2018 IL App (4th) 180162-U

NO. 4-18-0162

FILED
July 6, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Summ. C., Suva. C., Sumy. C., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 14JA29
v.	)	
Monel Brown,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding respondent was unfit under section 1(D)(m)(ii) of the Adoption Act was not against the manifest weight of the evidence.

¶ 2 In September 2016, the State filed a motion for the termination of the parental rights of respondent, Monel Brown, as to his minor child, Summ. C. (born in 2009). After a two-day hearing, the Champaign County circuit court found respondent unfit. In February 2018, the court concluded it was in Summ. C.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting only the circuit court erred by finding him unfit. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2014, the State filed a petition for the adjudication of wardship as to Summ. C. and two of her half-siblings, Suva. C. (born in 2012) and Sumy. C. (born in 2014).

Respondent is not the father of Suva. C. and Sumy. C. , and thus the focus of the background facts is on Summ. C. The State's petition alleged all three minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)), in that their environment was injurious to their welfare when they resided with (1) their mother, Daminica Claybrooks, and/or respondent because that environment exposes them to a registered sex offender (count I), and (2) Claybrooks because Claybrooks failed to protect them from respondent, a registered sex offender (count II). The petition also alleged only Summ. C. was neglected under section 2-3(1)(b), in that her environment was injurious to her welfare when she resided with respondent because respondent failed to correct the conditions that resulted in his prior adjudication of parental unfitness as to his child, J.B., in Champaign County case No. 12-JA-3 (count III). Additionally, the petition contended all three minors were neglected under 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2014)) because Claybrooks did not provide remedial care recognized under state law as necessary for the minors' well-being (count IV).

¶ 6 At the August 2014 adjudicatory hearing, both respondent and Claybrooks admitted and stipulated Summ. C. was neglected under section 2-3(1)(b) due to her exposure to a registered sex offender (count I). The State withdrew counts II through IV, and the circuit court accepted the admission and stipulation. After a September 2014 dispositional hearing, the court (1) found respondent and Claybrooks were unfit and unable to care for, protect, train, educate, supervise, or discipline Summ. C.; (2) made Summ. C. a ward of the court; and (3) placed her custody and guardianship with the Department of Children and Family Services (DCFS). The court also suspended respondent's visitation with Summ. C.

¶ 7 In July 2017, the State filed a motion to terminate respondent's and Claybrooks's

parental rights to Summ. C. The motion asserted respondent and Claybrooks were both unfit because they failed to make reasonable progress toward the minor child's return during any nine-month period after the neglect adjudication, specifically October 10, 2016, to July 10, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)). The termination petition also alleged respondent was unfit because he was depraved (750 ILCS 50/1(D)(i) (West 2016)).

¶ 8 On October 23, 2017, the circuit court commenced the fitness hearing for both respondent and Claybrooks. The State presented the testimony of (1) Bridget Walls, the foster care supervisor at the Children's Home and Aid; (2) Sheri Williamson, the caseworker in March 2017; (3) Grace Mitchell, the director of the Family Advocacy Center where Claybrooks received counseling; (4) Jessica McClellan, the caseworker in May 2017; (5) Tia Manierre, the current caseworker; and (6) Debbie Nelson, owner of Cognition Works, Inc., where Claybrooks was a client. The State also asked the court to take judicial notice of the judgments in respondent's three criminal cases (*People v. Brown*, No. 08-CF-1706 (Cir. Ct. Champaign County, January 30, 2009); *People v. Brown*, No. 09-CF-322 (Cir. Ct. Champaign County, August 17, 2009); *People v. Brown*, No. 13-CF-1766 (Cir. Ct. Champaign County, May 16, 2014)) and the prior orders in this case. Respondent testified on his own behalf and presented the testimony of (1) Kamisha Miller and (2) Ranisha Miller. He also presented a copy of his November 12, 2016, letter to a caseworker and the attached letter for Summ. C. The evidence relevant to the issue on appeal is set forth below.

¶ 9 Walls testified she was the supervisor of Summ. C.'s case from December 2016 to June 2, 2017. During that time period, respondent was incarcerated at Dixon Correctional Center. As part of his service plan, respondent had to complete parenting classes and sex offender treatment. She never made any referrals for respondent because he indicated no

services were available to him at the correctional center. Walls was not aware of respondent keeping in touch with the caseworker. When she left the case, respondent had not completed any services.

¶ 10 From late February 2017 to March 31, 2017, Williamson was the caseworker for Summ. C.'s case. She testified the only time she had contact with respondent was at the administrative case review in March 2017. Respondent did not tell her he had been in sex offender treatment, and he did not complete sex offender treatment. She also did not receive any documentation of programs that respondent was participating in while incarcerated. When Williamson left the case, respondent had not completed any services. She further testified respondent did not mail anything to Summ. C.

¶ 11 McClellan was the caseworker for a month in April and May 2017. She sent respondent a copy of the court report that occurred in April 2017. McClellan had no contact with respondent.

¶ 12 Since June 26, 2017, Manierre had been the caseworker for Summ. C.'s case. Respondent was incarcerated, and they communicated via mail. Respondent told her that he had been participating in sex offender treatment and parenting classes. He provided her a packet, but the packet did not include anything about sex offender treatment or parenting classes. Manierre mailed respondent a consent form, so she could contact the corrections center. Respondent told her he gave the form to the corrections center, and she sent him another consent form because she needed one as well. Respondent did not return the consent form, so Manierre was unable to contact the corrections center.

