2018 IL App (4th) 180307-U

NO. 4-18-0307

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 18, 2018
Carla Bender
4th District Appellate
Court, IL

In re M.H., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Macon County
Petitioner-Appellee,	)	No. 17JA4
v.	)	
Ashley A.,	)	Honorable
Respondent-Appellant).	)	Thomas E. Little,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court's findings respondent was unfit and it was in the minor's best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 Respondent, Ashley A., appeals from the trial court's judgment terminating her parental rights to her minor child, M.H. Respondent claims the court's associated orders finding her to be an unfit parent and finding termination to be in M.H.'s best interests were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2017, the State filed a two-count petition, alleging M.H., born August 13, 2015, was a neglected and abused minor. The State alleged respondent and her paramour had a history of domestic violence. During a December 30, 2016, altercation, in the presence of M.H., respondent was arrested (1) for the current domestic assault, (2) on an

outstanding domestic-assault warrant, and (3) for endangering the life of a child. She was taken into custody. M.H. was taken into protective custody by the Illinois Department of Children and Family Services (DCFS). The trial court granted DCFS temporary custody.

¶ 5 On February 9, 2017, after a combined adjudicatory and dispositional hearing, the trial court found M.H. to be a neglected minor whose environment was injurious to her welfare due to the ongoing domestic violence in the home. The court also (1) found respondent unfit and unable for reasons other than financial circumstances alone, to appropriately care for, protect, train, or discipline M.H. and (2) made M.H. a ward of the court. M.H. was placed in relative foster placement with her maternal aunt and uncle.

¶ 6 On January 11, 2018, the State filed a motion to terminate respondent's parental rights, alleging she was an unfit parent in that she (1) failed to maintain a reasonable degree of interest, concern or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor during any nine-month period following adjudication (750 ILCS 50/1(D)(m)(i) (West 2016)); (3) failed to make reasonable progress toward the return of the minor during any nine-month period following adjudication, namely February 9, 2017, to November 9, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (4) failed to make reasonable progress toward the return of the minor during any nine-month period following adjudication, namely April 10, 2017, to January 10, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 7 On April 2, 2018, the parties convened for a fitness hearing. Kimberly Nelson, the foster-care manager for Webster-Cantrell Hall, testified as the current caseworker. Nelson testified regarding respondent's case plan. Respondent was to participate in parenting classes, domestic-violence services, substance-abuse counseling, mental-health services, and individual

counseling. Respondent completed the assessments for substance-abuse and mental-health services, however no recommendations followed. She was unsuccessfully discharged from individual counseling for lack of compliance. Respondent completed the parenting intake assessment and attended 10 out of 12 classes, but she failed to successfully complete the course when she did not take the final test.

¶ 8 Nelson said respondent was also required to participate in drug drops every Wednesday but respondent did not "do a single one." Because respondent did not participate in the scheduled drug drops, she was tested prior to every visit. Respondent tested positive for marijuana "every single time" except once when Nelson suspected her of using someone else's urine. From then on, Nelson said she "observed her complete the drop." Thereafter, the tests were all positive. In July 2017, respondent participated in the first part of the two-part assessment for domestic-violence counseling, but she failed to attend the second part, which had been rescheduled four times.

¶ 9 Nelson said respondent successfully participated in visits with M.H. but participated in no other tasks in her service plan. Nelson said she had several meetings with respondent to "re-discuss the need to do services and a timeframe," however respondent "still didn't follow through." In Nelson's opinion, respondent had not met minimum parenting standards and was not in a position to care for M.H.

¶ 10 On cross-examination, Nelson testified the parenting-course instructor had recently allowed respondent to take the "outtake assessment" or final test. Respondent did not score high enough to pass the course, so the instructor allowed her to participate in "three or four refresher sessions." Nelson acknowledged respondent was able to secure stable employment and

adequate housing. Respondent was rated satisfactory on those individual tasks as well as the task associated with consistent visitation with M.H.

¶ 11 Cynthia Cherry, the parenting instructor for Webster-Cantrell Hall, testified she became the parenting instructor in November 2017. At that time, she went through various files and noticed respondent had completed 10 of the 12 required classes and had not completed the final test. After rechecking the files, Cherry discovered respondent had attended *all* of the required classes under the previous instructor but she still had not done the final test. In March 2018, Cherry allowed respondent to take the final test, but respondent scored below the required 70%. Cherry said she offered to provide respondent with three refresher sessions to cover the areas where respondent had scored poorly. They scheduled the first session for March 29, 2018, but respondent had to reschedule due to a job interview. As of the date of the hearing, the session had not been rescheduled.

¶ 12 The State rested and no other party presented evidence. After considering the State's evidence and counsels' closing statements, the trial court found the State had sufficiently proved respondent to be an unfit parent on the grounds set forth above.

¶ 13 On April 25, 2018, the trial court conducted the best-interest hearing. Nelson testified she prepared a best-interest report in preparation for the hearing. She said M.H. had resided in relative foster care with her maternal aunt and uncle since December 2016 when she was taken into protective custody. Nelson said M.H. was "doing very well." She said when M.H. first came into care, she was very shy and had speech difficulties. She was assessed but was found not in need of services. Since then, according to Nelson, M.H. "has grown quite the vocabulary and she's doing a lot better." The foster parents were willing to provide M.H. stability through adoption. The family resides in Sullivan, which Nelson described as a "very

tight-knit community." The older children in the home love M.H.. Nelson said "[t]hey're all very close knit and [M.H.] adores them." Nelson described M.H. as healthy and requiring no special needs. She said the family, including M.H., has a very tight bond with each other. According to Nelson, M.H. is happy, healthy, and safe in her foster home and, as such, Nelson believes it to be in M.H.'s best interest to remain there permanently.

