2019 IL App (4th) 190109-U

NO. 4-19-0109

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 27, 2019
Carla Bender
4th District Appellate
Court, IL

In re Kaid. J. and Kais. J., Minors	)	Appeal from the
	)	Circuit Court of
	)	Champaign County
(The People of the State of Illinois,	)	No. 15JA29
Petitioner-Appellee,	)	
v.	)	Honorable
Kevin J.,	)	Brett N. Olmstead,
Respondent-Appellant).	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In December 2018, the trial court found respondent, Kevin J., to be unfit within the meaning of section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)) because he failed to make reasonable progress toward the return of his minor children, Kaid. J. (born March 16, 2008) and Kais. J. (born February 20, 2012), to his care during the nine-month period from December 27, 2017, to September 27, 2018. In January 2019, the trial court terminated respondent's parental rights. On appeal, respondent argues that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Events Preceding the State's Petition for Termination of Parental Rights

¶ 5 Respondent and Kaylan B. are the parents of Kaid. J. and Kais. J. Kaylan B. and Alex L. are the parents of A.L. (born May 12, 2015). The record reflects that Kaylan B., Alex L., and A.L. were also involved in the underlying proceedings but are not subjects of this appeal. (Kaylan B. surrendered custody of her three children to the Department of Children and Family Services (DCFS) in March 2016; Alex L.'s parental rights were terminated in the underlying proceedings in July 2016.) Accordingly, for purposes of this appeal, we discuss the facts and the issues only as they relate to respondent and his two children, Kaid. J. and Kais. J.

¶ 6 Respondent was incarcerated from July 2012 to March 2017.

¶ 7 DCFS became involved in the instant case following the birth of A.L. on May 12, 2015. A.L.'s meconium tested positive for marijuana, amphetamines, opiates, and cocaine.

¶ 8 On May 22, 2015, the State filed a petition for adjudication of wardship, alleging that all three minors—A.L., Kaid. J., and Kais. J.—were neglected. In its petition, the State alleged the minors (Kaid. J. and Kais. J.) were 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)) because their environment was injurious to their welfare in that it exposed them to the risk of substance abuse and domestic violence. In July 2015, the trial court entered an adjudicatory order finding the minors neglected. In August 2015, the trial court entered a dispositional order adjudging the minors neglected, making them wards of the court, and placing custody and guardianship with DCFS.

¶ 9 In April 2016, the State filed a motion seeking a finding of unfitness and termination of respondent's parental rights. The State alleged respondent was unfit within the

meaning of section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)) because he failed to make reasonable progress toward the return of the minors during the nine-month period—July 18, 2015, through April 18, 2016—following the adjudication of neglect.

¶ 10 On June 27, 2016, the trial court conducted a fitness hearing. The court concluded that the State proved by clear and convincing evidence that, due to his incarceration, respondent failed to make reasonable progress toward the return of the minors during the nine-month period following the adjudication of neglect. Despite finding respondent unfit, the trial court commended respondent for the efforts he made while incarcerated:

> "[T]he State hasn't tried to allege that [respondent] has failed to maintain a reasonable degree of interest, concern or responsibility regarding his children, or that he has failed to make reasonable efforts. Reasonable efforts is something that's judged on a subjective standard, which means you take the parent as you find them, so [respondent], as we find him at the beginning of this case is incarcerated at the Danville Correctional Center, serving a sentence for residential burglary, and during that time, considering that that was—those were his circumstances when the case started, has he made efforts? Yes, he has. He has made far more than reasonable efforts. He has done everything he possibly could within the structure that DOC and the opportunities, as limited as they were, that DOC gave to him, even going so far as to seek a transfer to another facility because they couldn't muster up the attendance to get the kind of programs that would help him as far as showing progress in this case, and was unable to do that, and so considering the circumstances that he found himself in, he has made

accomplishment after accomplishment through the efforts and the work that he has put in ***."

Following the hearing, the trial court entered an adjudicatory order finding respondent unfit "because despite making every effort that he could while being incarcerated *** he was not able to make progress toward his children's return to him from July 18, 2015 to April 18, 2016 ***."