¶ 13 Kamisha testified respondent was the brother of her child's father. During his incarceration, he had sent Kamisha letters through her sister. According to Kamisha, respondent

had been regular about trying to keep in touch with her and his family throughout his incarceration. Kamisha testified respondent had sent Summ. C. a lot of letters and bought Summ. C. a bracelet for her birthday. In his letters to Kamisha, respondent expressed concern about Summ. C. and stated he was going to sex offender classes. Before his incarceration, he was living with his mother, Claybrooks, and Summ. C. He worked at the "pork plant in Rantoul" and took care of Summ. C. Respondent had good interactions with Summ. C.

¶ 14 Ranisha testified she was dating respondent and had known him since 2010. Since his incarceration they had been talking on the telephone and he mailed her a letter. Respondent told her he was attending sex offender classes because he really wanted Summ. C. He did not want Summ. C. to be in a foster home. Ranisha further testified respondent provided care for Summ. C. before his incarceration. According to her, he did really well with his daughter. Ranisha would accept him having a relationship with Summ. C.

¶ 15 Respondent testified he was taken into custody in February 2014 for failing to register as a sex offender. Since being in custody, he had attempted to keep in contact with the caseworkers by writing letters and participating in administrative case reviews through teleconference. Respondent had also attempted to maintain contact with Summ. C. by writing letters for her and sending them to the caseworkers. He did not receive any responses. Additionally, while incarcerated, he had participated in sex offender treatment, which was cancelled in September 2017. Respondent filed a grievance to continue to participate in the treatment and was told the center did not have the staff or the money to continue the program. He did not participate in any other services while incarcerated because they were not available at the correctional center. Respondent did successfully complete classes in speech communication, fundamentals of accounting, vocational technical math, world religions, and culinary arts. He

also successfully completed the vocational program for commercial custodian.

¶ 16 Additionally, respondent testified that, since being incarcerated, he had written Summ. C. a letter once a month and sent a birthday card for her birthday. Respondent also sent something every holiday as well. He sent those items to the caseworker and included a letter to the caseworker. Respondent presented a copy of his November 12, 2016, letter to caseworker, Janisha Hobbs. In that letter, he laid out everything he had sent for Summ. C. and expressed concern over what happened to the items. He also expressed concern over how Summ. C. was doing. Additionally, respondent presented a copy of the letter he sent to Summ. C. that was with the November 2016 letter to Hobbs. In addition to the letters, respondent had participated in administrative case reviews via teleconference every three months until they were stopped in September 2016. Respondent later agreed he had participated in the March 2017 administrative case review. Respondent testified he had consistently tried to remain involved in this case and in Summ. C's life and to participate in as many programs as possible while incarcerated. He was due to be released from prison on January 18, 2018.

At the conclusion of the hearing, the circuit court found respondent was unfit based on both (1) depravity and (2) his failure to make reasonable progress toward Summ. C.'s return during the nine-month period of October 10, 2016, to July 10, 2017. The court also found Claybrooks unfit.

¶ 17 At the February 2018 best interests hearing, the State presented the best interests report and asked the circuit court to take judicial notice of the prior orders in this case. Respondent did not attend the hearing, and his attorney did not present evidence on his behalf. On February 15, 2018, the circuit court entered a written termination order, terminating respondent's and Claybrooks's parental rights to Summ. C.

¶ 18 On March 9, 2018, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 307(a)(6) (Nov. 1, 2017). We note Claybrooks is not a party to this appeal.

¶ 19 II. ANALYSIS

¶ 20 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2016)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor child's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 21 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding unless it is contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding). A circuit court's decision is against the manifest weight of the evidence only where the

opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 22 On appeal, respondent only contends the circuit court's unfitness finding was against the manifest weight of the evidence. The State disagrees.

¶ 23 The circuit court found respondent unfit under, *inter alia*, section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)), which provides a parent may be declared unfit if he or she fails "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 under Section 2-3 of the Juvenile Court Act." Illinois courts have defined "reasonable progress" as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental

custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). We have also emphasized " 'reasonable progress' is an 'objective standard.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387).

¶ 24 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the petition alleged the relevant nine-month period was October 10, 2016, to July 10, 2017. Additionally, "time spent in prison does not toll the nine-month period." *In re J.L.*, 236 Ill. 2d 329, 341, 924 N.E.2d 961, 968 (2010).

¶ 25 During the relevant nine-month period, respondent was far from the circuit court being able to return Summ. C. to his custody. He had not seen Summ. C. in more than two years. Their relationship would need to be reestablished. Respondent also had not completed his required services of parenting classes and sex offender treatment. He could not work on his services until his release from prison, which was scheduled for January 2018. The fact his incarceration prevented him from completing required services is irrelevant to the objective standard. See *F.P.*, 2014 IL App (4th) 140360, ¶ 89. Accordingly, the circuit court's finding respondent unfit based on section 1(D)(m)(ii) of the Adoption Act was not against the manifest

weight of the evidence.

¶ 26 Because we have upheld the circuit court's determination respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West 2016)), we need not review any other bases for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004) (providing when parental rights have been terminated based on clear and convincing evidence of a single unfitness ground, the reviewing court need not consider any additional grounds for unfitness cited by the circuit court). Additionally, respondent does not challenge the circuit court's best interests finding, and thus we do not address that finding.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 29 Affirmed.