2019 IL App (4th) 180721-U

NO. 4-18-0721

FILED
March 19, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re J.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 16JA126
v.	)	
Charley S.,	)	The Honorable
Respondent-Appellant).	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the judgment of the trial court that terminated respondent's parental rights because the trial court's findings were not against the manifest weight of the evidence.

¶ 2 Respondent, Charley S., is the mother of J.S. (born May 2016). In October 2018, the trial court found respondent was an unfit parent and found termination of respondent's parental rights would be in the minor's best interests. Respondent appeals, arguing that the trial court's (1) fitness determination and (2) best-interest determination were against the manifest weight of the evidence. We disagree and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Procedural History

¶ 5 In October 2016, the State filed a petition for adjudication of wardship, alleging J.S. was a neglected or abused minor as defined by the Juvenile Court Act (Act) in that his envi-

ronment was injurious to his health and welfare as evidenced by (1) domestic violence between his parents and (2) the minor's sibling being adjudicated neglected and respondent's failure to make reasonable progress towards having that child returned to her care. 705 ILCS 405/2-3(1)(b) (West 2016). In January 2017, following a shelter care hearing, the trial court entered an order placing temporary custody and guardianship with the guardianship administrator of the Department of Children and Family Services (DCFS). That same month, the State filed a supplemental petition alleging J.S. was neglected in that his environment was injurious to his welfare as evidenced by respondent's failure to cooperate with intact family services.

¶ 6 In June 2017, the trial court conducted an adjudicatory hearing. The court, after considering the evidence presented, found J.S. was a neglected and abused minor.

¶ 7 In July 2017, the trial court conducted a dispositional hearing. In August 2017, the court entered a written order in which it found that it was in the best interest of J.S. and the public that J.S. be made a ward of the court and adjudicated a neglected minor. The court further found respondent unfit and unable for reasons other than financial circumstances alone to care for, protect, train, and discipline the minor, and it would be contrary to the minor's health, safety, and best interest to be in her custody. The court placed guardianship and custody with the guardianship administrator of DCFS.

¶ 8 B. The Termination Hearing

¶ 9 In June 2018, the State filed a motion for termination of respondent's parental rights. The State alleged respondent was an unfit parent because she (1) failed to make reasonable efforts to correct the conditions which were the bases for the removal of J.S. within the nine-month period between June 2017 and March 2018, (2) failed to make reasonable progress toward the return of J.S. within the nine-month period between June 2017 and March 2018, and

(3) failed to maintain a reasonable degree of interest, concern, or responsibility as to J.S.'s welfare. 750 ILCS 50/1(D)(b), (m)(i)(ii) (West Supp. 2017). Over two days in October 2018, the trial court conducted a bifurcated termination hearing.

¶ 10 1. *The Fitness Proceedings*

¶ 11 a. The State's Case

¶ 12 During the parental fitness portion of the hearing, the State first presented the testimony of Tiffany Clow, a caseworker with Rutledge Youth Foundation (Rutledge) assigned to the case between February 2017 and July 2017. Clow testified that the initial service plan goals consisted of (1) mental health services (including counseling and psychiatric treatment), (2) substance abuse services, (3) anger management, (4) domestic violence services, and (5) parenting education. Prior to March 2017, Clow provided referrals to respondent for all of these services except for anger management. Clow explained that respondent was concerned she would not be able to engage in all of the required services at once because she was working full time.

¶ 13 Clow further testified that in June 2017, respondent was present for an administrative case review at DCFS. During the review, respondent became verbally aggressive and threatened the staff. Respondent was asked to leave, and the police were called to escort her off the premises. As of June 2017, respondent had started counseling, but missed several scheduled appointments. Additionally, she had attempted to engage in anger management services, but the provider refused to conduct an evaluation because respondent did not have a referral. Upon learning this, Clow provided the proper referral but did not know if respondent had completed the evaluation. Regarding substance abuse treatment, respondent had completed an intensive outpatient treatment program but failed to attend the less intensive treatment program which was

required. In July 2017, respondent tested positive for synthetic marijuana and cocaine. Respondent had completed parenting classes in 2016 for a separate case involving her other child and therefore was not required to complete parenting classes in the instant case.

¶ 14 The State next called Shaun Wilkinson, a Rutledge caseworker who was the current caseworker and had been handling the case since November 2017. Wilkinson testified that respondent was still required to complete the same services set forth in the initial service plan. However, due to respondent's angry outbursts during visitations and with staff, respondent was also required to retake parenting classes. By June 2018, respondent had begun engaging in many services, but continued to have problems attending and cooperating with staff. Respondent would schedule and sometimes complete initial assessments but would then fail to attend and complete services. In some cases, respondent's angry outbursts during services caused providers to remove her from services. Respondent also frequently lost her temper with Rutledge staff and threatened them. Additionally, respondent failed to take all but three drug tests between December 2017 and June 2018, and those three tests all came back positive for synthetic marijuana.

