2019 IL App (4th) 180632-U

NO. 4-18-0632

FILED
January 31, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re D.H., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Adams County
Petitioner-Appellee,	)	No. 17JA24
v.	)	
Michelle R.,	)	Honorable
Respondent-Appellant).	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Holder White and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent forfeited her argument under the Americans with Disabilities Act, and the circuit court's finding respondent was unfit under section 1(D)(m)(ii) was not against the manifest weight of the evidence.

¶ 2 In May 2018, the State filed a motion for the termination of the parental rights of respondent, Michelle R., as to her minor child, D.H. (born in February 2014). The State later filed an amended termination motion and a second amended termination motion. In back-to-back hearings in September 2018, the Adams County circuit court found respondent unfit and concluded it was in D.H.'s best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting (1) her rights under the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101 to 12213 (2012)) were violated and (2) the circuit court erred by finding her unfit. We affirm.

¶ 4 I. BACKGROUND

¶ 5 D. H.'s father is Deshawn H., who is not a party to this appeal. In March 2017, the State filed a petition for the adjudication of wardship as to D.H. The State's petition alleged D.H. was 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 2016)), in that her environment was injurious to her welfare when she resided with respondent because (1) D.H. was present for a physical fight between respondent and her partner, N.P., which resulted in the State charging respondent with aggravated domestic battery and domestic battery (Adams County case No. 17-CF-265); (2) one of the minor children in the residence was eating ice cream from a garbage can; (3) the home was in poor condition with clutter and garbage throughout; and (4) respondent had two prior indicated reports with the Department of Children and Family Services (DCFS). The State later withdrew the allegations regarding the condition of the house and the child eating from a garbage can. At the September 2017 adjudication hearing, the circuit court found the State had proved by a preponderance of the evidence the remaining allegations in the wardship petition. After a November 2017 dispositional hearing, the court entered a dispositional order (1) finding respondent and Deshawn were unfit, unable, or unwilling to care for, protect, train, educate, supervise, or discipline D.H.; (2) making D.H. a ward of the court; and (3) placing her custody and guardianship with DCFS. In the dispositional order, the court also suspended respondent's visitation with D.H. pending further order of the court.

¶ 6 In May 2018, the State filed a motion to terminate respondent's and Deshawn's parental rights to D.H. The motion asserted respondent and Deshawn were both unfit because they failed to maintain a reasonable degree of interest, concern, or responsibility as to D.H.'s welfare (750 ILCS 50/1(D)(b) (West Supp. 2017)). In August 2018, the State filed an amended motion for termination of parental rights, which added an additional allegation respondent was

unfit for failing to make reasonable progress toward D.H.'s return during any nine-month period after the neglect adjudication. That same month, the State filed a second amended motion for termination of parental rights, raising the same two allegations of unfitness against respondent. The State also filed a notice that declared the nine-month periods the termination petitions were referring to were (1) September 28, 2017, to June 28, 2018, and (2) December 10, 2017, to September 10, 2018.

¶ 7 On September 10, 2018, the circuit court commenced the fitness hearing. At the State's request, the court took judicial notice of respondent's conviction and probation sentence for domestic battery, a Class A misdemeanor, in Adams County case No. 17-CF-265, as well as the subsequent revocation of probation and resentence in that case. The court also took judicial notice of the pleadings and its prior orders in this case. The State presented the testimony of (1) Jan Frageman, who was qualified as an expert in the field of licensed clinical counseling, and (2) Alexander Campbell, who was a child welfare specialist. The State also presented, *inter alia*, the service plans in this case with the following dates: (1) April 30, 2017; (2) September 4, 2017; and (3) March 26, 2018. Respondent did not provide any evidence.

¶ 8 Frageman testified respondent was a client of hers. Respondent came to Frageman's office and scheduled her intake appointment. On January 29, 2018, Frageman began a mental-health assessment of respondent. Respondent reported she had never had any sort of mental-health issues in the past. The assessment was done in a couple sessions. Frageman diagnosed respondent with an adjustment disorder with depression. Frageman explained an adjustment disorder is where a person is struggling to adjust to a change in the person's life. In respondent's case, it was not having D.H. in her care. Frageman had difficulty formulating a diagnosis for respondent because respondent did not feel she had any problems or mental-health

issues. Frageman recommended individual therapy with appointments every week to two weeks. Respondent scheduled 17 appointments with Frageman but missed 8 of the appointments. Respondent was also at least a half an hour late to another five appointments. Frageman discussed with respondent the importance of making the appointments and offered to help respondent in getting to her appointments. While a person could be terminated from counseling for failing to attend three appointments, Frageman had not terminated respondent because she was trying to help her be compliant with her service plan.

