2019 IL App (4th) 180730-U

NO. 4-18-0730

FILED
April 2, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Ke.A. and Ky.A., Minors,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 14JA72
v.	)	
Darrell A.,	)	Honorable
Respondent-Appellant).	)	Brett N. Olmstead,
		Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in finding respondent father unfit.

(2) The trial court did not err in terminating respondent father's parental rights.

¶ 2 Respondent father, Darrell A., appeals the orders finding him an unfit parent and terminating his parental rights to Ke.A. (born May 7, 2006) and Ky.A. (born August 25, 2008). Respondent argues the State's evidence as to his progress toward his children's return lacked specificity and was insufficient to prove he failed to make reasonable progress in the relevant nine-month period. Respondent further contends the court's decision to terminate his parental rights is against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Kristy W. are the biological parents of Ki.A. (born September 28,

2001), Ke.A., and Ky.A. Kristy is also the biological mother of M.W. (born April 30, 1998). Kristy, M.W., and Ki.A. are not parties to this appeal.

¶ 5 In October 2014, the State filed a two-count supplemental petition for an adjudication of neglect on behalf of M.W., Ki.A., Ke.A., and Ky.A. In count I, the State alleged Ki.A., Ke.A., and Ky.A. were neglected in that they resided in an environment injurious to their welfare when they resided with respondent and Kristy, as that environment exposed the children to domestic violence (705 ILCS 405/2-3(1)(b) (West 2014)). The count II allegations applied to M.W.

¶ 6 At the December 2014 adjudicatory hearing, respondent stipulated to the allegations in count 1. The trial court heard evidence with respect to the allegations against Kristy. The court made the following findings of fact. A deputy, on November 16, 2003, responded to a call of domestic battery. He met with Kristy at the hospital. Respondent battered Kristy in a vehicle. Kristy struck him as well. An accident occurred, and respondent left the scene. On August 18, 2005, the same deputy was dispatched for a domestic-battery incident. At the scene of that incident, Kristy reported respondent struck her multiple times and damaged property. One day later, a sergeant was dispatched for a domestic dispute reported by a child. Another incident was reported on August 30, 2007. Respondent had been drinking and battered Kristy. He pushed her into a wall and struck her in the stomach. On July 25, 2014, a Mahomet police officer spoke to Kristy after a domestic-violence incident in a Walgreen's parking lot. Kristy reported respondent pulled her from her vehicle and punched her multiple times. Respondent also choked Kristy until she lost consciousness. The officer observed a large "goose egg" on the back of her head. Another officer went to respondent and Kristy's residence, where

respondent was with the children. Respondent was arrested.

¶ 7 The trial court concluded the children were neglected. After the dispositional hearing, the court found Kristy fit, able, and willing to provide for the children and ordered custody of the children remain with her. The court placed guardianship with the Department of Children and Family Services (DCFS). The court found respondent unfit and unable to care for the children. The court concluded respondent had a history of domestic violence with Kristy and a history of substance abuse.

¶ 8 On April 18, 2018, the State filed a motion seeking a finding of unfitness and the termination of the parental rights of Kristy and respondent to Ke.A. and Ky.A. The motion contains one count of parental unfitness, alleging both parents were unfit in that they failed to make reasonable progress toward the return of Ke.A. and Ky.A. during any nine-month period following the neglect adjudication, April 16, 2017, until January 16, 2018 (750 ILCS 50/1(D)(m)(iii) (West 2014)).

¶ 9 Beginning in June 2018, the trial court held a hearing on the State's allegation of parental unfitness.

¶ 10 The State's first witness was Carolyn Johnson, a DCFS caseworker. Johnson testified she was assigned to the children's case in April 2014 and she was the caseworker over the period of April 16, 2017, to November or December 2017. Respondent was required to complete domestic-violence treatment, which he did shortly after Johnson received the case. Additional domestic-violence services were necessary after "things started developing." Respondent was required to participate in drug screens every week and to attend an assessment. When asked if he was supposed to attend counseling, Johnson stated they had discussed that "but

because we had trouble with contact and lack thereof *** I think that we were attempting to get him in the first services first and then integrate counseling later ***." Respondent was required to maintain consistent employment, stable housing, and contact with DCFS. When asked if respondent had stable housing during the time Johnson had the case, Johnson testified because of respondent's lack of involvement, Johnson could not assess stable housing.

