2019 IL App (4th) 190011-U

NO. 4-19-0011

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 20, 2019
Carla Bender
4th District Appellate
Court, IL

In re A.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 17JA58
v.	)	
Kiona B.,	)	Honorable
Respondent-Appellant).	)	Karen S. Tharp,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion by denying respondent's motions to continue and motion to reopen the trial evidence. Also, the circuit court's findings respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and it was in A.B.'s best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In July 2018, the State filed a motion for the termination of the parental rights of respondent, Kiona B., as to her minor child, A.B. (born in December 2010). At the beginning of the November 2018 fitness hearing, respondent's counsel made a motion to continue because respondent failed to appear at the hearing. The Sangamon County circuit court denied the motion and held the fitness hearing. At the conclusion of the fitness hearing, the court found respondent unfit. Thereafter, the court began the best-interests hearing, and respondent's counsel again moved to continue due to respondent's absence. The court again denied the motion to continue and held the best-interests hearing. After hearing the parties' evidence and arguments,

the court found it was in A.B.'s best interests to terminate respondent's parental rights. A few days later, respondent filed a motion to reopen the trial, noting respondent "represents" she was hospitalized at the time of the fitness and best-interests hearings and thus was unable to appear in court. After a January 2019 hearing, the court denied respondent's motion to reopen the trial.

¶ 3 Respondent appeals, asserting the circuit court erred by (1) denying respondent's motions to continue the fitness and best-interests hearings, (2) denying respondent's motion to reopen the trial evidence, (3) finding respondent unfit, and (4) concluding it was in A.B.'s best interests to terminate respondent's parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2017, the State filed a petition for the adjudication of wardship as to A.B. The petition alleged A.B.'s father was Tyree S., but it was later discovered Tyree was not A.B.'s father. The State's petition alleged A.B. 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 his environment was injurious to his welfare as evidenced by (1) domestic violence between respondent and Tyree, (2) respondent's drug use, and (3) Tyree's drug use. At an August 2017 hearing, respondent stipulated A.B. was neglected because his environment was injurious to his welfare based on domestic violence, and the State dismissed the other two bases for neglect. After a December 2017 dispositional hearing, the court entered a dispositional order (1) finding respondent was unfit, unable, or unwilling to care for, protect, train, educate, supervise, or discipline A.B.; (2) making A.B. a ward of the court; and (3) placing his custody and guardianship with the Department of Children and Family Services (DCFS). In March 2018, the results of a paternity test established Jiles S. was A.B.'s father. Jiles is not a party to this appeal.

¶ 6 In July 2018, the State filed a motion to terminate respondent's and Jiles's

parental rights to A.B. The motion asserted respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to A.B.'s welfare (750 ILCS 50/1(D)(b) (West Supp. 2017)); (2) make reasonable efforts to correct the conditions that were the basis for A.B.'s removal from respondent during any nine-month period after the neglect adjudication, specifically August 17, 2017, to May 17, 2018 (750 ILCS 50/1(D)(m)(i) (West Supp. 2017)); and (3) make reasonable progress toward A.B.'s return during any nine-month period after the neglect adjudication, specifically August 17, 2017, to May 17, 2018 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2017)).

¶ 7 On November 7, 2018, the circuit court held the fitness hearing. Respondent's counsel made a motion to continue the hearing based on respondent's absence. Counsel noted she had received information respondent had strep throat and high blood pressure and was being admitted into the hospital. Respondent had indicated she was at Memorial Hospital, but when respondent's counsel called Memorial Hospital, the hospital did not have a record of respondent being there. Based on the hospital reporting no one with respondent's name was at the hospital, the court denied respondent's motion to continue.

¶ 8 At the fitness hearing, the State presented the testimony of Lindsey Miller, the caseworker from April 2017 to February 2018, and Lisa Bracco-Tabora, the caseworker from March 2018 to June 2018. Respondent did not present any evidence.

