2019 IL App (3d) 190293-U

Order filed October 21, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re A.B.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Henry County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-19-0293
	)	Circuit No. 16-JA-28
v.	)	
	)	
John B.,	)	Honorable
	)	Terence M. Patton,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determination of parental unfitness pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2018)) was not against the manifest weight of the evidence.

¶ 2 The respondent, John B., appeals from the circuit court's order terminating his parental rights as to his minor daughter, A.B. On appeal, respondent argues the trial court's findings of his unfitness as a parent was against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 A.B. was born on November 16, 2016. On December 6, 2016, the State filed a petition for adjudication of wardship, alleging that A.B.'s environment was injurious to her welfare because at the time of her birth she tested positive for amphetamine and methamphetamine and those substances were not used in her medical treatment or in medical treatment of her mother, Erin V. The petition named Erin V.'s husband as A.B.'s father and respondent (Erin V.'s paramour) as A.B.'s putative father.

¶ 5 A DNA test confirmed that respondent was A.B.'s biological father (DCFS filed the DNA test results with the trial court on January 24, 2017).

¶ 6 On or about January 11, 2017, respondent was arrested on felony charges of Aggravated Driving Under the Influence (DUI) of alcohol and Driving While License Suspended. Those charges remained pending throughout the remainder of this case, with respondent eventually going to trial and being convicted on those charges in May 2018 and being sentenced to 5 years of imprisonment on June 26, 2018.

¶ 7 In this case, on February 8, 2017, an adjudicatory hearing took place in regard to the State's juvenile petition, which alleged that A.B. was neglected. The parties stipulated to the allegations, and the trial court found that A.B. was neglected as the result of her having been born exposed to drugs. A.B. was made a ward of the court and she was placed in the custody of the Department of Children and Family Services (DCFS).

¶ 8 On April 12, 2017, after a dispositional hearing, the trial court entered a dispositional order finding respondent was unfit and unable to care for A.B. and that A.B.'s placement with him would be contrary to her health, safety, and best interest. The trial court found that the service plan was appropriate and ordered respondent to do the following: (1) complete a

psychological assessment and follow all recommendations; (2) sign all necessary releases; (3) cooperate with and inform DCFS of any changes; (4) meet with the caseworker monthly; (5) attend couple's therapy with A.B.'s mother (Erin V.); (6) complete a substance abuse assessment with random drug testing and follow all recommendations; (7) attend individual therapy; and (8) follow all recommendations regarding his legal issues and have no further involvement with the law.

¶ 9 On December 11, 2018, the State filed a petition to terminate the parental rights of respondent as to A.B. The petition alleged that respondent was unfit for: (1) failing to make reasonable efforts to correct the conditions that were the basis for removal of A.B. during the nine-month period following the adjudication of neglect of April 2017 to January 2018 and the nine-month period of December 2017 to September 2018, pursuant to section 50/1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2018)); (2) failing to make reasonable progress toward the return of A.B. during the nine-month period following the adjudication of neglect of April 2017 to January 2018 and the nine-month period of December 2017 to September 2018, pursuant to section 50/1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2018)); and (3) respondent's habitual drunkenness, pursuant to section 50/1(D)(k) of the Adoption Act (750 ILCS 50/1(D)(k) (West 2018)).

¶ 10 On April 24, 2019, at the termination hearing, Sherry Koerperich, testified that she was the caseworker involved with this case from December 2017 through October 2018. She indicated that when the case was transferred to her in December 2017, respondent was cooperative and doing all his services until January of 2018, when he gradually decreased services. Koerperich testified that: (1) respondent had consistently attended therapy from December 2017 through May 2018, after which time he stopped attending therapy; (2)

respondent completed substance abuse treatment but failed to complete five or six random drug tests, which had been requested once per month, from January 2018 through May 2018; (3) respondent completed parenting classes; and (4) respondent consistently visited A.B. until May 2018.

¶ 11 Koerperich acknowledged that she had filed a report on January 30, 2018, indicating respondent was making reasonable efforts and reasonable progress during the time period of November 2017 to January 2018. She had indicated in the report that respondent cooperated with therapy through May 2018, but he had failed to complete six random urinalyses drug tests. Koerperich testified when she had requested each of the six random drug drops from respondent, she had phoned him and he answered the phone each time she called. Koerperich further testified that respondent was consistent in attending visitations with A.B. until May 2018, during which time he appropriately interacted with A.B. She also testified that respondent completed a parenting course and signed all necessary releases. Koerperich did not believe respondent made reasonable progress in the nine-month period prior to July 2018.

¶ 12 In July 2018, Koerperich recommended respondent's parental rights be terminated. At that time, Koerperich did not feel as though A.B. was any closer to going home than she was at the time of the case opening. Koerperich testified that during the initial three months of the nine-month period (November 2017 to January 2018) respondent was, in fact, making reasonable and substantial progress toward the return home of A.B. but he did not do so after January 2018. At the permanency review hearing in July 2018, Koerperich recommend that respondent's parental rights be terminated.

