2019 IL App (4th) 180832-U

NO. 4-18-0832

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re M.T., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Macon County
Petitioner-Appellee,	)	No. 16JA168
v.	)	
Gloria T.,	)	Honorable
Respondent-Appellant).	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and it was in M.T.'s best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In September 2018, the State filed a motion for the termination of the parental rights of respondent, Gloria T., as to her minor child, M.T. (born in September 2016). After a November 2018 hearing, the Macon County circuit court found respondent unfit. In December 2018, the court concluded it was in M.T.'s best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding (1) her unfit and (2) it was in M.T.'s best interests to terminate her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 M.T.'s father is Clinton J., who is not a party to this appeal. In November 2016,

the State filed a petition for the adjudication of wardship as to M.T. The State's petition alleged M.T. was neglected pursuant to sections 2-3(1)(a) and 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a), (1)(b) (West 2016)), abused under section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)), and dependent pursuant to section 2-4(1)(b) of the Juvenile Court Act (705 ILCS 405/2-4(1)(b) (West 2016)) based on respondent's severe medical problems, which were due to her lack of self-care and prevented her from providing M.T. with proper care. Clinton had no involvement in M.T.'s care. In June 2017, the State filed a supplemental petition, contending M.T. was also dependent under section 2-4(1)(b) of the Juvenile Court Act (705 ILCS 405/2-4(1)(b) (West 2016)) because M.T. was a medically complex child that required near constant care, which respondent could not provide due to her own physical disabilities.

¶ 6 In September 2017, the circuit court found M.T. was neglected under section 2-3(1)(a) of the Juvenile Court Act as stated in count I of the original petition and dependent under section 2-4(1)(b) as alleged in count I of the supplemental petition. After a December 2017 dispositional hearing, the court entered a dispositional order (1) finding respondent was unfit and unable to care for, protect, train, educate, supervise, or discipline M.T.; (2) making M.T. a ward of the court; and (3) placing her custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 7 In September 2018, the State filed a motion to terminate respondent's parental rights to M.T. The motion asserted respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to M.T.'s welfare (750 ILCS 50/1(D)(b) (West Supp. 2017)); (2) make reasonable efforts to correct the conditions that were the basis for M.T.'s removal from respondent during any nine-month period after the neglect and

dependent adjudication (750 ILCS 50/1(D)(m)(i) (West Supp. 2017)); (3) make reasonable progress toward M.T.'s return during any nine-month period after the neglect and dependent adjudication, specifically September 28, 2017, to June 28, 2018 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2017)); and (4) make reasonable progress toward M.T.'s return during any nine-month period after the neglect and dependent adjudication, specifically December 14, 2017, to September 14, 2018 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2017)).

¶ 8 On November 29, 2018, the circuit court held the fitness hearing. The State presented the testimony of Kathryn Vincent, the former caseworker. Respondent testified on her own behalf. The testimony relevant to the issues on appeal is set forth below.

¶ 9 Vincent testified she was assigned to be the caseworker for M.T. in January 2017. M.T. is a very medically complex child. During the first six months of the case, M.T. had 22 medical providers. When Vincent received the case, the initial service plan had already been put into place, and Vincent rated that plan on April 27, 2017. Vincent gave respondent an unsatisfactory rating for the goal of return home. Respondent's tasks were to (1) attend M.T.'s medical appointments, (2) have the ability to give verbal feedback regarding what is going on with M.T.'s medical needs, (3) receive and participate in specialized medical training for M.T., (4) receive appropriate specialized parenting services for M.T., (5) complete a psychological evaluation, (6) complete mental-health services, and (7) maintain her own health.

¶ 10 From January 2017 to April 20, 2017, respondent only attended 2 out of M.T.'s 68 medical appointments. She also only attended 9 out of 22 visits with M.T. As to services, Vincent testified respondent's tasks of attending specialized medical training, parenting classes, and mental-health services were dependent on respondent's psychological evaluation because Vincent needed to determine respondent's baseline intellectual and cognitive functioning to

determine appropriate services. Vincent set up two appointments for respondent to complete a psychological evaluation, but respondent never obtained one. Without the psychological evaluation, Vincent was unable to develop any kind of meaningful service plan goals. Vincent did try to offer some services without the psychological evaluation, but respondent adamantly refused to participate in mental-health services and did not attend any parenting classes. During a July 12, 2017, telephone conversation with Vincent, respondent stated she did not want to have any more involvement with DCFS, including visits with M.T. because "she was so worked up about the court stuff."

¶ 11 Vincent accommodated respondent's special needs by providing her transportation to all appointments and visits. Vincent did require respondent to give her 72 hours notice if respondent wanted to attend one of M.T.'s medical appointments. On two occasions, respondent gave Vincent notice the day before a medical appointment, and Vincent was unable to obtain transportation for respondent. Vincent also scheduled visits with M.T. around respondent's dialysis schedule. Moreover, Vincent tried to schedule M.T.'s doctor appointments on visitation days.

¶ 12 Vincent next evaluated the service plan on October 31, 2017. At that point, respondent had attended 4 out of 82 medical appointments. Respondent continually lost the six-month calendar Vincent provided her that listed M.T.'s appointments. When Vincent would discuss M.T. with respondent, respondent was never able to give verbal feedback about M.T.'s medical needs, reiterate a diagnosis of M.T., or explain how a diagnosis would impact M.T. in the short term or long term. Respondent never obtained any kind of specialized medical training, attended a parenting class, obtained a psychological evaluation, or participated in any mental-health services. Respondent did take care of her own health. Vincent again gave respondent an

unsatisfactory rating on her goal of return home.

