2019 IL App (4th) 190028-U

NO. 4-19-0028

FILED
May 9, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re J.W., a Minor	) Appeal from the
	) Circuit Court of
(The People of the State of Illinois,	) McLean County
Petitioner-Appellee,	) No. 17JA73
v.	)
Valencia W.,	) Honorable
Respondent-Appellant.	) J. Brian Goldrick,
	) Judge Presiding.

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

ORDER

¶ 1 *Held*: By finding respondent to be an "unfit person" in that, during the nine-month period following the adjudication of neglect, she failed to make reasonable progress toward the return of the minor, the trial court did not make a finding that was against the manifest weight of the evidence.

¶ 2 Respondent, Valencia W., appeals a judgment of the McLean County circuit court that terminated her parental rights to her son, J.W., born June 19, 2017. She challenges the court's finding that she was an "unfit person" within the meaning of sections 1(D)(b), (m)(i), and (m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2016)). (She does not specifically challenge the finding, made in a subsequent hearing, that it would be in J.W.'s best interest to terminate her parental rights.) We find sufficient evidence in the record to support the finding, under section 1(D)(m)(ii), that respondent failed to make reasonable progress during the nine-month period following the adjudication of neglect. Therefore, we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Petition to Terminate Parental Rights

¶ 5 Because respondent is the sole appellant in this case, we will consider only the allegations of parental unfitness directed against her. According to the State's petition for the termination of parental rights, there were four reasons why respondent should be deemed to be an "unfit person" (*id.* § 1(D)). First, she had abandoned J.W. See *id.* § 1(D)(a). Second, she had failed to maintain a reasonable degree of interest, concern, or responsibility as to J.W.'s welfare. See *id.* § 1(D)(b). Third, for nine months after the adjudication of neglect (see 705 ILCS 405/2-3, 2-21 (West 2016)), that is, from September 12, 2017, to June 12, 2018, she failed to make reasonable *efforts* to correct the conditions that had been the bases for removing J.W. from her custody. See 750 ILCS 50/1(D)(m)(i) (West 2016). Fourth, during the same nine-month period, she failed to make reasonable *progress* toward the return of J.W. See *id.* § 1(D)(m)(ii).

¶ 6 B. The Parental Fitness Hearing

¶ 7 In November and December 2018, the trial court held bifurcated hearings on the issues of parental fitness and J.W.'s best interest. See *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 8 At the beginning of the parental-fitness hearing, respondent's attorney announced, "I am willing to stipulate to a factual basis regarding [the] unfitness [of] my client." After the trial court ascertained that none of the other attorneys had any objection to the proposed stipulation by respondent, the assistant State's Attorney orally gave a factual basis.

¶ 9 According to the factual basis, the State would have called Jessica Dillard of the Center for Youth and Family Solutions, and she would have testified to the following facts. She had been the assigned caseworker since July 2017, when J.W. came into care because of a

medical diagnosis of failure to thrive. At the inception of the case, Dillard met with respondent and warned her that, on pain of possibly losing her parental rights to J.W., she had to work toward the goals in the service plans. The goals were cooperation and communication with the agency, mental-health counseling, stable housing and employment, and parenting instruction.

¶ 10 Although respondent had completed a parenting course, she appeared unable to apply what she had learned in the course. Her progress toward the remaining goals of the service plans likewise was unsatisfactory.

¶ 11 For one thing, visitation had been sparse. Respondent had not followed the visitation schedule, nor had she "take[n] advantage of the vast amount of visits she was offered at that time in the foster home." Because respondent had so seldom visited J.W., she was taken off the call-in list, and in January 2018, the place of visitation was changed from the foster home to the agency. Finally, in July 2018, visitation was suspended altogether—again, because of respondent's lack of participation. Even when respondent visited J.W., "she did not take initiative and did not interact well with the minor." Thus, Dillard would testify, respondent never made satisfactory progress on visitation.

¶ 12 Nor had respondent made satisfactory progress in the areas of employment and housing. She moved to Chicago in May 2018 without having obtained stable housing. (She "returned sometime in September of 2018.")

¶ 13 Mental-health counseling was yet another unmet goal. As of January 2018, respondent "had just begun [mental-health] counseling," and in June 2018, she was discharged from the counseling program for failing to show up.

¶ 14 When the assistant State's Attorney finished giving that factual basis, respondent's attorney said, "Your Honor, I stipulate that if these witnesses [*sic*] were called[,] they would testify significantly as indicated by the [S]tate's [A]ttorney."

¶ 15 The State then called some witnesses to testify, including Dillard, but because of respondent's stipulation to the factual basis, the testimony had to do primarily with the father. Even so, some additional information about respondent emerged from the testimony.

¶ 16 According to Dillard's testimony, for example, J.W. was in the care of respondent when, in July 2017, J.W. was removed for failure to thrive.