¶ 13 Respondent testified that he had taken parenting classes sometime before June 2017 by way of someone coming to his home. Respondent attended a few individual therapy sessions

until August 2017 when he stopped due to conflicts with his work schedule for his seasonal job. When his job ended in November 2017, he consistently attended individual therapy sessions one time per week until May when the trial on his criminal charges began.

¶ 14 Respondent also testified that he completed a substance abuse evaluation in November 2017. Respondent was required to submit to random urinalysis testing, and he did so "on a pretty regular basis." Respondent testified that he was taking at least two drug tests per month from June through November 2017. Respondent testified that in April to June of 2018, he performed one drug drop but was not notified of the other requests for drug drops. Respondent explained that he did not refuse to take any of the urinalysis but missed the drops because he was not available when someone showed up randomly at his house.

¶ 15 Respondent acknowledged that he had missed a few family team meetings in April and May of 2017 but indicated that he had attended all the meetings since June of 2017. He also testified that he attended visits with A.B. two or three times per week until his incarceration on June 26, 2017.

¶ 16 Respondent indicated that he had been living with A.B.'s mother (Erin V.), but he left in May of 2018, after being indicated by DCFS for showing pornography to a 10-year-old. Respondent explained that he had been asked questions, so he was honest, "talked to them about that," and, as a result, he was indicated by DCFS.

¶ 17 Respondent testified that he was currently incarcerated for an aggravated DUI and that the DUI was "aggravated" because he had three or more prior DUIs. He also had two illegal transportation tickets. His first alcohol related arrest was in 1996 for a DUI when he was 21 years old.

¶ 18 At the request of the attorney for A.B.'s mother and with no objection from any party, the trial court took judicial notice of the last three permanency review orders—from November 8, 2017, February 14, 2018, and September 12, 2018. The order of November 8, 2017, indicated that the trial court had found that the appropriate goal was the return home of A.B. within 12 months and that respondent had not made reasonable progress or efforts toward the return home of A.B. The order of February 14, 2018, indicated the same goal but that respondent had made reasonable progress and reasonable efforts. The order of September 12, 2018, indicated the trial court had changed the goal to substitute care pending a determination of termination of parental rights and that respondent had made reasonable efforts toward the return home of A.B. but he had not made reasonable progress.

¶ 19 In rebuttal, the State recalled Koerperich as a witness. Koerperich testified that she had discussed the random drug drops with respondent monthly at the team meetings and, because respondent did not have transportation, she would either call him or Help at Home would show up randomly. She testified, "it was never counted against him if he was not home or working" but a missed drop was counted against him if he chose not to go or they could not get a hold of him. Koerperich testified that respondent had advance knowledge of the requests for the six drug drops he had missed from January to May 2018, because Koeperich would call respondent beforehand.

¶ 20 Koeperich also testified that the permanency hearing report of July 2018 noted that respondent's individual therapy had been "satisfactory" because he was attending therapy consistently until May 2018. In May 2018, respondent stopped attending counseling without having completed it. He also did not have a stable job or the ability to care for A.B. at that time.

¶ 21 The trial court found that respondent was unfit for: (1) failing to make reasonable efforts during the nine-month period of December 2017 to September 2018; (2) failing to make reasonable progress during the nine-month period of December 2017 to September 2018; and (3) due to respondent's habitual drunkenness. Following the best interest hearing, the trial court found that it was in A.B.'s best interest to terminate respondent's parental rights. Respondent appealed.

¶ 22 ANALYSIS

¶ 23 On appeal, respondent argues the trial court's findings of his unfitness were against the manifest weight of the evidence. The State argues that it had proven respondent's unfitness by clear and convincing evidence.

¶ 24 In Illinois, the power to involuntarily terminate parental rights is statutorily derived from the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2018)) and the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1-1 *et seq.* (West 2018)). *In re E.B.*, 231 Ill. 2d 459, 463 (2008). The involuntary termination of parental rights is a two-step process. 705 ILCS 405/2-29(2) (West 2018); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). Initially, the court must find that a parent is unfit as defined in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2018); *E.B.*, 231 Ill. 2d at 472. Section 1(D) lists several grounds upon which a finding of unfitness can be made. 750 ILCS 50/1(D) (West 2018). If the court makes a finding of parental unfitness under section 1(D) of the Adoption Act, the court then considers the best interests of the child in determining whether parental rights should be terminated. 705 ILCS 405/2-29(2) (West 2018); *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010).

¶ 25 Here, we first address the trial court's finding that respondent was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act because he failed to make reasonable progress toward

the return home of A.B. during the period of December 2017 through September 2018. Reasonable progress is examined under an objective standard measured from the conditions existing at the time custody was taken from the parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). The benchmark for measuring a parent's reasonable progress under section 1(D)(m) of the Adoption Act encompasses compliance with the service plans and court's 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. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress exists when the trial court can conclude that progress being made by a parent to comply with directives is sufficiently demonstrable and of such a quality that the trial court will be able to order the minor returned to parental custody in the near future. *In re J.H.*, 2014 IL App (3d) 140185, ¶ 22; *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). Failure to make reasonable progress toward the return of the minor 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(D)(m) (West 2018); *C.N.*, 196 Ill. 2d at 217.