¶ 9 Miller testified she was assigned A.B.'s case in April 2017, when the case was opened. At that time, A.B. had an infant sister, A.S., who had "tox screens" at birth that were positive for methamphetamine. Respondent later took A.S. from her relative foster home and kept the baby at a hotel overnight. When respondent returned A.S. to the foster home in the morning, A.S. was deceased. No criminal charges were brought against respondent, but DCFS

made an indicated finding of death by neglect.

¶ 10 Miller established a service plan, which included the following services for respondent: "[s]ubstance abuse, domestic violence, counseling, cooperation, housing, and legal income." Miller made all of the necessary referrals to allow respondent to access the services. The first service plan was rated in October 2017. Respondent received an overall rating of unsatisfactory. Miller explained respondent would report she worked but would not provide proof of legal income. Moreover, respondent moved several times and did not always say when she moved or what her address was. Miller testified respondent was overall not cooperative. Miller gave respondent an unsatisfactory rating for domestic-violence services because respondent failed to sign the consent form that would allow Miller to speak with the agency in charge of respondent's domestic-violence services. Regarding substance abuse, respondent failed to attend her appointment for a substance-abuse assessment and did not complete any drug screens. Thus, Miller gave respondent an unsatisfactory rating for substance abuse. Respondent also received an unsatisfactory rating for individual counseling because she did not attend her appointments. While respondent only missed one visit during the first reporting period, she received an unsatisfactory rating because she was often late to visits or left early from visits. Also, at the beginning of the period, respondent took A.B. from his foster home without authorization.

¶ 11 In October 2017, Miller extended the service plan for another six months. Miller was no longer the caseworker in February 2018. From October 2017 to February 2018, respondent (1) never provided proof of employment, (2) lacked a stable address, (3) failed to sign the consent that would allow the agency providing domestic-violence services to speak with Miller, and (4) did not attend any individual-counseling sessions. Moreover, respondent only

completed one of nine drug screens, and the one screen she did complete was positive for marijuana. Respondent also continued to be late and leave early from visits with A.B. During her time as caseworker, respondent had 28 scheduled visits with A.B. and attended only 16. When respondent did attend visits, A.B. and respondent were excited to see each other but did not interact much during visits as A.B. would play with toys while respondent was on her cellular telephone. Respondent did sometimes bring A.B. food and gifts. Moreover, respondent was difficult to contact. Miller was never close to returning A.B. to respondent's care because respondent had not even attempted to start services.

¶ 12 Bracco-Tabora testified she was assigned as A.B.'s caseworker in March 2018. The second service plan was rated in April 2018. Respondent received an unsatisfactory rating for individual counseling because she had not attended any counseling sessions. Bracco-Tabora also gave respondent unsatisfactory ratings for housing and employment because respondent did not provide her address or proof of employment. Regarding substance abuse, respondent never attended a substance-abuse assessment and did not complete drug screens. Moreover, the language used by the agency providing respondent's domestic-violence services led Bracco-Tabora to believe respondent was not attending domestic-violence services. Additionally, respondent received an unsatisfactory rating for cooperation because she did not attend services and had minimal contact with Bracco-Tabora.

¶ 13 In April 2018, Bracco-Tabora continued the same service plan. Bracco-Tabora was no longer the caseworker in June 2018. From April to June 2018, respondent did not make any progress in her counseling services. Moreover, nothing changed with regard to respondent's housing and employment. Respondent still had not obtained a substance-abuse assessment and did not attend any drug screens. During the period of April to June 2018, respondent had 12

scheduled visits with A.B. and attended only six of the visits. Bracco-Tabora was never close to returning A.B. to respondent's care because respondent did not complete any services.

¶ 14 At the conclusion of the State's testimony, respondent's counsel again moved to continue the hearing to allow respondent to appear. The circuit court again denied the motion. The circuit court found respondent unfit based on her failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to A.B.'s welfare; (2) make reasonable efforts toward A.B.'s return during the nine-month period after the neglect adjudication, which was August 17, 2017, to May 17, 2018; and (3) make reasonable progress toward A.B.'s return during the nine-month period of August 17, 2017, to May 17, 2018.

