2018 IL App (4th) 180408-U

NO. 4-18-0408

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 29, 2018
Carla Bender
4th District Appellate
Court, IL

In re J.W., a Minor	)	Appeal from the
	)	Sangamon County
(The People of the State of Illinois,	)	Circuit Court
Petitioner-Appellee,	)	No. 16JA35
v.	)	
Brittany K.,	)	Honorable
Respondent-Appellant).	)	Karen S. Tharp,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In June 2018, the trial court terminated the parental rights of respondent, Brittany K., as to her minor child, J.W. (born June 4, 2014). On appeal, respondent argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

I. BACKGROUND

¶ 3 J.W was removed from respondent's care following a domestic-violence incident involving J.W.'s sister, father, and respondent. In the underlying proceedings, the parental rights of both parents were terminated; however, the father is not a party to this appeal. We only

discuss the facts as they relate to respondent and J.W.

¶ 4 In March 2016, the State filed a petition for adjudication of wardship, alleging that J.W. was a neglected minor and exposed to a substantial risk of physical injury in light of (1) the excessive corporal punishment inflicted upon J.W.'s sibling; (2) the cuts, welts, and bruises that J.W.'s sibling sustained; (3) respondent's anger-management issues; and (4) the father's anger-management issues. During the incident, the father struck J.W.'s sister with a belt while respondent and J.W. were present. In October 2016, the trial court entered an adjudicatory order finding J.W. was neglected. In November 2016, the trial court entered a dispositional order adjudicating J.W. a dependent minor, making him a ward of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 5 In January 2018, the State filed a petition seeking a finding of unfitness and termination of respondent's parental rights. The State alleged respondent was unfit because she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to J.W.'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 J.W.'s removal within nine months (October 5, 2016 through July 5, 2017) after the adjudication of neglect (750 ILCS 50/1(D)(m)(i)(West 2016)); and (3) failed to make reasonable progress toward the return of J.S. within the same nine-month period (750 ILCS 50/1(D)(m)(ii) (West 2016)). The State further alleged that termination of parental rights was in J.W.'s best interest.

¶ 6 In February and April 2018, the trial court conducted a fitness hearing. The State presented the testimony of Valerie Brown. She testified she previously worked for Lutheran Child and Family Services (LCFS) and was assigned to J.W.'s case from March 31, 2016, to

March 9, 2018. She stated J.W. was removed from respondent's care when the father struck J.W.'s sister. Brown explained this incident occurred while he was on parole for a prior domestic violence incident involving respondent, and their renewed relationship was a violation of his parole. The father was convicted of domestic violence again following the incident involving J.W.'s sister, and he was incarcerated during the pendency of this case.

¶ 7 Brown testified respondent initially cooperated with LCFS when J.W. was removed from her care. Respondent attended her supervised visits with J.W., participated in parenting classes, and began substance abuse services. However, she had positive drug drops and did not initially participate in the domestic violence services.

¶ 8 In February 2017, respondent's supervised visits with J.W. were increased to four hours per week. The next month, respondent's administrative case review (ACR) was not performed. Brown testified that, at the time, respondent was cooperating with services, compliant with drug testing, and had started attending domestic violence classes at Sojourn Shelter and Services, Inc. However, she did not begin individual counseling.

¶ 9 Brown stated that respondent's compliance with the service plans was rated satisfactory in March 2017. Brown later learned, however, that married parents must both be rated satisfactory on their service plans for either one to individually receive a satisfactory rating. Thus, according to Brown, respondent would not have received a satisfactory rating in March 2017 because she needed to divorce her husband, who was in prison at the time and generally had received "unsatisfactory" ratings. This policy was not conveyed to respondent because Brown was unaware of it at the time.

¶ 10 In April 2017, when respondent's husband was released from prison, respondent's

participation in services declined. Prior to her husband's release, respondent informed Brown that she intended to obtain a divorce. However, according to Brown, family members reported that respondent renewed the relationship with her husband for several months and lived with him following his release from prison. Brown testified that, after a court appearance in December 2017, she observed respondent meet her husband several blocks away in her vehicle. Brown further testified that respondent started to "slide on services" and stopped maintaining regular contact.

¶ 11 In June 2017, respondent's visits with J.W. were reduced to two-hour visits per week because of respondent's inconsistent attendance, despite offers to work around respondent's work schedule and assist with transportation. Brown explained there were also issues with parenting during the supervised visits because respondent would "overfeed" J.W., who weighed 70 pounds by the age of three. Brown stated respondent was also unsatisfactory with respect to both domestic violence and individual counseling because she would miss sessions unless there was a court date coming up.