¶ 11 On July 26, 2016, the trial court conducted a best-interest hearing. The court found that it was in the best interest of the minors not to terminate respondent's parental rights, noting that respondent would be released from prison in approximately eight months. However, the court informed respondent that the finding did not mean custody of the minors would be returned to him immediately upon release:

> "Now that doesn't—that won't be the time frame. That doesn't mean that [respondent] walks out of DOC and into a home with his children. That's not happening either. Upon his release, there will be services to engage in with [DCFS], and he'll have that opportunity. And from what I've seen of him so far, I think he is a person who's going to step up and take advantage of the opportunities that he has ***.
>
> So, I would anticipate and be hopeful that those services are engaged immediately upon his release, and that he continues his effort to maintain every opportunity he has to keep up contact with the children, and that we could enter a transition and a return home. And certainly, the children still see him as their father, he's not a stranger to them. That bond is there and has been maintained. And so, I find that it's in the children's best interest not to terminate parental rights for [respondent]."

¶ 12 Respondent was released from prison on March 10, 2017. In December 2017, DCFS prepared respondent's service plan. The plan's stated goal was to return the minors home to respondent within 12 months. Respondent had the following objectives under the plan: (1) "cooperate with Children's Home and Aid [(CHA)] in order to move towards case closure"; (2) "achieve and maintain a drug[-]free lifestyle"; and (3) "provide safe and appropriate housing for himself and his family." In addition, the court directed respondent to (1) "stop illegally smoking marijuana" and (2) "obtain a home with sufficient space for the children."

¶ 13 The subsequent permanency reports prepared by CHA revealed that respondent continually tested positive for marijuana and failed to secure appropriate housing for the children's return home. In each permanency order entered between December 2017 and September 2018, the trial court found that respondent made neither reasonable efforts nor reasonable progress toward returning the minors home. Due to respondent's failure to comply with the service plan and the trial court's directives, the State commenced termination proceedings for a second time.

¶ 14 B. State's Motion Seeking a Finding of Unfitness and the Termination of Respondent's Parental Rights

¶ 15 On October 2, 2018, the State filed a second motion seeking a finding of unfitness and termination of respondent's parental rights. The State alleged respondent was unfit within the meaning of section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)) because he failed to make reasonable progress toward the return of his minor children during the nine-month period from December 27, 2017, to September 27, 2018. The State further alleged that termination of parental rights was in the minors' best interest.

¶ 16 1. *Fitness Hearing*

¶ 17 On December 12, 2018, the trial court conducted a fitness hearing. The State presented the testimony of Melissa Simmons, an addiction counselor at Rosecrance, and Tia Manierre, the minors' foster care caseworker.

¶ 18 Tia Manierre testified that she was employed by CHA as the children's foster care caseworker. Manierre became the children's caseworker in December of 2017, "right after Christmas." She testified that respondent was required to complete substance abuse treatment, maintain a healthy and appropriate relationship with his children through visitation, obtain employment and housing, and maintain contact with CHA. Respondent never missed a visit with his children and the visits "always went exceptionally well, he has a great relationship with his kids." He provided verification of employment at least once a month. However, at the time of the hearing, Manierre did not know if respondent lived in an appropriate place for the children to return. She testified that it had "been reported that he moved into a two-bedroom apartment[,]" but respondent denied this. Respondent maintained that he lived with his brother in a two-bedroom duplex. Manierre had been to the two-bedroom duplex and concluded it was inappropriate for the children to return to because there were not enough bedrooms.

¶ 19 Manierre further testified that respondent was required to complete random drug screens at least once a week. Respondent "pretty consistently" tested positive for marijuana. Manierre recalled "a couple of drug screens, maybe back in the summer *** where he provided a clean urine sample, but it was never consistent." In fact, respondent's visitation would have dropped "to a third-party discretion" if he had provided three consecutive clean drops; however, this never happened because "he, at most, only had one." Manierre recommended inpatient treatment to respondent for the first time in the summer of 2018 but he "wasn't on board with it."