¶ 15 After the fitness hearing, the circuit court held the best-interests hearing. Respondent's counsel again moved to continue the hearing, and the court denied the motion based on the same reasons for its denial of the motion to continue the fitness hearing. The State presented the testimony of Ellie Held, the caseworker since July 2018.

¶ 16 Held testified A.B. was seven years old and had lived in his current foster home for a year. The foster placement met all of A.B.'s needs, and A.B. had made progress there. A.B.'s foster parents had signed permanency commitment forms for him. A.B.'s foster parents were expecting a child, and A.B. was excited to be getting a little sister. A.B. stated he wanted to be adopted by his foster parents. Held testified a bond existed between A.B. and his foster parents.

¶ 17 As to respondent, Held testified A.B. knows respondent is his mother and is excited to see her at visits. A.B.'s last visit with her was good. A.B. ate pizza, and respondent held her baby, L.D. Respondent and A.B. talked about different things. Held explained L.D. came into care in July 2018. When respondent tends to L.D., A.B. plays on respondent's cellular

telephone. Held noted respondent had not completed any services. L.D. had lived with A.B. in his foster home but was later moved to his father's care.

¶ 18 In Held's opinion, respondent's parental rights should be terminated. She noted the foster parents took good care of A.B. and he is doing well with them. Before L.D. was born, respondent was basically out of the picture. She did not engage in services and only visited A.B. about half of the time.

¶ 19 During arguments, respondent's counsel again asked for a continuance, and the circuit court again denied it. The guardian *ad litem* asserted the termination of respondent's parental rights was not in A.B.'s best interest because he had only been in his foster home for one year when he was brought into care at six years old. At the conclusion of the hearing, the circuit court found it was in A.B.'s best interests to terminate respondent's parental rights. That same day, the court entered a written order terminating respondent's and Jiles's parental rights to A.B.

¶ 20 On November 15, 2018, respondent filed a motion to reopen the trial, noting respondent had represented she was hospitalized at the time of the fitness and best-interests hearings and was unable to appear in court. The court held a hearing on the motion on January 3, 2019. Respondent again stated she was at Memorial Hospital at the time of the hearings. Respondent did not know the exact dates but stated she could get the documents from the hospital. The court took a recess until 1:30 p.m. to allow respondent to obtain documents from the hospital. At 4:45 p.m., respondent still had not appeared and had not contacted her attorney. The court then denied the motion because respondent had failed to provide documentation of her hospitalization.

¶ 21 On January 4, 2019, 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. Motions to Continue

¶ 26 Respondent first asserts the circuit court erred by denying her motions to continue the fitness and best-interests hearings. We review a circuit court's decision to grant a motion to continue under the abuse of discretion standard. See *In re M.R.*, 393 Ill. App. 3d 609, 619, 912 N.E.2d 337, 346 (2009). A circuit court "abuses its discretion when no reasonable person would agree with its decision." *In re M.P.*, 408 Ill. App. 3d 1070, 1073, 945 N.E.2d 1197, 1200 (2011).

¶ 27 In this case, the wardship petition was brought under article II of the Juvenile Court Act (705 ILCS 405/art. 2 (West 2016)). Illinois Supreme Court Rule 900(b)(2) (eff. Mar. 8, 2016) defines the scope of the 900 series of supreme court rules and provides rules 900 through 920, except as stated therein, apply to all child custody proceedings, including those initiated under article II of the Juvenile Court Act. Illinois Supreme Court Rule 901(c) (eff. July 1, 2018) addresses continuances and provides the following:

> "Parties, witnesses and counsel shall be held accountable for attending hearings in child custody and allocation of parental responsibilities proceedings. Continuances shall not be granted in child custody and allocation of parental responsibilities proceedings except for good cause shown and may be granted if the continuance is consistent with the health, safety and best interests of the child. The party requesting the continuance and the reasons for the continuance shall be documented in the record."