¶ 12 By July 2017, according to Brown, respondent was not "even close" to having J.W. returned to her care. At that time, respondent was living with her mother, and the residence could not pass the home safety check due to clutter and people smoking near oxygen tanks. Brown further stated that, throughout the duration of the case, "[w]e never even got to unsupervised visits *** for any considerable length of time."

¶ 13 Respondent testified on her own behalf. When asked about the reasons for J.W.'s removal from her care, respondent stated, "Um, they said I didn't protect my child, is all I was told." Respondent further testified that, after J.W.'s removal, she regularly visited J.W., missing

only two visitations due to her work schedule. She stated she provided Brown with documentation and regularly communicated with her. Respondent also disagreed with Brown's testimony regarding the completion of her services.

¶ 14 Respondent stated she completed substance abuse treatment and parenting classes by July 2017. She also attended domestic violence counseling. Further, she testified that it was never conveyed to her that she could receive unsatisfactory ratings on her service plans while she remained married and that if she had known of this policy she would have divorced her husband. She also explained she intended to obtain a divorce but could not do so for financial reasons.

¶ 15 Respondent testified that the last time she lived with her husband was in March 2016 when J.W. was removed from her care. She further testified that they do not socialize or have a relationship of "any kind." When asked whether she visited him while he was in prison, respondent stated, "Kind of sort of. Not really."

¶ 16 With respect to J.W.'s weight issues, respondent testified she would give J.W. grapes and Lunchable meals without the dessert during her supervised visits. She acknowledged J.W. was overweight but noted he spent the majority of his time with his foster parent.

¶ 17 The trial court found respondent unfit as alleged in the State's motion, stating, in pertinent part, as follows:

> "To me, this case isn't about whether or not the parents were married or divorced. Is it an issue? Yes, but that's not what this case is about. *** I *** note that I find several of [respondent's] statements about the divorce *** very disingenuous. She *** testified *** she wanted to file for divorce, couldn't find anybody to help her[,] *** couldn't afford it, although there are avenues to

address that ***, [and] she would have gotten divorced if she'd have been told that she needed to do it. Well, which is it? You either wanted to do it and could have gotten it done[,] or you didn't know, and if you'd have known, you would have got [the divorce]. *** I find the statements very disingenuous.

* * *

The issue of the marriage may be a problem, but it only becomes a problem if the [c]ourt at some point is ready to return a child to one parent and not the other.

* * *

The adjudication *** dealt with an injury to a child while in the care of the parents. *** [T]his incident with the child *** occurred after there had been domestic violence to the mother herself. She apparently stayed with the father, because they were all in the same household, so she put her child in harm's way by continuing in a domestic violence relationship. I note that [respondent] said that their relationship only fell apart in March of 2016, which again would have been the incident with the child. At that time, dad went off to jail, and later, to prison.

I noted with concern *** the very beginning of [respondent's] testimony [when I] *** asked her why is this case here? *** [S]he said, 'They said I didn't protect my child.' No ownership, no responsibility for the situation that her children were put in. 'They said I didn't protect my child.'

I looked at the *** service plans *** close in time to the nine-month period. *** [In] March of 2017 *** [t]he caseworker herself rated the [service] plan, although it didn't go through an official ACR. At that time, [respondent] was in substance abuse treatment, she either was in or had done parenting class, she was visiting [J.W.], but she was not in counseling. I highlight that. She was not in counseling.

* * *

[Respondent's] visits had been increased from one time a week for two hours to two times a week for two hours *** in February [2017], as I recall. *** [E]ventually, by I believe June [2017], [she] had to drop *** back to one time a week because she wasn't making the second visit. *** Again, I don't find it credible *** that they decreased the visits back to one time a week because she missed two visits.

* * *

By the end of that time period, mother stopped keeping contact with the caseworker. She had done her substance abuse treatment, but she wasn't always available, according to the caseworker, to stay in contact with regard to doing random drops. I do note that she *** admitted [to] a positive drop for synthetic marijuana in October. There was apparently another positive test that she said she didn't recall *** in October.

She went sporadically to Sojourn, it appears, maybe six times between October of 2016 and February of 2017, she went once in June, and once in

November. She says that she had started counseling first at Capital Community Health Care. Don't know when, don't know how long. She said she went there but never provided any information.

* * *

[She] said *** [the] caseworker told [respondent] in February of 2017 that she could do counseling at Lutheran. [Respondent] didn't want to do that, so here we are by the end of the nine-month time period, I believe it was after that, [when] [respondent] finally said [']okay, I'll go to the counseling at Lutheran[.]['] [S]o she didn't start Lutheran until December of 2017.

* * *

Obviously, what is this case about? It's about domestic violence and abuse to a child, putting a child in harm's way. That's why counseling and domestic violence counseling were important in this case, to deal with the issues of the cycle of abuse ***[.]