¶ 9 The last appointment respondent attended was August 29, 2018. During that appointment, Frageman initiated a new mental-health assessment of respondent. Respondent again indicated she was only coming to the appointments to get her daughter back and did not feel like she needed any services. Frageman did not complete the mental-health assessment during that appointment. Frageman rated respondent's progress in therapy as poor because respondent was not forthcoming with information and did not feel like she needed to be there. If respondent was to begin fully participating in therapy, Frageman stated respondent would need at least three to six months more of therapy. If respondent continued at her current rate, Frageman would unsuccessfully discharge respondent from therapy.

¶ 10 Respondent told Frageman she had graduated from high school. Respondent also reported being in special education classes in high school. Frageman asked respondent what kind of problems she had and respondent did not share any. Moreover, respondent did not request any accommodations for a learning disability, even after Frageman asked what she could do to help respondent. Frageman testified her other clients were more forthcoming with their needs. Frageman also testified people with depression sometimes struggle with motivation.

¶ 11 Campbell testified his job was to aid in the reunification of families and D.H. was

on his caseload. He received D.H.'s case after the police witnessed respondent and N.P. fighting in front of 11 children. Three service plans had been drafted in D.H.'s case. The first plan was dated April 30, 2017, and set forth the following tasks for respondent: "[c]ooperation, domestic violence, mental health, parenting and visitation." Campbell rated the April 2017 service plan on September 4, 2017. Campbell rated respondent unsatisfactory on all of her tasks and rated her unsatisfactory for overall progress toward the goal of having D.H. returned home in 12 months. Campbell explained respondent was not attending visits and was not engaged in any services. A new service plan was drafted in September 2017 with no change to any of respondent's tasks.

¶ 12 In March 2018, Campbell rated respondent on the September 2017 service plan and again gave her all unsatisfactory ratings. Campbell noted respondent was not having visitation with D.H. and she had not made progress in working toward reunification. Moreover, respondent had not cooperated with in-home visits and had not attended monthly meetings. Campbell further testified respondent had not started parenting classes and was not involved in mental-health services. Campbell noted respondent's visitation had been suspended by the court because respondent was not participating in visitation and services.

¶ 13 The March 2018 service plan had the same tasks as the first two, and Campbell again rated respondent unsatisfactory on all of her tasks. Respondent was in parenting classes but had not provided any verification of her completion. Campbell noted respondent did not have visitation with D.H. and had not made progress toward reunification.

¶ 14 Campbell also testified respondent reported at an October 4, 2017, family team meeting she was ready to engage in services. Respondent provided a home address for a residence, at which Campbell had been unable to contact respondent both in person and via mail in the past. Respondent insisted it was her address. Campbell was unable to contact respondent

in November and December. In January 2018, he received a voicemail from respondent requesting a mental-health-assessment referral. Respondent did not answer when he returned her call. At a March 2018 team meeting, respondent reported she was attending counseling and participating in a domestic-violence program. Respondent also stated she was working but was homeless. Campbell gave respondent the date for the April 2018 administrative case review, but respondent failed to attend. In May 2018, respondent called Campbell to see how D.H. was doing and to provide a contact number. Respondent did attend the May 2018 team meeting. In June 2018, respondent called Campbell to set up a meeting about visitation. Campbell set up an in-house meeting, but respondent was not at home when he arrived for the meeting.

¶ 15 Campbell did acknowledge that, at their first meeting, respondent requested D.H. be placed with respondent's aunt and provided the aunt's information. Campbell was aware respondent stated during therapy that she was in special education classes when she was in school. Respondent never told Campbell about being in special education classes and never completed the integrated assessment, which would have yielded such information. Respondent never requested any accommodations from Campbell. Campbell noted he explained the service plans to her and asked if she had any questions. Respondent did complete parenting classes in March 2018. However, she still received an unsatisfactory rating for parenting on her service plan because the in-home portion of the classes did not occur at respondent's home and no observations had been made of respondent's interaction with D.H. Additionally, Campbell testified the parenting classes did involve reading and writing.