¶ 26 A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make, so we will defer to the trial court's factual findings. *In re A.W.*, 231 Ill. 2d 92, 102 (2008); *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90 (2004). The trial court is to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m) in determining whether a parent has made reasonable progress toward the return of the minor. *J.L.*, 236 Ill. 2d at 341. The State must prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2–29(4) (West 2018); 750 ILCS 50/1(D) (West 2018); *C.N.*, 196 Ill. 2d at 208. A trial court's finding of parental unfitness will

not be reversed on appeal unless it is against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208. Only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion will the trial court's decision be against the manifest weight of the evidence. *Id.*; *Tiffany M.*, 353 Ill. App. 3d at 890.

¶ 27 In reviewing the record in this case, we cannot say the trial court's findings of parental unfitness based upon the respondent's failure to make reasonable progress toward the return of A.B. during the nine-month period of December 17, 2017, through September 18, 2018, was against the manifest weight of the evidence. The evidence showed that A.B. was taken into protective custody shortly after her birth in late 2016 because she was born exposed to drugs. Respondent stopped attending counseling during the nine-month period and became incarcerated. He did not complete his individual his therapy. He also stopped attending visits with A.B. in May of 2018. We acknowledge that respondent was incarcerated as of June 26, 2018, but that does not excuse his lack of progress. See *J.L.*, 236 Ill. 2d at 341-43 (it is well-settled that a respondent's incarceration during the relevant nine-month period for demonstrating reasonable progress will not excuse lack of progress and will not toll the relevant time period). Furthermore, prior to his incarceration, respondent refused six drug tests during the nine-month period. Thus, the State proved by clear and convincing evidence that respondent failed to substantially fulfill his obligations under the service plan during the relevant nine-month period and failed to correct conditions that brought A.B. into care in the first place. Consequently, the trial court's finding that respondent failed to make reasonable progress during the specified nine-month period was not against the manifest weight of the evidence.

¶ 28 Respondent argues that it was the drug use of A.B.'s mother that was the basis for the removal of A.B. and "there was little, if any, evidence of [his] need or capacity to correct those

conditions." We agree with the State that this argument has no merit. We acknowledge that "[a]ny tasks the court requires of the parents, guardian, or legal custodian or child prior to returning the child home, must be reasonably related to remedying a condition or conditions that gave rise to or which could give rise to any finding of child abuse or neglect." See 705 ILCS 405/2-28(2) (West 2018). However, requiring respondent to complete substance abuse treatment, therapy, and drug drops as part of his service plan was reasonably related to remedying the condition that gave rise to A.B. being removed from the home—her exposure to drug abuse and drug use in her home. See *In re Z.M.*, 2019 IL App (3d) 180424, ¶ 54 (providing that requiring a respondent to complete substance abuse treatment was reasonably related to remedying conditions giving rise to the minor's removal where minor was removed after a knife was pulled on respondent and there was marijuana smell in the home, even though respondent had claimed the minor's mother was responsible for the smell, because the removal was based, in part, on drug use in the home).

¶ 29 We also note that respondent did not appeal the dispositional order, which encompassed the trial court's finding that A.B. was neglected due to being exposed to drugs and which encompassed the court-ordered tasks for respondent to complete that were entered as part of the dispositional order. See *Zariyah A.*, 2017 IL App (1st) 170971, ¶ 65 (citing *In re Barion S.*, 2012 IL App (1st) 113026, ¶ 36 (the dispositional order is a final and appealable order and the proper vehicle to appeal a finding of abuse or neglect)). Nor did respondent take issue with the service plan. See 705 ILCS 405/2-23 (West 2018) (if the court finds services in a plan will not reasonably accomplish the permanency goal, the court shall enter such a finding in writing, based on evidence taken, and enter an order for a new service plan to be created and served on all parties within 45 days). Additionally, respondent has taken no issue with any specific

permanency review finding made by the trial court in this case. See 705 ILCS 405/2-28(2) (West 2018) (the trial court is required to make findings at the permanency review hearing as to whether the services in the service plan require anything that is not reasonably related to remedying a condition or conditions that gave rise or which could give rise to any finding of child abuse or neglect).

¶ 30 Here, respondent failed to complete his obligations under the service plan during the relevant nine-month period—including drug drops, counseling, and visitation. Accordingly, the trial court's finding that respondent was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act because he failed to make reasonable progress during the nine-month period of December 2017, to September 2018, was not against the manifest weight of the evidence. Because only one ground for a finding of unfitness is necessary to uphold a circuit court's finding of parental unfitness, we need not review respondent's contentions regarding the other bases of the trial court's findings of unfitness. See *Z.M.*, 2019 IL App (3d) 180424, ¶ 70 (citing *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005) (parental rights may be terminated where there is a single alleged ground for unfitness supported by the evidence)).

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Henry County is affirmed.

¶ 33 Affirmed.