¶ 11 Johnson testified respondent, after completing the first round of domestic-violence treatment, "just kind of fell off—fell off the—the rocker." Respondent and Kristy had more issues of domestic violence after completing the domestic-violence program. Respondent was again referred to counseling. Respondent was supposed to make the call to Cognition Works to set the appointments. In the period of April 2017 until November or December 2017, respondent had not completed the second referral. In that same period, respondent was living with Kristy.

¶ 12 Johnson reported respondent participated in "[v]ery few" drug drops. At the beginning of Johnson's involvement in the case, she would call him and tell him to go to the screening. At some point, around May 2017, it became respondent's responsibility to call daily to see if he had to participate in a drop. Respondent had been referred to Prairie Center for a substance-abuse assessment around April and May of 2017. Respondent had some scheduling issues. Johnson did not know whether respondent completed the assessment.

¶ 13 In the time period beginning April 16, 2017, through November or December 2017, Johnson initially testified she did not have much contact "at all" with respondent. The following discussion occurred:

"Q. Okay[.] What kind of contact information did you have

for [respondent]?

A. Can I correct that? So[,] you[']re asking me from April until I finished the case?

Q. Right[.]

A. Okay[,] so I[']ll correct that[.]

Q. Okay[.]

A. There was a time frame where he was a missing man[,] and there was absolutely no contact whatsoever[.] But towards the end[,] and yeah[,] I mean he pretty much stepped up[.] [H]e would seek me out[.] [H]e would call me[.] [Y]es[,] I—I stand corrected on that[.]

Q. Okay[.] What time period was he missing?

A. Right before the kids got taken and thereafter a bit. It took awhile for him to—to[,] I guess[,] face what he was needing to face[,] and he finally came forward and came to court."

¶ 14 On cross-examination, Johnson testified custody was removed from Kristy in May 2017. Extended visitation ended in July 2017. The children were removed after Johnson made an unscheduled visit to Kristy's residence and found respondent mowing the yard. This was during the same time period Kristy was telling Johnson she did not know where respondent was. Johnson also testified Kristy reported two instances of domestic violence that occurred after the decision to remove the children from the home. Describing one of the incidents, Johnson testified Kristy was hysterically crying. She had run to Florida, and she wanted to inform

Johnson of the domestic incident. Johnson stated the two incidents gelled together, but she recalled Kristy reporting she had been choked. At this time, despite having been referred for domestic-violence classes, respondent had not been attending treatment. A court report filed by Kristy on April 21, 2017, indicates respondent had not visited his children for over a year. He was continuing to refuse to meet with her. Johnson testified Ke.A. and Ky.A. were court-ordered to attend counseling. While in Kristy's custody and through the extended visits, the children did not attend counseling on a regular basis.

¶ 15 According to Johnson, she authored a report filed on May 12, 2017. As of that date, she still had no contact with respondent. As of August 18, 2017, when Johnson filed her report, she had no contact with respondent. Johnson testified contact with respondent improved after the children were finally removed from Kristy's home. Visits had to be scheduled, and respondent attended those visits. His cooperation in other matters improved as well.

¶ 16 On redirect examination, Johnson testified respondent was again referred to Cognition Works for domestic-violence treatment after the incident Kristy reported in 2017. Respondent did not complete treatment. The two 2017 incidents of domestic violence by respondent occurred between April 27, 2017, and November or December 2017. The incident where she found respondent mowing the lawn at Kristy's residence occurred in the time period of April 2017 until she left the case. When she pulled up to Kristy's residence and saw respondent, respondent ran. Johnson followed him and called to him, but he ignored her.