¶ 13 The third evaluation of the service plan took place in April 2018. Vincent no longer was the caseworker as of March 2018, but she reviewed the records in M.T.'s case. During the third evaluation period, respondent lacked communication with Vincent and did not attend any appointments or visits with M.T. Vincent noted that, during the entire pendency of the case, respondent had attended 10 out of 49 visits with M.T. Her last visit was in September 2017. Respondent also refused monthly home visits with Vincent.

¶ 14 Over an objection, the circuit court allowed Vincent to testify about the period of April to September 2018. Vincent testified from the beginning of the case until September 2018, respondent had not made any progress. She further opined it would not be safe to return M.T. to respondent due to M.T.'s complex medical needs and respondent's failure to display progress with the service plan. Vincent noted respondent was still where she started on the goal of return home.

¶ 15 Respondent denied telling Vincent she did not want to participate in services. According to respondent, she missed her first psychological evaluation due to her own medical appointment, and Vincent never set up a second appointment for the evaluation. Respondent further testified she had never been referred to a mental-health service provider or parenting classes. Moreover, respondent stated Vincent refused to give her gas cards, which would have allowed her friend to drive her to M.T.'s medical appointments. Respondent did not have any transportation issues with visitation as a case aide would provide transportation. Respondent does not have her driver's license.

¶ 16 Further, respondent testified she was taking care of her own medical needs by attending dialysis three times a week and controlling her diabetes with diet. Respondent called

M.T.'s foster mother every day to get an update on how M.T. was doing. When asked about M.T.'s medical issues, respondent was only aware M.T. had cerebral palsy.

¶ 17 At the conclusion of the hearing, the circuit court found respondent unfit based on her failure to (1) maintain a reasonable degree of responsibility as to M.T.'s welfare; (2) make reasonable efforts toward M.T.'s return during any nine-month period; (3) make reasonable progress toward M.T.'s return during the nine-month period of September 28, 2017, to June 28, 2018; and (4) make reasonable progress toward M.T.'s return during the nine-month period of December 14, 2017, to September 14, 2018.

¶ 18 On December 20, 2018, the circuit court held the best-interests hearing. The State presented the testimony of both Vincent and Ashlyn Fore, the current caseworker for M.T. Fore testified she prepared the best-interests report for this case. Fore noted M.T. had been in her current foster home since October 31, 2016, and was now two years old. The foster home was an adoptive placement and was meeting all of M.T.'s medical needs. The foster family had recently adopted two other children who adored M.T. and viewed her as a sibling. The two other children were in grade school and did not have any medical issues. According to Fore, M.T. was bonded with her foster mother and would only allow the foster mother to feed her.

¶ 19 Vincent testified M.T.'s foster home was the best one she had seen at dealing with a medically complex child. The foster mother quickly put routines into place and kept all of her own documentation for M.T.'s medical issues. According to Vincent, M.T. "couldn't be in better hands." Vincent believed M.T. should be adopted by her foster family.

¶ 20 At the conclusion of the hearing, the circuit court found it was in M.T.'s best interests to terminate respondent's parental rights. That same day, the court entered a written order terminating respondent's and Clinton's parental rights to M.T.

¶ 21 On December 20, 2018, respondent filed a timely notice of appeal 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).

¶ 22 II. ANALYSIS

¶ 23 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).

¶ 24 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 and best-interests determination unless they are 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) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970

(2010) (best-interests determination). 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.

¶ 25 A. Respondent's Fitness

¶ 26 Respondent first contends the circuit court's unfitness finding was against the manifest weight of the evidence. Respondent addresses all four counts of unfitness, and the State contends it proved all four counts. We will address whether respondent made reasonable progress toward M.T.'s return during the nine-month period of September 28, 2017, to June 28, 2018.

¶ 27 Section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West Supp. 2017)) 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) (quoting *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 Respondent argues the circuit court should not have found she failed to make reasonable progress because no referrals were made for any services. However, the evidence showed respondent did not complete a psychological evaluation, which was needed to better tailor her other services to accommodate any intellectual or cognitive deficiencies respondent may have had. Respondent also adamantly refused many of the services Vincent offered her.

Additionally, respondent's last visit with M.T. was at the very beginning of the nine-month period, and respondent had only attended two of M.T.'s numerous doctor's visits. Respondent also only knew one of M.T.'s numerous medical conditions at the fitness hearing. Vincent testified respondent was never able to give verbal feedback that she understood M.T.'s medical needs. In this case, respondent was never close to having M.T. returned to her, as respondent did not make progress toward the return of M.T.

¶ 30 Accordingly, we conclude 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.

¶ 31 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 any other bases 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).

¶ 32 B. M.T.'s Best Interests

¶ 33 Respondent also challenges the circuit court's finding it was in M.T.'s best interests to terminate her parental rights. She contends it was in M.T.'s best interests to be returned to respondent. The State disagrees and contends the court's finding was proper.

¶ 34 During the best-interests hearing, the circuit court focuses on "the child's welfare and whether termination would improve the child's future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West Supp. 2017)) in the context of the child's age and developmental needs.

See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures, siblings, and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West Supp. 2017).

¶ 35 We note a parent's unfitness to have custody of his or her child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interests. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 36 In this case, the only home M.T. had ever known was her foster home. The evidence showed M.T. was bonded with her foster family, which included two older children. The foster parents were able to meet M.T.'s medical needs and provide her with a safe and loving home. M.T. was doing well in their care. Respondent was never able to fully understand M.T.'s medical needs and how to meet them. Here, the best-interests factors favored the termination of respondent's parental rights.

¶ 37 Accordingly, we find the circuit court's conclusion it was in M.T.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the Macon County circuit court's judgment.

¶ 40 Affirmed.