¶ 28 Here, respondent's counsel made motions to continue the fitness and best-interests hearings based on respondent's absence from the hearings. Respondent reported to her

counsel she was ill and in the hospital. However, respondent's counsel contacted the hospital, and the hospital had no record of respondent as a patient. Under such facts, respondent failed to show good cause for a continuance. Thus, we find the circuit court did not abuse its discretion by denying respondent's motions to continue the fitness and best-interests hearings.

¶ 29 B. Motion to Reopen the Trial Evidence

¶ 30 Respondent also challenges the circuit court's denial of her motion to reopen the trial evidence. The granting or denying of a motion to reopen the trial evidence lies within the circuit court's discretion. See *In re Marriage of Hopkins*, 106 Ill. App. 3d 135, 137, 435 N.E.2d 897, 899 (1982).

¶ 31 At the hearing on the motion to reopen the trial evidence, respondent stated she had been hospitalized on the date of the fitness and best-interests hearings. Respondent asserted she could obtain documentation to prove her hospitalization. The circuit court took a recess for several hours to allow respondent time to obtain the documentation. When respondent failed to return, the court denied respondent's motion. Given respondent's failure to provide evidence supporting her assertion she was hospitalized on the day of the fitness and best-interests hearings, we find the circuit court did not abuse its discretion by denying respondent's motion to reopen the trial evidence.

¶ 32 C. Respondent's Fitness

¶ 33 Respondent further contends the circuit court's unfitness finding was against the manifest weight of the evidence. Respondent only addresses reasonable efforts and reasonable progress. As the State notes, respondent does not address the court's finding she was unfit because she failed to maintain a reasonable degree of interest, concern, or responsibility as to A.B.'s welfare. We note this court may affirm the circuit court's unfitness finding based on a

single ground of unfitness. 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). Regardless of respondent's failure to address the reasonable degree ground for unfitness, we will address whether respondent made reasonable progress toward A.B.'s return during the nine-month period of August 17, 2017, to May 17, 2018.

¶ 34 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).

¶ 35 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 August 17, 2017, to May 17, 2018.

¶ 36 Respondent asserts her lack of properly or timely executing consent documents to allow her caseworker to confirm her services should not defeat the fact she was participating in those services. The evidence at the fitness hearing had shown respondent told her caseworker she had employment but failed to provide pay stubs. Respondent also said she was engaging in domestic-violence services but did not sign the proper consent form to allow confirmation of her participation. Even assuming respondent was employed and engaged in domestic-violence services, respondent still did not cooperate with her caseworker; did not attend individual

counseling; did not complete a substance-abuse assessment; completed only one drug screen, which was positive for marijuana; and only attended half of her visits with A.B. Respondent was not close to having A.B. returned to her care regardless of her employment and engagement in domestic-violence services.

¶ 37 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.

¶ 38 Since we have upheld the circuit court's determination respondent met the statutory definition of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West Supp. 2017)) on the basis of failure to make reasonable progress, we do not review her argument regarding reasonable efforts. See *Tiffany M.*, 353 Ill. App. 3d at 891, 819 N.E.2d at 820.

¶ 39 D. A.B.'s Best Interests

¶ 40 Respondent also challenges the circuit court's finding it was in A.B.'s best interests to terminate her parental rights because she and A.B. had a bond. The State disagrees and contends the court's finding was proper.

¶ 41 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, security, and familiarity, 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).

¶ 42 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).

¶ 43 While A.B. recognized respondent as his biological mother, he had bonded with his foster family with whom he had lived for a year. His foster parents met all of his needs and desired to adopt A.B. A.B. had made progress in his foster home and wanted to be adopted by his foster parents. He was excited his foster parents were having a baby. Respondent had not completed any services and thus was not close to being able to provide stability for A.B.

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

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the Sangamon County circuit court's judgment.

¶ 47 Affirmed.