¶ 17 The State also called Constance Owens-Mooney (Owens-Mooney), a clinician at Chestnut Family Services (Chestnut). According to her testimony, respondent came to Chestnut on November 7, 2017, for a substance-abuse assessment. It did not appear, from the assessment, that respondent currently was using drugs, and so Owens-Mooney saw no need for respondent to undergo substance-abuse treatment. Nevertheless, because respondent acknowledged suffering from symptoms of depression, Owens-Mooney recommended to her, in a letter on November 13, 2017, that she undergo mental-health counseling. To Owen-Mooney's knowledge, respondent never followed up with that recommendation. Granted, there were other clinicians at Chestnut from whom respondent could have received mental-health counseling, but, generally, the referring agency placed the client with the clinician who had completed the assessment. After her assessment of respondent, Owens-Mooney never heard from respondent again.

¶ 18 The final witness the State called in the parental fitness hearing was Dora Wakefield (Wakefield), J.W.'s maternal great-grandmother. Her testimony regarding respondent was essentially as follows. Wakefield was, from the start, the foster parent, and she used to supervise visitation between J.W. and his biological parents. Wakefield had always been flexible

on the times of visitation; the availability of visitation in her home had been practically unlimited. Respondent showed some interest in visitation early on in the case; she visited J.W. maybe 10 times. But then respondent stopped visiting J.W. after she moved to Chicago. Respondent never told Wakefield why she moved, and while living in Chicago, respondent never sent J.W. any gifts or financial support and never even called to ask how J.W. was doing.

¶ 19 It did not get much better when respondent moved back into the area. Wakefield was asked, "Has [respondent] started visiting with [J.W.] again since she moved back into town last month?" and Wakefield answered, "No." Instead of visiting with J.W., respondent "just c[a]me over to maybe wash his clothes." Not even that was done on respondent's initiative; Wakefield would ask respondent's mother (Wakefield's daughter) to come over, and respondent would dutifully come over with her mother. These visits, in Wakefield's view, were not really visitation. Respondent, when she dropped by, tended to be standoffish and impatient with J.W. and acted as if she did not quite know what to do with him. And J.W. never was excited to see her.

¶ 20 After Wakefield's testimony, the State requested the trial court to take judicial notice of the pleadings and orders the State had listed and summarized in petitioner's exhibit No. 1. Having ascertained that none of the other attorneys had any objection, the court granted the State's request, taking judicial notice of that exhibit.

¶ 21 One of the orders listed in petitioner's exhibit No. 1 was the temporary custody order, which was entered on July 31, 2017. The exhibit recounted the factual findings the trial court had made in the temporary custody order, and they were as follows. At birth, J.W. was diagnosed with slow intrauterine growth, intrauterine exposure to hepatitis B, and a hearing problem. Not only had respondent failed to bring J.W. to follow-up medical appointments for

those diagnosed conditions, but she had failed to complete feeding logs, as the Illinois Department of Children and Family Services (DCFS) had requested her to do, to monitor J.W.'s weight. J.W. lost weight in the weeks following his birth, and on July 24, 2017, he was admitted into the hospital. While J.W. was in the hospital, respondent showed no interest in him, refusing to feed him or even hold him. On the basis of those findings, the trial court awarded temporary custody of J.W. to DCFS.

¶ 22 A couple of months later, the trial court adjudicated J.W. to be a neglected minor in that he suffered from a lack of remedial care. See 705 ILCS 405/2-3(1)(a) (West 2016). Petitioner's exhibit No. 1 recounted the supporting factual finding the court had made in the adjudicatory order: "[Respondent] failed to follow up with medical appointments for [J.W.'s] diagnos[e]s of slow intrauterine growth and intrauterine exposure to hepatitis b."

¶ 23 To address the possibility that respondent's neglect of J.W. was due to an underlying emotional problem, the trial court ordered respondent to undergo a mental health evaluation and to complete any recommended counseling. Petitioner's exhibit No. 1 listed the dispositional order of November 15, 2017, in which the court directed respondent to "fully cooperate with the agency and successfully complete any recommended services, including [a] psych[ological] eval[uation] *** and mental health treatment."

¶ 24 Petitioner's exhibit No. 1 then listed and summarized the permanency orders that tracked respondent's progress in meeting those and other goals. According to the permanency order of April 25, 2018, respondent had completed a parenting course and had undergone a psychological evaluation; nevertheless, "she must fully engage in mental health counseling," she had missed three visits, and she still lacked stable housing and employment. Three months later, her efforts and progress had not improved, as the court noted in the permanency order of July 11,

2018: "[Respondent] was unsuccessfully discharged from counseling due to attendance. Visits between [respondent] and the minor were suspended due to majority of visits being missed. She has failed to drug screen as requested."