¶ 17 Debbie Nelson, the director at Cognition Works, testified she performed an intake assessment on respondent on January 31, 2018. At that assessment, respondent denied any history of violence. He had no response when asked about Kristy's injuries that occurred during

their confrontations. Respondent blamed his arrests on drinking and neighbors calling the police due to their arguing. Respondent was scheduled to begin the partner-abuse intervention program on February 7, 2018.

¶ 18 Grace Mitchell, an employee with the Family Advocacy Center in Champaign County (FACC), testified she received a referral for counseling, domestic violence, and parenting for both Kristy and respondent in September 2017. The parents' intake assessment occurred in November 2017. Mitchell testified FACC contacts individuals within a week after receiving a referral. Mitchell agreed the delay from September 2017, when she received the referral, to November 2017, when they came in for the intake assessment, was due to the parents. After the assessments, Kristy and respondent were scheduled to take parenting classes, which included couples counseling, together, as part of the family-table program. The program began in January 2018 and ran until mid-March. The parents successfully completed the family-table program. The parents were also to take domestic-violence classes at the same time. The domestic-violence program did not separate the programs for the victims and the perpetrators. The two started the domestic-violence program on November 15, 2017. The domestic-violence program ran until January 31, 2018. Participants attended two hours a week for eight weeks. Respondent and Kristy completed the course, having to make up three missed classes.

¶ 19 On cross-examination, Mitchell testified the family-table program was a group setting. No one provided either parent individual counseling. At the intake assessment for Kristy, Kristy did not report any incidents of domestic violence perpetrated by respondent. Kristy "was fairly quiet about her relationship with her husband[.]" Mitchell testified she did not have a conversation with Kristy about her relationship with respondent.

¶ 20 Mitchell testified regarding the intake assessment she had with respondent. Respondent believed he satisfactorily dealt with anger issues. He discussed things that frustrated and angered him. Respondent did not report any incidents of domestic violence. When asked about seeing episodes of domestic violence, he reported having not seen any.

¶ 21 Devon Watkins, a deputy with the Champaign County Sheriff's Office, testified she responded to a domestic-battery call at Kristy's residence in Mahomet around 9 p.m. on October 1, 2017. When Deputy Watkins arrived, Kristy was inside a minivan in her driveway. Kristy reported respondent pushed her up against a wall and took her phone from her. Kristy had a bloody lip. When Deputy Watkins asked Kristy about her lip, Kristy stated she was not sure how that occurred. Kristy showed Deputy Watkins where respondent pushed her, and she observed dried blood spots on the wall. Deputy Watkins observed scratches on respondent's back and stomach. She asked Kristy about the scratches, and Kristy replied those may have occurred while respondent was taking her phone from her. Kristy denied ripping a necklace off respondent.

¶ 22 Deputy Watkins spoke with respondent. Respondent stated Kristy ripped off his shirt and necklace. Respondent stated Kristy struck him in the face.

¶ 23 The State asked the trial court to take judicial notice of all orders and the petition filed in the case. The court stated it did so.

¶ 24 Madeline Mayers, a caseworker with Lutheran Social Services in Illinois (LSSI) from September 2017 until March 3, 2018, testified she was the caseworker for Ke.A. and Ky.A. starting on October 30, 2017. Mayers could not make contact with either parent until December. Mayers attempted contact by calling the phone numbers listed in the LSSI file. She also mailed a

letter to the address on file. Respondent eventually responded to a voicemail. At the visits with the children, the children were very excited to see respondent. They interacted well. It was difficult watching them say goodbye.

¶ 25 On cross-examination, Mayers testified she prepared the January 10, 2018, report filed with the court. At the time the report was filed, Kristy and respondent resided together. Respondent admitted missing two drug screens on October 17, 2017, and October 25, 2017.

¶ 26 On redirect examination, Mayers testified she spoke to respondent about his December 15, 2017, positive test screen for cocaine. Respondent was surprised at the result.

