2019 IL App (4th) 180604-U

NO. 4-18-0604

FILED
January 22, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re M.W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 17JA63
v.	)	
Shajuan W.,	)	Honorable
Respondent-Appellant).	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in terminating respondent's parental rights.

¶ 2 In April 2017, the State filed a petition for adjudication of wardship with respect to M.W., the minor child of respondent, Shajuan W. The trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In June 2018, the State filed an amended motion to terminate respondent's parental rights. Following a hearing in September 2018, the court found respondent unfit and determined it was in the minor's best interests that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding him unfit and (2) terminating his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2017, the State filed a petition for adjudication of wardship with respect

to M.W., born in March 2012, the minor child of respondent and Christina M. The State alleged the minor was neglected pursuant to sections 2-3(1)(a) and (1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(a), (1)(b) (West 2016)) because (1) her environment was injurious to her welfare due to her mother's drug use, (2) her environment was injurious to her welfare due to her mother's refusal to cooperate with Intact Family Services, and (3) she was not receiving the proper care and supervision necessary for her well-being in that her mother failed to abide by a safety plan. The State's petition indicated respondent resided at Vienna Correctional Center.

¶ 6 The trial court found probable cause to believe the minor was neglected and it was a matter of immediate and urgent necessity to remove M.W. from the home. The court placed M.W. in shelter care and granted temporary custody to DCFS.

¶ 7 In August 2017, the trial court found, based on Christina's stipulation, that M.W. was neglected based on an injurious environment due to Christina's refusal to cooperate with Intact Family Services. The remaining allegations in the State's petition were dismissed. Respondent's counsel requested visits with M.W., but the guardian *ad litem* objected based on her meeting with M.W. The court refused to order visits at that time.

¶ 8 In its September 2017 dispositional order, the trial court found respondent and Christina unfit, unable, or unwilling, for some reason other than financial circumstances alone, to care for, protect, train, educate, supervise, or discipline the minor and M.W.'s health, safety, and best interests would be jeopardized if she remained in her parents' custody. The court adjudicated the minor neglected, made her a ward of the court, and placed custody and guardianship with DCFS. Respondent's counsel renewed the motion to allow visits with M.W., but the guardian *ad litem* continued to object because prison visits would not be in M.W.'s best interests. It appears the court denied respondent's request for visitation.

¶ 9 In May 2018, the State filed a motion to terminate respondent's parental rights. The State alleged respondent was unfit because he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)) and (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minor within nine months after the adjudication of neglect (August 2, 2017, to May 2, 2018) (750 ILCS 50/1(D)(m)(i) (West 2016)). The State also proceeded to terminate Christina's parental rights. In June 2018, the State filed an amended motion to terminate respondent's parental rights, alleging he was unfit because he failed to make reasonable progress toward the minor's return to him within nine months after the adjudication of neglect (August 2, 2017, to May 2, 2018) (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 10 In September 2018, the trial court conducted a hearing on the State's amended motion. Laura Sanders, formerly a child-welfare specialist with Lutheran Child and Family Services (LCFS), testified she was assigned as M.W.'s caseworker in May 2017. M.W. had been taken into care due to Christina's use of illicit substances and failure to provide adequate care. Sanders said she initially had phone contact with respondent, who was in prison. His release date is March 2019. Sanders stated respondent cooperated with the integrated assessment. His service plan required him to cooperate with DCFS and LCFS, obtain a substance-abuse assessment, undergo parenting classes and counseling, and engage in domestic-violence services.

¶ 11 An October 2017 administrative case review rated respondent as unsatisfactory with regard to his services. Sanders stated respondent had not completed any of the services in his service plan and he was still in prison. Respondent was also rated unsatisfactory at an April 2018 case review because he had not completed services. Sanders noted she had discussed with respondent his ineligibility for a prison parenting program until M.W. turned six years old in

March 2018. During her entire time as caseworker, respondent did not have visitation with M.W. because the guardian *ad litem* believed visits would not be in M.W.'s best interests. When she neared the end of her tenure at LCFS in April 2018, Sanders was not close to returning M.W. to respondent because he was still incarcerated.

