2019 IL App (4th) 190036-U

NO. 4-19-0036

FILED
April 25, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re K.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 17JA58
v.	)	
Jackie B.,	)	Honorable
Respondent-Appellant).	)	J. Brian Goldrick,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Holder White and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding respondent was unfit under section 1(D)(m)(ii) of the Adoption Act was not against the manifest weight of the evidence.

¶ 2 In June 2018, the State filed a motion for the termination of the parental rights of respondent, Jackie B. as to her minor child, K.B. (born in April 2010). At an October 2018 hearing, respondent admitted she was unfit, and the McLean County circuit court accepted her admission and found respondent unfit. In December 2018, the court concluded it was in K.B.'s best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding her unfit. We affirm.

¶ 4 I. BACKGROUND

¶ 5 K.B.'s father is William C., who is not a party to this appeal. In June 2017, the

State filed a petition for the adjudication of wardship as to K.B. The State's petition alleged K.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 her environment was injurious to her welfare when she resided with respondent based on respondent's residence having deplorable living conditions and respondent's unresolved mental-health issues. At an August 2017 hearing, respondent admitted K.B. was neglected based on deplorable living conditions, and the circuit court adjudicated K.B. neglected. After a September 2017 dispositional hearing, the court entered a dispositional order (1) finding respondent was unfit to care for, protect, train, educate, supervise, or discipline K.B.; (2) making K.B. a ward of the court; and (3) placing her custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 6 In June 2018, the State filed a motion to terminate respondent's parental rights to K.B. The motion asserted respondent was unfit because she (1) failed to make reasonable efforts to correct the conditions that were the basis for the minor child's removal from the parent during any nine-month period after the neglect adjudication, specifically August 2, 2017, to May 2, 2018 (750 ILCS 50/1(D)(m)(i) (West Supp. 2017)); and (2) has an inability to discharge parental responsibilities due to a mental impairment, mental illness, intellectual disability, or development disability and such inability to discharge parental responsibilities shall extend beyond a reasonable period of time (750 ILCS 50/1(D)(p) (West Supp. 2017)).

¶ 7 At an October 10, 2018, hearing, the State amended the first unfitness ground in the termination petition to allege respondent failed to make reasonable progress toward K.B.'s return during any nine-month period after the neglect adjudication, specifically August 2, 2017, to May 2, 2018 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2017)). Respondent then admitted she was unfit for failure to make reasonable progress, and the State dismissed the other unfitness

allegation. The State gave the following factual basis for the reasonable progress ground:

> "[T]he State would present evidence by case worker Alyssa Barich who would testify she was the case worker for the minor [K.B.] and during the nine month period between August 2 of 2017 and May 20 of 2018, *** respondent mother, failed to make reasonable progress in that she had not at that time yet completed domestic violence treatment which she had just begun in May of 2018. She has not yet made progress in individual counseling which had started back in November, and that at that time she did not have stable housing and she was living at The Salvation Army.
>
> Additionally the State would request the court take judicial notice of the permanency orders from January 31st and May 16th of this year, which would indicate that the court found that [respondent] had not made reasonable and substantial progress towards the return of the minor."

Respondent's counsel stipulated to the aforementioned factual basis. The circuit court found respondent's admission was knowingly and voluntarily made.

¶ 8 On December 11, 2018, the circuit court held the best-interests hearing. William C. executed a final and irrevocable consent to adoption. The State presented the testimony of Alissa Baertsch, Maria Levengood, and Jeff Levengood. Respondent testified on her own behalf. The circuit court took judicial notice of the court file. At the conclusion of the hearing, the circuit court found it was in K.B.'s best interests to terminate respondent's parental rights. A transcript of the December 11, 2018, proceedings is not included in the record on appeal. That same day, the court entered a written order terminating respondent's parental rights to K.B.

¶ 9 On January 9, 2019, respondent filed a letter indicating she sought to appeal the

termination of her parental rights. On January 24, 2019, respondent filed a timely motion to file an amended notice of appeal under Illinois Supreme Court Rules 303(b)(5) and 303(d) (eff. July 1, 2017), which this court granted. 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).

¶ 10 II. ANALYSIS

¶ 11 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). In this case, respondent just challenges her unfitness finding.

¶ 12 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 unless it is 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). 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.

¶ 13 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).

¶ 14 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 2, 2017, to May 2, 2018.

¶ 15 Respondent contends she made substantial progress and reasonable efforts toward correcting the initial conditions that led to K.B.'s removal. In support of her argument, respondent notes (1) a July 2018 permanency report; (2) a May 9, 2018, statement by a DCFS worker; and (3) respondent's June 26, 2018, letter to the circuit court. First, we note the aforementioned documents were not part of the State's factual basis and pertain to matters outside the nine-month period at issue. Also, the correction of the conditions which gave rise to the removal of the minor child is just part of the consideration of whether a parent is unfit for failing to make reasonable progress toward the minor child's return during the nine-month period. See *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. Moreover, respondent does not challenge the sufficiency of the State's factual basis or that her admission was knowing and voluntary.

¶ 16 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.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm the McLean County circuit court's judgment.

¶ 19 Affirmed.