¶ 27 In September 2018, at the close of the evidence, the trial court found the State proved its allegation of unfitness by clear and convincing evidence. The court noted respondent had made no change in his life to resolve the domestic-violence issues in his relationship. The court also pointed to respondent's missed drug screens and the December 2017 positive result for cocaine.

¶ 28 As to Kristy, the trial court found issue with the nine-month time period alleged by the State, as custody of the children was not removed from Kristy until May 16, 2017. The court concluded the nine-month period should not have begun as to Kristy until May 16, 2017. The court denied the State's motion to find Kristy unfit.

¶ 29 In October 2018, the best-interests hearing was held. At the start of the hearing, the trial court noted it had reviewed the DCFS report, authored by Cat Shutz, an LSSI caseworker, as well as the court-appointed special advocate (CASA) report authored by Karen Murray. According to the DCFS report, respondent and Kristy Wright were married and resided together. Respondent was employed through a union. Shutz referred respondent to complete a

substance-abuse screen referral on October 5, 2018, but respondent did not complete the screen. Respondent stated he had to purchase a truck that day. A second request was made for October 16, 2018, but respondent was unable to attend. Drug screens performed on July 3 and July 26, 2018, were negative for all substances and alcohol. The screen performed on July 10, 2018, was positive for cocaine and alcohol. We note an inconsistency in the report. After indicating respondent failed to complete the screen on October 5, 2018, the report lists October 5, 2018, as a negative screen for substances and alcohol.

¶ 30 According to the DCFS report, respondent completed the options class. It was recommended he "should now begin therapy services." Respondent successfully completed his 26-week program to address domestic violence, which he began after his January 31, 2018, assessment. Regarding the visits, respondent interacted very positively with his children. All appeared "very happy to spend time together."

¶ 31 Regarding the children, Ke.A. and Ky.A. resided in the home of their paternal aunt. There were no concerns regarding Ke.A.'s behavior, health, or education. Respondent maintained phone contact with Ke.A. Ky.A. was happy, except for missing her best friend. The author had no concerns regarding her health and behavior. Ky.A. was academically behind when she entered her new school, but an individualized education program (IEP) was put in place addressing those concerns. Both children attended individual therapy. Both received all medical care.

¶ 32 According to the report, the children's foster mother was willing to provide permanency for the children through adoption. Both children were attached to their foster mother and, after a period of adjustment, they have adjusted well to the placement. In their foster

placement, the children continued contact with relatives and older siblings. The author opined "While [respondent] appears to greatly care for his children, as observed during visits, his progress to successfully achieve reunification has been inconsistent throughout the life of the case." The report recommends the termination of respondent's parental rights.

¶ 33 Karen Murray (with the Champaign County Court Appointed Special Advocates for Children) authored a CASA report, dated October 15, 2018, for the best-interest hearing. According to Murray she met with the children 10 times between August 7, 2017, and September 25, 2018. Murray observed during the school years from 2014 through 2017, the children missed a substantial amount of school and struggled to progress academically. From mid-2015 until mid-2017, respondent was unavailable for supervised visits with the children and failed to comply with random substance-abuse monitoring. In addition, during this time, there were multiple unconfirmed reports respondent resided in the home with Kristy and the children.

¶ 34 Murray observed respondent outside the family home on April 2, 2017. He ran from Murray. Murray observed the following: "It became difficult to find the truth in the matter of finances, living arrangements, substance abuse, employment, and visitation. The children were put in the position of having to lie to DCFS and CASA regarding their parents' lifestyle." On May 16, 2017, the trial court removed custody of the children from Kristy. DCFS allowed the children to remain in the home with Kristy. In the following month, DCFS had no face-to-face contact with the children. Kristy ignored attempts at communication by DCFS and CASA. On July 25, 2017, the children were placed in foster care with their paternal aunt. On October 1, 2017, another incident of domestic abuse occurred. On July 9, 2018, respondent tested positive for cocaine and alcohol.