¶ 12 On cross-examination, Sanders testified respondent had been cooperative with DCFS and LCFS as far as communication with those agencies. However, he did not enroll in any counseling or domestic-violence services and did not obtain a substance-abuse assessment. He was ineligible to undergo parenting classes at the prison where he was incarcerated. Respondent told Sanders he was attempting to obtain a transfer to complete his services.

¶ 13 Tyler Lobmaster, an LCFS caseworker, testified he became involved in M.W.'s case in April 2018. At that time, Lobmaster talked on the phone with respondent, who stated he was attempting to get on a waiting list for parenting classes. Since that time, respondent had not made any progress with his service plan, and he remained incarcerated. Due to respondent's incarceration, Lobmaster was not close to returning M.W. to him at the end of May 2018.

¶ 14 On cross-examination, Lobmaster testified respondent had not fulfilled any of his services, although he had communicated with Lobmaster over the phone. According to Lobmaster, while M.W. had turned six years of age, respondent had not enrolled in a parenting class.

¶ 15 Respondent testified he had been in prison for 3½ years. When M.W. was brought into care, respondent was in prison. He had not visited with her while he was incarcerated. He testified he had attempted to cooperate with LCFS and DCFS by communicating with those agencies. He tried to enroll in all of the services set forth in his service plan by submitting request slips "multiple times to get into classes." He stated he had

"too much time to enroll in those classes" and had to wait until his sentence was closer to completion to do so. He also stated he could not get into parenting classes because M.W. was not old enough.

¶ 16 On cross-examination, respondent testified he was convicted of aggravated robbery in March 2015. Prior to being sent to prison, he had been in jail for "three to four months." He had regular visits with M.W. prior to his incarceration. Respondent admitted he had been unsuccessful in completing his service plan. Given his release date in March 2019, he was ineligible to attend classes at the time of the hearing.

¶ 17 The trial court noted respondent is dependent on the prison system with regard to what services he can engage in, "but that is based on consequences of behavior that he engaged in even before the minor came into care when apparently *** she was just three years old." Moreover, "just because someone is in prison and does not have *** access to services that they would have available if they were not incarcerated, particularly with regard to reasonable progress, *** there is no requirement that they be given a pass while they're in the Department of Corrections." The court noted that by May 2018, it would not have been able to place M.W. back in respondent's care, "in large part obviously because he's incarcerated, but also because he had not engaged in services during that period of time." The court stated it would give respondent "the benefit of the doubt" that his request for prison transfers constituted reasonable efforts. The court's written order found respondent unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to M.W.'s welfare and for failing to make reasonable progress.

¶ 18 At the best-interests hearing, Lobmaster testified M.W. has been living with her aunt since the opening of the case. Now six years old, M.W. has been making progress in her

placement. Lobmaster stated M.W.'s behavior "is a lot better" and "she's not acting out." Her behavioral issues have "lessened quite a bit" and she has done "very well" with counseling. Lobmaster stated M.W.'s aunt is an adoptive placement and M.W. and her aunt have a "very strong attachment." Lobmaster stated respondent has had no visits with M.W. and he has sent her no cards or letters during the entire period of his incarceration. Lobmaster did not believe there would be any harm to M.W. if respondent's parental rights were terminated because he has been absent from her life and he has not reached out to her.

¶ 19 On cross-examination, while Lobmaster noted termination of parental rights "can cause some emotional harm," he stated "it's a harm that can be overcome by services, counseling and other efforts." He also stated M.W.'s aunt indicated she was open to the idea of allowing M.W. to visit with respondent and Christina.

¶ 20 The trial court noted M.W. had "been in a stable home for quite some period of time." While the court indicated it was not holding the lack of visits by respondent against him, it did note respondent made no effort to maintain contact or a relationship with M.W. so that she knew he cared or was thinking about her. Moreover, respondent would still have to cooperate with services after he leaves prison. Given M.W.'s stable placement and the potential for it to be a permanent placement, the court found it in M.W.'s best interests that respondent's parental rights be terminated. The court also terminated Christina's parental rights. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Unfitness Findings

¶ 23 Respondent argues the trial court's findings of unfitness were against the manifest weight of the evidence. We disagree.