¶ 15 Wilkinson acknowledged that respondent had recently made progress. Specifically, respondent completed parenting classes in April 2018, completed anger management in May 2018, reengaged in outpatient drug treatment in July 2018 with a completion date of November 2018, and completed domestic violence treatment in October 2018. Further, respondent had not threatened staff since June 2018, was not raising her voice as often, and appeared to be applying the skills she had learned in anger management. She had not had an emotional outburst during a visitation since May 2018.

¶ 16 Wilkinson agreed that respondent always acted appropriately towards J.S. during visitations and showed him affection. Wilkinson also agreed that respondent had attended every

drug test since June 2018, but reported she tested positive for synthetic marijuana each time. Respondent expressed surprise at the results and maintained that she had been sober. Wilkinson was aware that respondent was also drug tested as a condition of court-ordered probation in a prior criminal case, and those tests came back negative. Respondent told Wilkinson in September 2018 that she believed the false positives were related to her birth control medication, which was administered by a shot. Wilkinson stated he attempted to contact her primary care physician and probation to get further information on the discrepancies but had so far been unsuccessful.

¶ 17 b. Respondent's Case

¶ 18 Ben Rasche, respondent's therapist at Rutledge, testified on her behalf. Rasche explained that he began seeing respondent in January 2018. For the first few months, respondent focused on her traumatic past, anger issues, and drug addiction. Respondent used to blame Rutledge for taking J.S. away from her. More recently, however, Rasche noticed a significant change in respondent. She reported that her psychiatrist changed her medication in June 2018 and was now taking prescriptions for depression and anxiety. Respondent was less combative, accepted responsibility for her bad choices, and reported being sober. Rasche noted that the permanency goal for J.S. changed from return home to substitute care pending court determination of parental rights in June 2018. In Rasche's opinion, it would have been easy for respondent to give up, but instead she had worked harder to make progress in therapy and her services.

¶ 19 Respondent testified on her own behalf. Respondent admitted she had difficulty starting and following through with services prior to March 2018. She also admitted to the angry outbursts and threatening statements against staff. Respondent attributed a lot of her struggles to her drug use, unemployment, poor time management, and scheduling issues.

¶ 20 Since January 2018, however, respondent stated she had made significant pro-

gress, completing all of her services, although she completed many of her services after March 2018. Respondent attributed her success to sobriety, counseling, and her new psychiatric medication. Respondent stated she was now applying the skills she had learned in her services, was able to effectively manage her time and prioritize services, and had not used drugs since April 2018. Respondent maintained that all of her other drug tests, both with probation and her primary care physician, came back negative and that she had attempted to share these results with Wilkinson. In the weeks prior to the hearing, respondent had been trying to determine what would cause the positive results and believed it was related to her birth control shot. She explained that she had had an adverse reaction to a different form of birth control, got pregnant with J.S. while on a birth control patch, and had struggled to take oral medications consistently in the past. Respondent, therefore, decided that the shot she was taking was the best form of treatment for her.

¶ 21 c. The Trial Court's Findings

¶ 22 The trial court found that the State had proved all three allegations of unfitness listed in the petition—that is, that respondent (1) failed to make reasonable progress, (2) failed to make reasonable efforts, and (3) failed to maintain a reasonable degree of interest—by clear and convincing evidence. Regarding reasonable progress, the court explained that respondent had not completed her services during the relevant time period of June 2017 to March 2018, admitted to drug use and that her use prevented her from making progress, and that she frequently threatened staff all the way up until June 2018. As to reasonable efforts, the court stated that respondent did not have any cognitive or physical impairments that prevented her from engaging in services; instead, it was simply respondent's poor choices. The court also concluded respondent did not maintain a reasonable degree of interest or concern because the case had been pending since January 2017 but respondent had made any significant effort or progress only within the three

months prior to the October 2018 hearing.

¶ 23 2. *The Best-Interests Proceedings*

¶ 24 Immediately following the trial court's fitness finding, the court conducted proceedings regarding whether it was in J.S.'s best interests to terminate respondent's parental rights. Wilkinson testified that J.S. lived with his foster parents and older brother and had formed a strong bond with both. Wilkinson noted that the foster parents were meeting all of J.S.'s needs, he was a healthy two-year-old child, and he was developing normally. J.S. had supervised visitation with respondent for two hours once per month. He cried and stated "no go" before each visitation, but enjoyed his visits and had the same response (crying and saying "no go") when his visitations with respondent ended.