¶ 25 On the basis of those judicially noticed court records, respondent's stipulation, and the witnesses' testimony, the trial court made the following findings in the parental fitness hearing. The court found the allegation of abandonment (750 ILCS 50/1(D)(a) (West 2016)) to be unproven, but the court found the remaining allegations against the parents to be proven. As for respondent, the court found she had failed to maintain a reasonable degree of interest, concern, or responsibility as to J.W.'s welfare (see *id.* § 1(D)(b)) and that, during the nine months following the adjudication of neglect, she failed to make reasonable efforts (see *id.* § 1(D)(m)(i)) and reasonable progress (see *id.* § 1(D)(m)(ii)).

¶ 26 II. ANALYSIS

¶ 27 To terminate parental rights, a trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (*id.* § 1(D)) and (2) it has been proven, by a preponderance of the evidence, that it would be in the best interests of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. 705 ILCS 405/2-29(2) (West 2016); *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20.

¶ 28 In the present case, respondent did not surrender her parental rights to J.W.; nor did she consent to his adoption. Therefore, the first prerequisite to the termination of her parental rights was a finding, by clear and convincing evidence, that she was an "unfit person" within the

meaning of one of the subsections of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). See *M.H.*, 2015 IL App (4th) 150397, ¶ 20.

¶ 29 Because meeting only one of the definitions in section 1(D) would make a parent an "unfit person," we need not consider all four of the definitions that the State cited in its petition. See *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999). Instead, we will choose just one of the definitions; we will limit our review to paragraph 8(D) of the State's petition to terminate parental rights: the allegation that, from September 12, 2017, to June 12, 2018, respondent failed to make reasonable progress toward the return of J.W. to her custody. See 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 30 The trial court found this allegation to be proven by clear and convincing evidence, and such a factual finding by the court finding deserves "great deference." *In re Brown*, 86 Ill. 2d 147, 152 (1981). "[A] finding of unfitness will not be reversed unless it is against the *manifest* weight of the evidence." (Emphasis added.) *Id.* To characterize the court's finding as "against the manifest weight of the evidence," we would have to be able to say this: it is *clearly evident* that the court should have arrived at the opposite conclusion—that the State did *not* prove, by clear and convincing evidence, that, from September 12, 2017, to June 12, 2018, respondent failed to make reasonable progress toward the return of J.W. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001).

¶ 31 "Progress" means "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." *Id.* at 216-17. The condition that gave rise to the removal of J.W. was respondent's failure to take him, a newborn infant diagnosed with slow intrauterine

growth, to crucial follow-up medical appointments. Another problem that would prevent a reasonable court from returning J.W. to respondent's custody was her refusal to keep the recommended feeding log and J.W.'s admission into the hospital for loss of weight and failure to thrive. Still another, perhaps even more revelatory problem was respondent's refusal to feed or hold J.W. while he was in the hospital and the lack of interest she displayed toward him.

¶ 32 The trial court and DCFS gave respondent some directives reasonably calculated to address those problems. One of the directives was to complete a parenting course, and as respondent points out, she completed a parenting course. Another directive was to visit with J.W., and as respondent points out, she did some visiting toward the beginning of the case. But doing *some* things, making *some* progress, is not necessarily to make progress that is *reasonable*, which is the progress the statute requires. 750 ILCS 50/1(D)(m)(ii) (West 2016); *In re Stiarwalt*, 190 Ill. App. 3d 547, 557 (1989): *In re A.C.B.*, 153 Ill. App. 3d 704, 709 (1987) ("[T]he trial court could properly conclude that the rate of progress the mother has made is not reasonable considering the right of the children to not be left in limbo for an unreasonable time.").

¶ 33 One aspect of the reasonable progress expected of respondent was to strengthen the mother-child bond by visiting J.W. consistently. Respondent visited him about 10 times at the beginning of the case, according to Wakefield's testimony; then, six months into the nine-month period, a permanency report criticized respondent for missing three visits; visitation was transferred from the foster home to the agency because she was barely visiting; and finally, eight months into the nine-month period, visitation—and contact with J.W.—ceased altogether when respondent moved to Chicago.

¶ 34 The root problem in this case is parental indifference. Respondent had shown, at best, only a tepid interest in J.W.—not nearly the degree of interest a parent normally would

show in his or her newborn child—and the court and DCFS had to come up with services that might help. In case there was an underlying emotional problem, such as depression, a dispositional order instructed respondent, two months into the nine-month period, to complete any recommended mental-health counseling. The remaining seven months of the nine-month period went by without respondent's having completed mental-health counseling. In fact, in the final month of the nine-month period, June 2018, respondent was discharged from the counseling program because of absenteeism.

¶ 35 Under the facts of this case, mental-health counseling and visitation were important, highly relevant services. We are unconvinced it is clearly evident that the State failed to prove, by clear and convincing evidence, respondent's lack of reasonable progress in those services and, hence, her lack of reasonable progress toward the return of J.W. to her custody. By finding section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)) to be proven, the trial court did not make a finding that was against the manifest weight of the evidence.

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, we affirm the trial court's judgment.

¶ 38 Affirmed.