¶ 24 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177-78 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.' " *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

¶ 25 In the case *sub judice*, the trial court found respondent unfit for failing to make reasonable progress toward the return of the minor to him within nine months after the adjudication of neglect. The State specified the nine-month period to be August 2, 2017, to May 2, 2018.

¶ 26 "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

> "[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).

"The law does not afford a parent an unlimited period of time to make reasonable progress toward regaining custody of the children." *In re Davonte L.*, 298 Ill. App. 3d 905, 921, 699 N.E.2d 1062, 1072 (1998). Moreover, "[t]ime in prison is included in the nine-month period during which reasonable progress must be made." *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89, 19 N.E.3d 227. "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006).

¶ 27 In this case, M.W. came into care in April 2017 based on residing in an injurious environment due to her mother's refusal to cooperate with Intact Family Services. Respondent was incarcerated at that time. His service plan required him to cooperate with DCFS and LCFS, obtain a substance-abuse assessment, undergo parenting classes and counseling, and engage in domestic-violence services. Sanders rated respondent unsatisfactory in October 2017 and April 2018 because he failed to complete any services and he was still in prison. According to Sanders and Lobmaster, they were never close to returning M.W. to respondent because he continued to be incarcerated and would remain in prison until March 2019.

¶ 28 While he has been in prison for the length of this case and will remain in prison until March 2019, respondent argues he has "fulfilled the only obligation of his service plan that he was able to fulfill," he cooperated with the caseworkers, and he took it upon himself to

request a transfer to a new facility to make more services available to him. However, as the trial court found, being incarcerated does not give respondent a pass when it comes to complying with his service plan. See *In re J.L.*, 236 Ill. 2d 329, 340, 924 N.E.2d 961, 967 (2010) (stating the reasonable progress ground of unfitness does not contain an "exception for time spent in prison"). Given respondent's prison sentence and the fact he would have to complete services once released, the record reflects it is unlikely respondent would be able to parent M.W. in the near future. Thus, the court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because the grounds of unfitness are independent, we need not address the remaining ground as to a reasonable degree of interest, concern, or responsibility. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds.").

¶ 29 B. Best-Interests Finding

¶ 30 Respondent argues the trial court's finding it was in the minor's best interests for his parental rights to be terminated was against the manifest weight of the evidence. We disagree.

¶ 31 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). "[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." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004); see also *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80, 966 N.E.2d 1107 (stating once the trial court finds the parent unfit, "all considerations, including the

parent's rights, yield to the best interests of the child"). When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2016).

¶ 32 A trial court's finding that termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 33 In this case, Lobmaster testified M.W. has been living with her aunt since the opening of the case. She has made progress in her placement, done "very well" in counseling, and her behavioral issues have "lessened quite a bit." M.W. and her aunt have a "very strong attachment," and it is an adoptive placement. M.W. had no visits with respondent, and he had not sent her any cards or letters in an attempt to stay in contact with her.

¶ 34 During the best-interests hearing, the trial court indicated it considered the statutory factors. The court noted M.W. "has been in a stable home for quite some period of time" and respondent had not made any efforts to maintain contact with M.W. to let her know that "he cared and was thinking about her."

¶ 35 The evidence indicated M.W. is in a good home, her needs are being met, and she is getting the behavioral help and counseling she needs. Her aunt is willing to adopt her, which will provide her with the permanency she needs and deserves. On the other hand, respondent remains incarcerated, and no evidence indicated he would be able to provide for her upon his release. Respondent contends Lobmaster testified M.W. "would suffer emotional harm" if his parental rights are terminated. However, Lobmaster only testified termination could cause "some emotional harm" and any harm could be "overcome by services, counseling and other efforts." Given the lack of visitation or other contact between M.W. and respondent, along with the scarcity of any evidence of a relationship between them prior to his incarceration, respondent's claim M.W. would "suffer emotional harm" is dubious. Considering the evidence and the best interests of the minor, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 36 III. CONCLUSION

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

¶ 38 Affirmed.