¶ 25 Wilkinson agreed that respondent had completed all of her services and was applying the skills she had learned, but he was concerned that respondent would not continue to apply them because she had trouble doing so in the past. He also agreed that respondent's behavior with J.S. was always appropriate and there were currently no concerns with her parenting ability aside from respondent's testing positive for synthetic marijuana. Wilkinson acknowledged discrepancies existed between respondent's drug tests. He thought that if respondent could prove previous results were false positives or started receiving negative results, he could recommend increased visitation. Wilkinson opined that if everything continued perfectly with no setbacks, J.S. could be returned home within three to six months.

¶ 26 Nonetheless, Wilkinson believed it was in J.S.'s best interest for respondent's parental rights to be terminated. J.S. called his foster parents "momma" and "dada," never mentioned respondent between visits, and frequently asked to speak with his foster mother during car rides to and from visitations. Moreover, the foster parents expressed a desire to adopt both J.S.

and his brother. Although Wilkinson agreed that J.S. could visit his brother if he were returned to respondent, he noted that respondent's parental rights had been terminated as to his brother and it was entirely up to his current foster parents if visitation could occur. Wilkinson maintained that J.S.'s bond with his foster parents and brother were very strong and breaking that bond would be detrimental while terminating respondent's rights would have a minimal impact.

¶ 27 Respondent did not present any evidence.

¶ 28 The trial court found that it was in J.S.'s best interests to terminate respondent's parental rights. The court explained that J.S. was bonded with his foster parents, they were taking care of him and providing for his needs every day, and he had spent the majority of his life with them. Further, J.S. spent more time with the case aide than respondent. Accordingly, his sense of familiarity and security, continuity of affection, need for attachment, and least restrictive placement all weighed in favor of terminating parental rights. Regarding the drug tests, the court expressed frustration with respondent's failure to clear up the confusion. The court stated that respondent should have changed her birth control if she believed that was the cause and did not have sympathy for her excuse of not wanting to take "one more pill" or respondent could have simply stopping taking it all together because respondent was not "in a relationship with anybody." The court acknowledged that respondent had made significant positive changes since the case was opened and hoped she continued on that path. The court also thought that had J.S. been "quite a bit older" or spent more time with respondent before the case was opened the outcome may have been different. However, because the focus of the hearing was on the best interests of J.S. and not respondent, the court found it was in his best interest to terminate her parental rights.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Respondent appeals, arguing that the trial court's (1) fitness determination and (2) best-interest determination were against the manifest weight of the evidence. We disagree and affirm the trial court's judgment.

¶ 32 A. The Fitness Determination

¶ 33 Respondent argues the trial court's findings that the State proved all three grounds of unfitness by clear and convincing evidence were against the manifest weight of the evidence. The State responds that all three of the trial court's findings were proper. It is well settled that "[a]s 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." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003). Based on our review of the record, we conclude that the trial court's finding that respondent failed to make reasonable progress within the applicable nine-month period was not against the manifest weight of the evidence. Accordingly, we discuss only that finding.

¶ 34 1. *The Standard of Review*

¶ 35 A determination of parental unfitness involves factual findings and credibility determinations 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). A trial court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001). A decision is against the manifest weight of the evidence when the opposite conclusion is clearly the proper result. *In re Nylani M.*, 2016 IL App (1st) 152262, ¶ 48, 51 N.E.3d 1067.

¶ 36 2. *Reasonable Progress*

¶ 37 The State must prove unfitness as defined in section 1(D) of the Adoption Act by

clear and convincing evidence. 750 ILCS 50/1(D) (West 2016); *In re D.D.*, 196 Ill. 2d at 417. Section 1(D)(m)(ii) of the Adoption Act defines an unfit person as a parent who fails to make "reasonable progress toward the return of the child" during any nine-month period following an adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(ii) (West 2016). The Illinois Supreme Court has held that "the 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 ***." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001); see also *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17, 83 N.E.3d 485. Likewise, this court has defined "reasonable progress" as follows:

> " 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that 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. 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).

