paragraph 4(F) alleged that from November 27, 2016, to August 27, 2017, she failed to make reasonable progress during the nine-month period following adjudication of neglect. See *id.*

¶ 10 Fifth, paragraph 4(G) alleged that from December 13, 2016, to September 13, 2017, she failed to make reasonable progress during the nine-month period following adjudication of neglect. See *id.*

¶ 11 B. The Fitness Hearing

¶ 12 In the fitness hearing, which the trial court held on November 27, 2017, the first witness the State called was Angie Danzeisen. She testified substantially as follows.

¶ 13 She was a foster care case manager for Lutheran Child and Family Services (Lutheran), and from April to August 2017 she was the case manager for P.H. and Z.H. The children were brought into care in December 2015 because of "[n]eglect"—"minimal parenting standards were not being met."

¶ 14 Each of the service plans for respondent recommended, among other services, parenting instruction and weekly drug testing. During the time Danzeisen was case manager, respondent underwent only three urine tests, one of which was positive for K-2, or synthetic marijuana, and it was not until June or July 2017 that respondent completed the parenting course.

¶ 15 The State next called Kimiko Warnsley, who testified she was the children's caseworker from January 2016 to January 2017 and that one of the services she recommended for respondent was instruction in parenting. Respondent began the parenting course and "did the intake several times with the parenting instructor," but, during the time Warnsley was the caseworker, respondent "did not complete parenting" instruction.

¶ 16 A goal in respondent's service plans was to have stable housing. The assistant state's attorney asked Warnsley: "And during the year that you had it, January of [20]16 to January of [20]17, she did not have stable housing?" Warnsley answered: "When I first had the case, she was living on Williams Street with her paramour, Sheldon Long, and then a few hotels at Soy City and then Lakeview Motel and then[,] before I left[,] she was living in her van."

¶ 17 The final witness the State called in the fitness hearing was Amanda Beasley-Ricks. She testified she was a foster-care supervisor at Webster-Cantrell Hall (Webster), Decatur, Illinois, and that she had been the case supervisor since April 2017. She testified that, since respondent's case was opened, in December 2015, the only service respondent had completed was the parenting course, and she did not complete it until June 26, 2017. Although respondent underwent a substance-abuse assessment, she unilaterally discontinued weekly drug screens in May 2017. Also, as of September 2017, she still lacked stable housing.

¶ 18 The State rested, and respondent took the stand. She testified she had attended six weeks of counseling and that no further mental-health services had been recommended to her. She further testified that a woman at Dove, Inc. told her it was unnecessary that she receive counseling for domestic violence, since it had been five years since she had been in a relationship with her ex-husband, Alonzo Hoyer (the children's father).

¶ 19 As for drug-testing, respondent explained that her participation had been entirely optional. She volunteered to undergo weekly drug screening only out of solidarity with her husband, Sheldon Long, who had to undergo weekly drug screening because of his drug history. (He, too, had to receive services, since he lived in the home to which the children were to be returned.) She did six or seven weekly drug screens, until, in an annual case review, she was

accused of using "spiced marijuana." This induced her to stop submitting urine samples so that no further "false positives" would be attributed to her.

¶ 20 Finally, as for the parenting course, she started it on March 21, 2017, and completed it on June 7, 2017. She gave the following explanation for her delay in taking the parenting course:

> "A. That, again, I thought that my ex-husband [(Alonzo Hoyer)] was going to get our children full-time[,] so when I found out that he—that wasn't going to be an option, I then again contacted Ms. Willa, which is the parenting instructor for—at Webster, and told her I needed to complete my parenting as soon as possible. I started it March 21st, and I believe I completed it June 7 of this year."

¶ 21 The trial court found respondent to be an "unfit person" for all of the reasons the State alleged in its petitions to terminate parental rights. In other words, the court found paragraphs 4(B), (D), (E), (F), and (G) of the petitions to be proved.

¶ 22 C. The Hearing on the Best Interests of P.H. and Z.H.

¶ 23 On January 18, 2018, having previously found respondent (and Alonzo Hoyer) to be an "unfit person," the trial court held a hearing on what course of action would be in the best interests of P.H. and Z.H. The evidence in this hearing consisted of a best-interest report and testimony.

¶ 24 Beasley-Ricks testified that P.H. and Z.H. lived in the same traditional foster home. P.H. had been in the home since May 22, 2017, and Z.H. had been there since August 16, 2017. The foster parents, who wanted to adopt them, provided them all the necessary food, clothing, housing, and medical care and made sure they got to school on time.

¶ 25 The boys' grades had gone up, and although P.H. had an individualized educational plan to address his disruptive behaviors at school, Beasley-Ricks had not received any more calls from the school about major behavioral incidents.

¶ 26 Both of the boys were in therapy, and the foster parents attended family therapy and parent-teacher meetings.

¶ 27 Beasley-Ricks had never seen the boys as stable as they were now. They seemed content and secure. They no longer were afraid that someone would come knocking on the door and tell them they had to move. She thought it was in their best interests to stay where they were and for the foster parents to adopt them, as they wished to do.

¶ 28 The State rested, and respondent took the stand. She testified she was unemployed but that she had been receiving supplemental security income since November 2017.

¶ 29 Before the children were taken into protective custody, at the ages of 11 and 9, they resided with respondent. She had provided them food and clothing and had taken them to their medical appointments. They called her "mommy," and she always had a loving and nurturing relationship with them. They had lived with her for most of their lives. They also had "lived with [respondent's] mother and father, their grandparents[,] and they were very close to their grandmother and grandfather."

¶ 30 The boys used to spend a lot of time with extended-family members. They were "really close to an uncle." There were picnics and family get-togethers on holidays.