* * *

[Respondent's] visits were always supervised. Until January of 2018, she lived in a home with her mother *** that wasn't appropriate for return of the child. It wasn't even appropriate for visits. *** [The] caseworker said it was because there were holes in the wall, issues with the flooring, there [were] oxygen tanks in the home and people were smoking, so she couldn't even have visitation in the home let alone have her child returned there.

* * *

> [The] [c]aseworker testified that at no time was [respondent] ready to return the child to either parent, certainly not by July of 2017 or at any time. I agree with her assessment. At no point would I have been ready to return the child to either parent because the issues in this case had never been addressed.
>
> I will note that [it was argued] that [respondent] didn't have the knowledge she needed to complete the service plan because there had been no March [2017] ACR and she wasn't told about the [divorce] issue[.] [B]ut she knew she needed to go to counseling, and she knew she needed to address domestic violence issues. She did neither.***"

¶ 18 On June 7, 2018, the trial court conducted a best-interest hearing.

¶ 19 Brown, the former caseworker with LCFS, testified J.W. was living with his paternal aunt, Lois W., who was in a relationship with respondent's sister, Nicole K. According to Brown, Lois indicated she was willing to adopt J.W.

¶ 20 Brown testified J.W. was making progress in his placement with Lois. Previously, J.W. was in specialized pre-K due to speech impediments; however, after progressing in speech therapy, J.W. was moving to the standard pre-K class. J.W. had learned sign language while living with his aunts, and his overall vocabulary improved. Brown further testified his aunts attended to his medical, social, and educational needs. Brown testified that J.W.'s aunts "plan for his future together."

¶ 21 Brown stated J.W. was "very close" to both Lois and Nicole. She explained they lived in a single-wide trailer, and they planned to move to a larger home in the immediate area so J.W. could have a dog. At their current residence, J.W. had his own bedroom, and they had

cleared extra space for J.W.'s expanding toy collection.

¶ 22 Brown stated that, during J.W.'s placement, Lois and Nicole had divorced for two months and later reunited. Based on her observations, J.W. did not respond negatively to the divorce. According to Brown, Lois and Nicole had a strained relationship with respondent. Brown testified that Lois did her best to shield J.W. from the tension. Brown stated that, once this case was over, she anticipated the tension would ease. She further testified there had not been any issues at family functions where all relatives were in attendance. Brown stated she "believe[d] Lois [was] quite capable of determining *** what is in the best interest of [J.W.]," and she saw no "reason that Lois would cut ties with [respondent]."

¶ 23 Brown acknowledged J.W. had a bond with respondent. However, she testified there would be no harm if respondent's parental rights were terminated because J.W. would still have contact with her at family functions. Also, J.W. had already spent half of his life with Lois, and he had grown accustomed to her. Brown testified it would be in J.W.'s best interest to achieve permanency instead of lingering in the system.

¶ 24 Respondent testified J.W. is attached to both her and Lois. She stated that, since the fitness hearing, she had obtained housing where J.W. could have his own room. She further testified that she regularly visited J.W., and she brought him a new toy every time she saw him.

¶ 25 Respondent explained that Lois and Nicole had been together for seven years and they had a rocky relationship. She testified J.W. was placed with Lois, and not Nicole, because Nicole had "lost her child already" when Nicole's parental rights were terminated. Respondent further testified Lois was "disabled" and could not take care of herself because she "can't run" and she needed "back surgery." She further stated Lois would keep J.W. from her when Lois was

in one of her "moods."

¶ 26 She expressed concern that, if her parental rights were terminated, Lois would keep J.W. from her. She testified that, during the pendency of the case, the family had separate holiday celebrations. Further, respondent explained she communicated with J.W. through Facebook messenger, and when Nicole and Lois temporarily separated, communication through Facebook "stopped for a couple of weeks."

¶ 27 Respondent testified she had not "done anything wrong" and she "completed everything [she] was supposed to." She stated she would divorce her husband, which she still had not done at the time of the best interest hearing.

¶ 28 Based on the evidence presented, the trial court found it was in J.W.'s best interest that respondent's parental rights be terminated.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On appeal, respondent argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 32 A. Fitness

¶ 33 Parental rights may be involuntarily terminated when the trial court finds that a parent is unfit based on grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and termination is in the child's best-interest. *In re J.L.*, 236 Ill. 2d 329, 337–38, 924 N.E.2d 961, 966 (2010). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A reviewing court will not reverse a trial court's fitness

finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 34 Here, the trial court determined respondent was unfit based upon each of the grounds alleged by the State. Specifically, the court determined respondent (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to J.W.'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 J.W.'s removal within nine months (October 5, 2016, through July 5, 2017) after the adjudication of neglect (750 ILCS 50/1(D)(m)(i)(West 2016)); and (3) failed to make reasonable progress toward the return of J.W. within the same nine-month period (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 35 We find the trial court's determination that respondent was unfit was not against the manifest weight of the evidence. An unfit parent includes one who has failed "to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the [neglect] adjudication ***." 750 ILCS 50/1(D)(m)(ii) (West 2016).