She again brought up the topic in August of 2018. Respondent "was more open to it" this time but "it was never anything that he followed through with."

¶ 20 Melissa Simmons testified that she began employment at Rosecrance in May of 2017. At that time, respondent was already a client. Simmons stated that CHA referred respondent to Rosecrance for substance abuse treatment in April of 2017. Respondent regularly attended weekly, two-hour group meetings with Simmons. The purpose of the group was "to learn some relapse prevention skills, and to learn decision-making skills, and to help him maintain sobriety." Simmons testified that despite respondent's regular attendance, he continued to struggle to maintain his sobriety; specifically, respondent was unable to abstain from marijuana. She believed respondent needed to attend an inpatient program in order to properly address his addiction to marijuana. At the time of the hearing, respondent had yet to successfully complete his substance abuse treatment.

¶ 21 The trial court found that the State proved by clear and convincing evidence respondent was unfit because he failed to make reasonable progress towards the return of his children during the nine-month period from December 27, 2017, to September 27, 2018. The court concluded that custody could not be restored to respondent in the near future due to his failure to complete substance abuse treatment and properly address his addiction to marijuana:

> "Certainly as you *** got to September 27 of 2018 the status was [respondent], despite the provision of services, was unable to establish consistent sobriety for any length of time whatsoever, other than maybe one oddball negative screen, having a couple of those in the summer, and at that time he really needed to get into inpatient treatment, had been presented with that option and rejected it. And looking into the near future from September 27 [of 2018], it

couldn't be said that the children could have been returned to his custody, because he continued to struggle with this addiction, and had been unsuccessful in addressing it and maintaining consistent sobriety."

Following the hearing, the trial court entered an adjudicatory order finding respondent unfit.

¶ 22 2. *Best-Interest Hearing*

¶ 23 At the January 28, 2019, best-interest hearing, the trial court considered the best-interest report prepared by Tia Manierre; no other evidence was presented to the court. The best-interest report indicated that the children had been living with their paternal grandparents since the case began in May of 2015. While the children loved respondent and were attached to him, both children were also very bonded and attached to their grandparents. For example, Kais. J. "has been observed to lay on the couch with [his] grandparents, cuddle with them, hug them, and tell [them] that he misses them"; Kaid. J. "has been observed to hug and kiss her grandparents, tell them that she loves them, and takes care of them when they are not feeling well." The children also expressed a sense of safety and security residing with their grandparents.

¶ 24 Kaid. J. and Kais. J. also had significant ties to their community. Kaid. J. was involved in several daily activities such as gymnastics and Girl Scouts of America, which she had been involved with since the case began. She had also attended the same school since the case began and reported feeling very connected to her peers and enjoying time with her friends. Kais. J. engaged in gymnastics, Boy Scouts of America, and tae kwon do, and he reported that he enjoyed these activities. Kais. J. attended the same school as his sister and enjoyed the friendships he had there.

¶ 25 The best-interest report indicated that the children needed permanence in their lives. They had been living a life of uncertainty for nearly four years, which had led to ongoing

behavioral issues. Kaid. J. reported "feeling hopeless and as if the process will not come to an end." While the children wanted to maintain a relationship with their father, they both expressed a desire to continue to live with their grandparents. The report concluded that it was in the best interest of the children to be adopted by their grandparents, which they had expressed a willingness to do. However, the report also noted that it "would also be in the best interests for the minor[s] to continue contact and visitation with [respondent]."

¶ 26 After considering the report, the trial court found it was in the children's best interest to terminate respondent's parental rights. The court reviewed the factors listed in the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)) and found that each one favored termination of respondent's parental rights. It noted that the children would continue living with respondent's side of the family: "they're in a home that preserves that background and those ties, including familial, cultural, and religious, all those sense of attachments, their ability to maintain attachments to extended family." The court also highlighted the children's wishes: "These children both very much love their father, and they want their father to be in their lives, but they don't want to live with him, they want to stay where they are and grow up there." However, of greatest significance to the court was the children's need for permanence:

> "[Respondent] can provide positive support, but these children need to know who their parents are, and that person is not [respondent]. And to try to keep this case going on in a limbo where [respondent] is working towards becoming that person, that is nowhere on the horizon, and you can already see the fraying that's happening with the children from this case being kept in a limbo. You can already see it. They need to know who their parents are, and that's in their best interests ***."