¶ 35 Murray reported the children often left visits conflicted as the parents were telling the children they would return home soon. The parents rarely telephoned the children. Both children benefited from counseling. As to the children's safety, while in their parents' home, the children "were very often left in the care of an older sibling for many, many hours." The children's attendance at school "was considerably lacking, resulting in poor academic progress." Ke.A. often fell asleep at school. Both children observed the domestic violence between the parents. At the home of their foster parent, Ke.A. no longer fell asleep during school. Both rarely missed school. They experienced "appropriate supervision and stability." Also, both were able to participate in extracurricular activities, allowing the children improved sense of self and worth and new friendships. The foster mother, their paternal aunt, accommodated and encouraged the children's relationships with their maternal grandparents and older sisters. Residing in the same town with the foster family was another paternal aunt and a cousin, providing a sense of family. Both children were very attached to their foster mother, showing respect and "caring feelings" for her. The children did not ask about their parents.

¶ 36 According to Murray, the children believed living with their foster mother was the best place for them. The children needed the security and permanence provided in the foster home. In the four years since the case began, the parents failed to show they can provide a safe and stable home. The CASA recommended parental rights be terminated.

¶ 37 The trial court found by a preponderance of the evidence and clear and convincing evidence it was in the best interest of the children respondent's parental rights be terminated. The court ordered the termination of respondent's parental rights.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 A. Parental Fitness

¶ 41 Respondent argues the trial court erred in finding he failed to make reasonable progress toward the return of Ke.A. and Ky.A. in the nine-month period of April 16, 2017, and January 16, 2018. Respondent contends much of the State's testimony, caseworker Johnson's testimony in particular, was unclear as to whether much of what she related occurred during the applicable period. Respondent emphasizes, beginning August 18, 2017, his contact with the agencies was cooperative. After the October 1, 2017, incident of domestic violence, he completed service programs, and his visits were consistent. Respondent also emphasizes his contact with the children was "mutually loving."

¶ 42 In proceedings to terminate parental rights, the first step for the trial court is to consider parental fitness. A parent is "unfit" when the State, by clear and convincing evidence, proves one ground set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011). On appeal, a determination a parent is unfit is entitled to great deference because the trial court that made the determination was able to view witnesses and their demeanor during testimony. *Id.* We thus will not disturb a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 43 Here, the trial court found respondent unfit on the ground he failed to make reasonable progress toward the children's return during any nine-month period following the initial nine-month period after the neglect adjudication, specifically April 16, 2017, through

January 16, 2018. The question of whether the progress of a parent is "reasonable" is evaluated under an objective standard. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). Before finding "reasonable progress exists," the court must conclude the child will, in the near future, be able to be returned to the parent's custody because that parent will have fully complied with the court's directives. (Internal quotation marks omitted.) *A.L.*, 409 Ill. App. 3d at 500. The benchmark for measuring a parent's progress includes the parent's compliance with service plans and court directives, in light of the conditions giving rise to the child's removal, and other conditions that later became known that would prevent the return of custody to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001); see also *A.L.*, 409 Ill. App. 3d at 499-500.

¶ 44 The parties dispute whether the permanency reports constitute evidence in this case. The State, in arguing progress was not reasonable, points to information found in the permanency reports and contends the evidence is sufficient for the finding of unfitness. In his reply brief, respondent counters the permanency reports should not be considered as they were not accepted into evidence and constitute hearsay.

¶ 45 We note neither party provides relevant authority in support of the conclusion the information in the permanency reports should or should not have been considered by the trial court. However, this court has long held "wholesale judicial notice of everything that took place prior to the unfitness hearing is unnecessary and inappropriate." *In re J.G.*, 298 Ill. App. 3d 617, 628-29, 699 N.E.2d 167, 175 (1998). The permanency reports were not admitted during the fitness hearing. We may not consider information contained in those reports in reviewing the trial court's finding of unfitness.