> "[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).

¶ 36 Additionally, this court has described reasonable progress as "an 'objective standard,' " which exists "when 'the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody.' " (Emphasis in original.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 37 On appeal, the State argues respondent failed to make reasonable progress toward J.W.'s return home for the nine-month period following the neglect adjudication from October 5, 2016, through July 5, 2017. Specifically, the State contends respondent's participation in services diminished over the course of the case, particularly when her husband was released from prison. Further, respondent tested positive for drugs, she was unable to have visitations at her home because it could not meet safety standards, she failed to maintain appropriate contact with the caseworker, and she only attended domestic violence counseling sporadically. Respondent counters that the trial court disregarded "the objective steps she took to complete the service plan."

¶ 38 We find the evidence presented at the fitness hearing was sufficient to support the trial court's determination that respondent was unfit because she failed to make reasonable progress within the nine-month period following the adjudication of neglect. In reaching its decision, the trial court relied on respondent's failure to take accountability for her role in subjecting J.W. to harm by remaining in a relationship with her husband, who was on parole for a domestic violence incident at the time J.W. was removed from care. The court found respondent's assertion that she would divorce her husband disingenuous because at no point did

she make any effort to divorce him. The court emphasized respondent was not in individual counseling until the end of the nine-month period and she attended domestic violence counseling "sporadically."

¶ 39 Further the trial court did not find respondent's testimony credible regarding her reasons for missing visitations, stating it was unlikely that LCFS would reduce her visits because she only missed two. The court noted that respondent's communication with LCFS diminished when her husband was released from prison. Further, she tested positive for synthetic marijuana and she was never able to have unsupervised visits.

¶ 40 We agree that this evidence supports the finding that respondent had not made reasonable progress with respect to respondent's substance abuse, her failure to consistently maintain contact with her supervisor, and her failure to regularly engage in individual counseling or domestic violence counseling. We thus conclude the trial court's fitness finding was not against the manifest weight of the evidence.

¶ 41 Because only one ground for a finding of unfitness is necessary to uphold the trial court's judgment, we need not review the other bases for the court's unfitness finding. *Gwynne P.*, 215 Ill. 2d at 349 (A parent's rights may be terminated if even a single alleged ground for unfitness is supported by the evidence.).

¶ 42 B. Best Interest

¶ 43 Respondent next argues termination of her parental rights was not in J.W.'s best interest. Specifically, she argues there was no evidence she harmed J.W., he was bonded to respondent and recognized her as his mother, and the caseworker provided "incoherent" explanations with respect to the significance of achieving permanency. We disagree.

¶ 44 "Following a finding of unfitness *** the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphases in original.) *In re D. T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). "[A]t 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.* At this stage of the proceedings, "the State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). We will not disturb the trial court's best-interest determination unless it is against the manifest weight of the evidence. *Id.* at 1071. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 45 Under the Juvenile Court Act of 1987, there are several factors a court should consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). These factors, considered in the context of the child's age and developmental needs, include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family

and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay. H.*, 395 Ill. App. 3d at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 46 In this case, sufficient evidence was presented at the best-interest hearing to support the trial court's determination that terminating respondent's parental rights was in J.W.'s best interest. The court noted respondent's testimony that she "did nothing wrong." The court expressed concern that respondent did not understand why J.W. was removed from her care, and thus, she would be unable to complete the recommended services or make the changes necessary to provide J.W. with permanence.

¶ 47 The trial court's concerns regarding the need for permanence for J.W. were proper, and the evidence supported its concerns regarding this best interest factor. The court acknowledged respondent and J.W. were bonded, but the evidence also showed that J.W. was attached to his foster parent, Lois, with whom J.W. had lived with for over half of his life by the time of the fitness hearing. The evidence also demonstrated J.W. was doing well in his foster home with Lois, who voiced a willingness to provide permanency. During the two-year period with Lois, J.W. had learned sign language and his speech had improved to the point where he was able to move from a specialized pre-kindergarten class to the standard pre-kindergarten curriculum. Further, Lois made efforts to shield J.W. from family tensions, she provided J.W. with a home and his own bedroom, she attended to his medical and social needs, and the caseworker testified that Lois was "plan[ning] for [J.W.'s] future" and was "quite capable of determining *** what [was] in the best interest of [J.W.]." According to the trial court, respondent's inability to provide a stable environment was the most significant factor weighing

in favor of termination.

¶ 48 Based on this evidence, we find the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 49 III. CONCLUSION

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

¶ 51 Affirmed.