Following the hearing, the trial court entered an order terminating respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence.

¶ 30 A. Fitness

¶ 31 Respondent argues the trial court's fitness determination was against the manifest weight of the evidence. Respondent asserts that the trial court erred in finding him unfit "simply because, [18] months out of prison, he struggled with an addiction to marijuana."

¶ 32 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 33 The trial court determined the State proved by clear and convincing evidence that respondent was unfit because he failed to make reasonable progress toward the return of the children to his care during the nine-month period from December 27, 2017, to September 27,

2018. The court concluded that the children could not be returned to respondent's custody in the near future because he failed to address his addiction to marijuana and maintain consistent sobriety.

¶ 34 Under the Adoption Act, an unfit parent includes any parent who fails to make reasonable progress toward his or her child's return during any nine-month period following the neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2016). In addressing section 1(D)(m) of the Adoption Act, the supreme court has stated 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 become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

This court has described reasonable progress as "an 'objective standard,' " which exists "when 'the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody.' " (Emphasis in original.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 35 The evidence presented at the fitness hearing was sufficient to support the trial court's determination that respondent failed to make reasonable progress toward the return of his children. In order to comply with the service plan and the trial court's directives, respondent was

required to "achieve and maintain a drug[-]free lifestyle" and "stop illegally smoking marijuana." The record reveals little, if any, demonstrable progress by respondent to comply with this directive. Simmons testified that although respondent regularly attended weekly group meetings designed to help him maintain his sobriety, he failed to abstain from marijuana. Simmons further testified that respondent needed more intensive services to address his addiction and she recommended inpatient treatment to him, but respondent never participated in these services. Manierre testified respondent was required to submit to weekly random drug screens and that respondent consistently tested positive for marijuana. Manierre could recall only "a couple of drug screens, maybe back in the summer *** where he provided a clean urine sample, but it was never consistent." In fact, respondent's visitation would have dropped "to a third-party discretion" if he had provided three consecutive clean drops; however, this never happened because "he, at most, only had one." Based on this evidence, we find the trial court's fitness determination was not against the manifest weight of the evidence.

¶ 36 B. Best Interest

¶ 37 Respondent also argues that the trial court's best-interest determination was against the manifest weight of the evidence. Respondent asserts the trial court erred because "he was closely bonded to his children, his parents had provided foster care for some years, and [his] only failing was a remedial addiction to marijuana."

¶ 38 "Following a finding of unfitness *** the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphases in original.) *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving

home life." *Id*. "At the best-interest stage of termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009).We will not disturb the trial court's best-interest determination unless it is against the manifest weight of the evidence. *Id*. at 291. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 39 Under the Juvenile Court Act, there are several factors a court should consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). These factors, considered in the context of the child's age and developmental needs, include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay. H.*, 395 Ill. App. 3d at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 40 In this case, the evidence presented at the best-interest hearing showed that the children had lived with their paternal grandparents since before the case began in May of 2015. Although the children were bonded to respondent, they were also bonded and attached to their grandparents and wanted to live with them. The children reported feeling safe and secure with

their grandparents. The grandparents provided the children with love, support, consistency, stability, and familiarity. Both children also had strong ties to the community; they were engaged in multiple extracurricular activities, attended the same school, and had numerous friends from school and the neighborhood. The children also needed permanency, as they had been living a life of uncertainty for nearly four years. The grandparents were willing to provide this permanency by adopting the children. In addition, the record shows that the children will likely continue to enjoy a relationship with respondent regardless of whether he retains his parental rights. Based on these facts, we find the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment.

¶ 43 Affirmed.