¶ 46 The testimony at trial is sufficient to support the trial court's finding the State clearly and convincingly proved respondent to be an unfit parent. The benchmark for measuring respondent's progress includes consideration of the conditions giving rise to the removal of the children. See *C.N.*, 196 Ill. 2d at 216. The children were removed from respondent's custody due to the domestic violence he inflicted on his wife, the children's mother. Despite the father's early completion of domestic-violence services, Johnson reported two incidents of domestic violence occurred in the period of April 27, 2017, and November-to-December 2017. One involved respondent's choking Kristy. Deputy Watkins testified to an incident of domestic violence on October 1, 2017, after which Kristy reported respondent pushed her up against a wall. We note Deputy Watkins may have been describing one of the incidents reported by Johnson. When respondent was asked on January 31, 2018, about the domestic-violence incidents, including the events in the nine-month period, he denied they occurred and provided no response when asked about Kristy's injuries. Instead, respondent blamed his arrests on drinking and arguing. In addition to the domestic violence, the testimony of the State's witnesses show defendant admitted missing drug screens in October 2017 and showed surprise at a positive drug screen in December 2017. Defendant's progress was not reasonable.

¶ 47 Given respondent's repeated incidents of domestic violence and his missed and failed drug screens, the court did not err in concluding the children would not, in the near future, be able to be returned to the parent's custody. See *A.L.*, 409 Ill. App. 3d at 500. The court properly found respondent unfit.

¶ 48 B. The Best Interests of the Child

¶ 49 Respondent argues the trial court erred in concluding termination of his parental

rights were in the best interest of his children. According to respondent, the court failed to give proportional weight to the unusual status of the case, in which the parental rights of Kristy, respondent's wife, remained intact. Respondent admits his engagement with DCFS was belated, but points to the court's language at the end of the best-interests hearing concluding respondent "by December of last year *** started engaging meaningfully with" DCFS. Respondent maintains, given a purpose of the Juvenile Court Act is "to preserve and strengthen the minor's family ties whenever possible" (705 ILCS 405/1-2(1) (West 2014)), the termination of his parental rights in these circumstances was against the manifest weight of the evidence.

¶ 50 At the second stage of proceedings to terminate parental rights, upon a finding of parental unfitness, the trial court determines whether termination of those rights is in the best interest of the child. *In re J.G.*, 298 Ill. App. 3d 617, 627, 699 N.E.2d 167, 174 (1998). It is at this stage, the court shifts its focus from the parents' interest to the child's interest in securing "a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The court, in evaluating the child's interests, must consider a number of statutory factors, including the child's safety and welfare, the development of the child's identity, the child's background, the uniqueness of each child and family, and the preferences of those available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). The child's interests are superior to the parent's interest in maintaining a relationship with the child. *D.T.*, 212 Ill. 2d at 364. Parental rights may be terminated only if the court concludes the State proved by a preponderance of the evidence that termination is in the children's best interests. *Id.* at 366. We will not disturb an order terminating parental rights unless that order is against the manifest weight of the evidence. *T.A.*, 359 Ill. App. 3d at 961.

¶ 51 The trial court's order is not against the manifest weight of the evidence. Despite respondent's "meaningful" engagement with DCFS near the end of the nine-month statutory period, respondent continued to struggle with substance abuse. In July 2018, respondent tested positive for cocaine and alcohol. He missed at least one drug screen in October 2018. While residing in the home with respondent, the children witnessed domestic violence, regularly missed school, and were left in the care of older siblings for long periods of time. Despite four years' involvement with DCFS, respondent could not yet offer his children a stable home life. In contrast, the foster home in which the children resided offered permanency and security. The foster mother, the children's paternal aunt, provided the opportunity for the children to maintain family ties. In her home, the children were progressing in school and engaging in extracurricular activities. There, the children were also appropriately supervised. The court properly terminated respondent's parental rights.

¶ 52 III. CONCLUSION

¶ 53 We affirm the trial court's judgment.

¶ 54 Affirmed.