¶ 31 When the children were in her care, she took them on Sundays to Body of Christ Church in Buffalo, Illinois, the church her parents attended until they passed away. Long sometimes went with them to church.

¶ 32 While respondent had custody of them, the boys attended Durfee Elementary School in Decatur, where Z.H. played T-ball and other sports. He had two or three close friends in the neighborhood, and they went to the park, rode bicycles, and went swimming and sledding. P.H. was more of a loner, a "mommy's boy."

¶ 33 Respondent loved her children and wanted them back.

¶ 34 II. ANALYSIS

¶ 35 A. The Finding of Unfitness

¶ 36 There are two steps to involuntarily terminating parental rights. First, the State must prove, by clear and convincing evidence, that the parent meets one or more of the definitions of an "unfit person" in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). 705 ILCS 405/2–29(2) (West 2016)); *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 20. If the State proves that the parent meets a statutory definition of an "unfit person," the trial court will hold a subsequent and separate hearing, in which the State must prove, by a preponderance of the evidence (*In re D.T.*, 212 Ill. 2d 347, 367 (2004)), that terminating parental rights would be in the best interests of the child. 705 ILCS 405/2–29(2) (West 2016); *M.I.*, 2016 IL 120232, ¶ 20.

¶ 37 When a parent appeals the trial court's findings that he or she is an "unfit person" and that terminating parental rights is in the best interests of the child, we do not retry the case but instead limit ourselves to deciding whether the court's findings are against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008); *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). This is a deferential standard of review. A finding is against the manifest evidence only if the evidence "clearly" calls for the opposite finding (*In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072 (2006)), such that "no reasonable person" could arrive at the trial court's finding on

the basis of the evidence in the record (*Mizell v. Passo*, 147 Ill. 2d 420, 425-26 (1992); *Baker v. Daniel S. Berger, Ltd.*, 323 Ill.App.3d 956, 963 (2001)).

¶ 38 Therefore, we begin by considering whether it is "clearly evident," from the evidence in the record, that the State failed to prove, by clear and convincing evidence, that respondent met at least one of the statutory definitions of an "unfit person" the State set forth in its petitions. *In re A.J.*, 269 Ill. App. 3d 824, 828 (1994). The trial court found all cited grounds of unfitness to be proved. Because respondent's conformance to only one of the definitions in section 1(D) of the Adoption Act is enough to make her an "unfit person," we need not review every alleged ground of unfitness. See *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999). We choose to review the evidence supporting paragraph 4(E) of the petitions, the paragraph alleging that respondent failed to make reasonable progress from February 27 to November 27, 2016.

¶ 39 Section 1(D)(m)(ii) of the Adoption Act provides:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***:
>
> * * *
>
> (m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected *** minor ***." 750 ILCS 50/1(m)(ii) (West 2016).

On February 26, 2016, the trial court adjudicated P.H. and Z.H. to be neglected. Paragraph 4(E) of the petitions for the termination of parental rights specified a nine-month period following that adjudication of neglect: February 27 to November 27, 2016. The trial court found the State had

carried its burden of proving, by clear and convincing evidence, that respondent failed to make reasonable progress during that nine-month period. The question for us, on appeal, is whether it is clearly evident, from the evidence in the record, that the State did *not* carry its burden of proof. See *A.J.*, 269 Ill. App. 3d at 828.

¶ 40 To answer that question, we begin with the statutory definition of "failure to make reasonable progress." " '[F]ailure to make reasonable progress toward the return of the child to the parent' 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(m)(ii) (West 2016). According to the testimony of Danzeisen, the children were brought into care because of "[n]eglect": "minimal parenting standards were not being met." The service plans imposed on respondent an obligation to take a parenting course. This obligation was logically calculated to address the reason why the children were brought into care. From February 27 to November 27, 2016, respondent failed to take parenting classes. Therefore, we uphold the trial court's finding that she failed to make reasonable progress during that nine-month period and that she met the definition of an "unfit person" in section 1(D)(m)(ii) of the Adoption Act. That finding is not against the manifest weight of the evidence.

¶ 41 B. The Finding That Terminating Parental Rights Would Be in the Best Interests of P.H. and Z.H.

¶ 42 Respondent argues the trial court made a finding that was against the manifest weight of the evidence by finding it would be in the best interests of P.H. and Z.H. to terminate her parental rights. We disagree.

¶ 43 A trier of fact could reasonably find that several of the factors in section 1-3(4.05) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-3(4.05) (West 2016)) weigh in favor of terminating parental rights. That section provides:

"(4.05) Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child."

705 ILCS 405/1-3(4.05) (West 2016).

¶ 44 Respondent lacked employment and stable housing. It appears that, in the past, she relied on help from her parents—the children used to live with her parents, according to her testimony—and now her parents were deceased. Instead of taking a parenting course to remedy her own parental deficiencies, she was prepared to let the children be turned over to her ex-husband, Alonzo Hoyer, an evidently unsuitable person, with whom she no longer had a relationship and who did not even bother to show up for the proceedings. See *In re C.W.*, 199 Ill. 2d 198, 217 (2002) (at the best-interests hearing, the "full range of the parent's conduct" must be considered, including the grounds for finding the parent unfit); *In re D.L.*, 326 Ill. App. 3d 262, 271 (2001) (such evidence is a "crucial [] consideration" at the best-interests hearing). The children appear to be content in their current foster home, where all their needs are being met. The foster parents want to adopt them. For all those reasons, a reasonable trier of fact could find that sections 1-3(4.05)(a), (d)(ii), (d)(v), and (g) of the Act weigh in favor of terminating parental rights.

¶ 45 III. CONCLUSION

¶ 46 For the foregoing reasons, we affirm the trial court's judgment.

¶ 47 Affirmed.