¶ 38 3. *The Trial Court's Finding in This Case*

¶ 39 Here, the relevant nine-month period was June 2017 to March 2018. The State presented extensive evidence that respondent, at best, merely began to engage in her required services prior to March 2018. Apparently, respondent had a pattern of scheduling an assessment

or attending one or two classes before completely discontinuing the services for months at a time, sometimes because her angry outbursts resulted in providers barring her from their services. Further, respondent admitted she did not complete any of the necessary services prior to March 2018 and that her drug use, unemployment, and poor time management prevented her from consistently engaging in services. Respondent admitted she threatened staff, had outbursts of anger that resulted in decreased visitation, and continued to use drugs until April 2018. Although respondent presented evidence that she had completed all of her required services prior to the fitness hearing and that she was implementing the skills she had learned, the trial court found—and the record demonstrates—that this progress did not begin until after June 2018, well outside of the relevant nine-month period. Accordingly, we conclude the trial court's finding that respondent failed to make reasonable progress toward the return of J.S. was not against the manifest weight of the evidence.

¶ 40 B. The Best-Interests Determination

¶ 41 Respondent argues the trial court's best-interest determination was against the manifest weight of the evidence. Specifically, respondent contends that she had completed all of her services by the time of the hearing, was applying the skills she had learned in everyday life, and was ready, willing, and able to meeting J.S.'s needs. Critically, respondent asserts that Wilkinson agreed respondent had made significant changes and believed J.S. could have been returned home within three to six months if respondent passed her drug tests. Respondent also argues that the failed drug tests were inconsistent with other evidence presented, could have been caused by respondent's birth control, and merited further investigation.

¶ 42 The State responds that J.S. had spent the majority of his life in foster care and had developed a strong bond with his foster parents and older brother. Further, the trial court

specifically found J.S.'s sense of familiarity, security, love, attachment, and continuity of affection all favored termination of respondent's parental rights and remaining with the foster parents was the least-disruptive placement alternative. The State also asserts that respondent's claims that the drug tests were false positives were unsubstantiated and rejected by the trial court. Irrespective of the drug tests, the State emphasizes that the focus of the best-interest determination is on the child, not the parent, and the statutory factors weighed in favor of termination.

¶ 43 1. *The Applicable Law and Standard of Review*

¶ 44 At the best-interest stage of a termination proceeding, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights 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). In reaching a best-interest determination, the trial court must consider, within the context of the child's age and developmental needs, the following factors:

> "(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." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006); see also 705 ILCS 405/1-3(4.05) (West 2016).

¶ 45 A reviewing court affords great deference to a trial court's best-interest finding

because the trial court is in the superior position to view the witnesses and judge their credibility. *In re Jay. H.*, 395 Ill. App. 3d at 1070. An appellate court "will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Id.* at 1071. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the trial court should have reached the opposite result. *Id.*

¶ 46 2. *This Case*

¶ 47 Wilkinson testified that J.S. had a strong bond with his brother and his foster parents, who had expressed a willingness to adopt both of them. Wilkinson also explained his belief that breaking that bond would be detrimental to J.S., while terminating respondent's parental rights would likely result in little change because J.S. only saw respondent once per month for two hours. J.S. frequently asked to speak with his foster mother during car rides to and from visitations and did not express a similar interest in respondent. In short, J.S. was a normal two-year-old child and his foster parents had been meeting his needs on a daily basis for over half of his life.

¶ 48 Further, although respondent had made significant progress recently, Wilkinson was still concerned that she would not continue to apply the skills she had learned consistently in the future given her prior history of emotional outbursts during visitation. Wilkinson also acknowledged there was some disagreement concerning whether respondent's failed drug tests were false positives but noted that each positive result was analyzed a second time to double check the results. Even assuming respondent passed all her drug tests and there were no setbacks, Wilkinson estimated it would take three to six months of increased visitation before J.S. could be returned home. Given this context, we conclude the trial court's finding that it was in J.S.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evi-

dence.

¶ 49 We are not without sympathy for respondent. As noted by her therapist, respondent could have easily given up after J.S.'s permanency goal was changed from return home to substitute care in June 2018. Instead, respondent worked even harder to complete her services, accept responsibility for her actions, and apply what she had learned in her everyday life. Significantly, respondent got psychiatric treatment, began consistently taking medication and attending therapy, and consistently engaged in outpatient treatment for her drug use. The witnesses, attorneys, and even the trial court all agreed that respondent had changed significantly as a person and for the better. Respondent herself noted that since getting sober and regularly taking her psychiatric medication she had decreased depression and anxiety, had more energy, was generally healthier, and was better able to appropriately respond to her emotions. Although it was not enough to change the outcome in this case, respondent's actions are commendable, and we join the trial court in expressing our sincere hope that she will continue in this positive change of her behavior, seek treatment, and apply the skills she has learned.

¶ 50 III. CONCLUSION

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

¶ 52 Affirmed.