¶ 16 After hearing the parties' arguments, the circuit court found respondent unfit on both grounds alleged in the second amended termination motion. The court noted it had suspended respondent's visitation with D.H. on November 9, 2017, and no requests had been

made seeking to have visitation reinstated. The court also noted that, while evidence was presented respondent was in special education classes while in high school, no evidence was presented she did have a type of learning disability. Moreover, the court pointed out respondent was able to read and write sufficiently to complete the parenting classes.

¶ 17 After finding respondent and Deshawn unfit, the circuit court held the best-interests hearing. The State again called Campbell to testify at the best-interests hearing. Campbell testified D.H. came into care in March 2017 at two and half years old. She had been living in the same foster home since coming into care. D.H. was now four years old, and her foster parents desired to adopt her. Campbell had observed positive interactions between D.H. and her foster parents. At the conclusion of the best-interests hearing, the circuit court entered a written order finding it was in D.H.'s best interests to terminate respondent's and Deshawn's parental rights.

¶ 18 On September 11, 2018, respondent filed a timely notice of appeal from the termination of her parental rights 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) (eff. Nov. 1, 2017).

¶ 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 Supp. 2017)). *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 interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). In this case, respondent does not challenge the circuit court's best-interests finding.

¶ 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). 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 A. ADA

¶ 23 Before addressing respondent's challenge to the circuit court's unfitness finding, we first address the claim respondent's rights under the ADA were violated when the State failed to provide reasonable accommodations to her in this case. Respondent raises her claim under section 12132 of the ADA (42 U.S.C. § 12132 (2012)), which provides "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." The State contends the ADA does not directly apply, respondent had to pursue her ADA claim through a grievance procedure, and respondent fails to

establish no accommodations were made in her case. Respondent did not file a reply brief addressing the State's contentions.

¶ 24 As instructed by our supreme court, the two most important tasks of an appellate court panel when beginning to review a case are to ascertain whether it has jurisdiction of the appeal and "to determine which issue or issues, if any, have been forfeited." *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). While respondent argued in the circuit court Campbell and Frageman failed to accommodate her learning disability, respondent did not raise an argument the State's services were noncompliant with the ADA. Issues not raised in the circuit court are forfeited. *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14, 43 N.E.3d 1005. The purpose of the forfeiture rule is to encourage parties to raise issues in the circuit court, ensuring that both the circuit court is given an opportunity to correct any errors prior to an appeal and the party does not obtain a reversal through his or her own inaction. *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 14. Accordingly, we reject respondent's argument on the basis of forfeiture. See *In re Jeanette L.*, 2017 IL App (1st) 161944, ¶ 16, 69 N.E.3d 918.

¶ 25 B. Fitness Finding

¶ 26 Respondent also contends the circuit court erred by finding her unfit. The State disagrees.

¶ 27 The circuit court found respondent unfit under sections 1(D)(b) and 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (m)(ii) (West Supp. 2017)). We note respondent only cites authority addressing section 1(D)(b) of the Adoption Act. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (failure to cite authority results in forfeiture of the issue). Regardless, we will address section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West Supp. 2017)),

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) (quoti*ng 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).

¶ 28 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 September 28, 2017, to June 28, 2018.

¶ 29 Here, respondent was rated unsatisfactory on her service plans that covered the relevant period. Respondent was also homeless for part of the relevant period. Moreover, the circuit court had suspended visitation in November 2017 due to respondent's lack of cooperation with the caseworker and failure to fully engage in services. Thus, respondent did not have visitation with D.H. for a majority of the nine-month period. As to respondent's contention she did not receive accommodations for her disability, the evidence at the fitness hearing was respondent disclosed to Frageman she was in special education classes in high school. Respondent never disclosed she had a specific learning disability or other disability. No evidence was presented respondent did not understand what she needed to do to be reunited with D.H. or needed special assistance to complete her tasks. Campbell testified the parenting classes required reading and writing. Even if respondent established a disability, Frageman testified she did not follow normal protocol and kept respondent as a client despite respondent's numerous absences. Frageman also offered to help respondent make her appointments. Thus, we agree with the State Frageman made accommodations for respondent. A review of the evidence at the fitness hearing shows respondent was not close to having D.H. returned to her during the

relevant nine-month period. Accordingly, we find 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.

¶ 30 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 Supp. 2017)), we need not review the other basis 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).

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the Adams County circuit court's judgment.

¶ 33 Affirmed.