¶ 14 On cross-examination, Nelson indicated she had observed respondent's visits with M.H. since February 2017. In Nelson's opinion, those visits demonstrated "meaningful interactions" between respondent and M.H. and M.H. appeared to "be bonded" with respondent.

¶ 15 At the close of Nelson's testimony, the State asked the trial court to consider the best-interest report filed on April 4, 2018. Without objection, the court agreed to do so. The report indicated that it was Nelson's recommendation that M.H. remain in her current foster placement and that respondent's parental rights be terminated. This recommendation was based upon the fact that respondent had "not completely complied with any service other than visitation with M.H.," and she "continue[d] to test positive for marijuana and continue[d] to deny the use of marijuana." Nelson indicated she was also concerned that respondent was still in a relationship with her paramour, who was "a part of the allegations for why this case was opened." According to the report, respondent had repeatedly been advised that M.H. would not be returned home if respondent remained in the relationship. The report also indicated M.H. "has been adjusting very well in her current placement" and her foster parents "are very willing to adopt if parental rights are terminated."

¶ 16 After considering the evidence, the best-interest report, the arguments of counsel, and the statutory best-interest factors, the trial court found the State sufficiently proved it was in the minor's best interest to terminate respondent's parental rights.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Finding of Unfitness

¶ 20 Respondent challenges the trial court's finding of unfitness on all four of the grounds alleged. Specifically, she argues the court's finding that she failed to make reasonable progress toward the return home of M.H. during any nine-month period following the adjudication of neglect was against the manifest weight of the evidence. We disagree.

¶ 21 The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship and, as such, the State must prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(4) (West 2016); *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The trial court's decision should not be reversed on appeal unless the finding was against the manifest weight of the evidence. *Id*. Only if the record shows it is clearly apparent the court should have reached the opposite conclusion will the court's decision be deemed to be against the manifest weight of the evidence. *Id.* The court is to consider evidence occurring only during the relevant nine-month period to determine whether a parent has made reasonable progress toward the return of the minor. *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 22 In this case, the trial court found respondent was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act because she failed to make reasonable progress during the nine-month period of April 10, 2017, and January 10, 2018. See 750 ILCS 50/1(D)(m)(ii) (West 2016). Our supreme court has interpreted section 1(D)(m)(ii) as requiring a parent make demonstrable movement toward the goal of reunification. *C.N.*, 196 Ill. 2d at 211. The benchmark for measuring a parent's reasonable progress under section 1(D)(m)(ii) of the Adoption Act includes compliance with service plans and court directives in light of the

condition that gave rise to the removal of the child and other conditions which later become known that would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. Reasonable progress exists when the court can conclude the progress being made by a parent to comply with the directives given for the return of the minor is sufficiently demonstrable and of such quality that the court would be able to order the child returned to the parent's custody in the near future. *In re J.H.*, 2014 IL App (3d) 140185, ¶ 22.

¶ 23 Service plans are an integral part of the statutory scheme, and compliance with the service plans is intimately tied to a parent's progress toward the return of the child. *C.N.*, 196 Ill. 2d at 216. The failure to make reasonable progress includes the failure to substantially fulfill the terms of the service plans. *Id.* at 216-17.

¶ 24 The evidence before the trial court clearly demonstrated respondent failed to successfully complete the vast majority of the tasks set forth in her service plan. M.H. was removed from respondent's care because she repeatedly engaged in domestic violence to cause her arrest in December 2016. For 15 months, which included the relevant time period, respondent was unable to consistently participate in any of her required services except visitation. She was given ample opportunity to prove that M.H. should be returned to her care. She failed to do so. She tested positive for marijuana at each visit, failed to follow through with the opportunity to successfully complete her parenting course, failed to follow through with the opportunity to engage in domestic-violence counseling, failed to attend individual counseling, and refused to end her relationship with her paramour. According to Nelson's testimony, respondent was not close to having M.H. returned to her care anytime soon.

¶ 25 Based on the evidence presented, respondent failed to complete her obligations under the service plan during the relevant nine-month period, namely between April 10, 2017,

and January 10, 2018, which guided the trial court to appropriately determine that respondent was an unfit parent pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)). Accordingly, we find the court's order finding respondent unfit was not against the manifest weight of the evidence.

¶ 26 Because we have upheld the trial court's determination that 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 (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).

¶ 27 B. Best-Interest Finding

¶ 28 After a finding of parental unfitness, the focus shifts to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). "Accordingly, at a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.*

¶ 29 When making its determination, the trial court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60 (2005). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church,

school, and friends; 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; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). Here, the court indicated it focused its decision on the child's sense of attachment; her sense of security, familiarity and continuity; and her need for permanence.

¶ 30 Respondent's only argument that terminating her parental rights would not be in M.H.'s best interest is that the caseworker testified that M.H. knows respondent and respondent is bonded with M.H. Despite this mother-and-child bond, unfortunately for respondent, the overwhelming weight of the evidence favored termination of her parental rights. That is, respondent's "interest in maintaining the parent-child relationship must yield to [M.H.'s] interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364.

¶ 31 The evidence presented clearly suggested the best interests of the minor would be best served by terminating respondent's parental rights. Nelson testified M.H. was thriving in her foster home. She was happy, safe, and well-bonded with her foster parents, who were willing to provide her permanency and stability through adoption. She was receiving the necessary care in a secure, loving, and stable environment. Based on this evidence, we conclude the court's determination that it was in M.H.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

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

¶ 34 Affirmed.