2019 IL App (4th) 190110-U

NO. 4-19-0110

FILED
July 16, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: H.K.-G., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 16JA29
v.	)	
Nathan G.,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

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

ORDER

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

¶ 2 Respondent, Nathan G., appeals from the trial court's judgment terminating his parental rights to his minor child, H.K.-G. Respondent claims the court's associated orders finding him to be an unfit parent and finding termination to be in H.K.-G.'s best interests were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 2016, the State filed a two-count petition, alleging H.K.-G., born April 16, 2016, was a neglected minor. The State alleged respondent and the minor's mother (T.K.), who is not a party to this appeal, exposed the minor to substance abuse (count I) and criminal activity (count II), thus creating an environment injurious to her welfare. See 705 ILCS 405/2-3(1)(b)

(West 2016). The Illinois Department of Children and Family Services (DCFS) received a report that the minor was in the care of a relative who had a history of using methamphetamine and was on probation for a methamphetamine-related case. The mother had been arrested a few days earlier for home invasion while she was on probation. She was overheard via telephone discussing with respondent her ongoing methamphetamine sales and details regarding the proceeds she received from the home invasion. Respondent had been arrested a few months earlier, before H.K.-G. was born, for the manufacture of methamphetamine. He was incarcerated at all times pertinent to this appeal.

¶ 5 DCFS took H.K.-G. into protective custody, and the trial court granted DCFS temporary custody.

¶ 6 On September 1, 2016, after a stipulated adjudicatory hearing, the trial court found H.K.-G. to be a neglected minor whose environment was injurious to her welfare due to the exposure of controlled substances. On September 30, 2016, at the dispositional hearing, the court (1) found respondent unfit and unable for reasons other than financial circumstances alone to appropriately care for, protect, train, or discipline H.K.-G. and (2) made H.K.-G. a ward of the court. H.K.-G. was placed in a relative foster placement with her maternal great-aunt where she remained for the life of the case.

¶ 7 On September 21, 2018, the State filed a motion to terminate the mother's and respondent's parental rights, alleging they were unfit parents where they (1) failed to make reasonable progress toward the return of the minor during any nine-month period following adjudication, namely December 1, 2017, to September 1, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2016)) (count I) and (2) failed to maintain a reasonable degree of interest, concern or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)) (count II).

¶ 8 On December 14, 2018, the parties convened for a fitness hearing. At the beginning of the hearing, the mother surrendered her parental rights. Valerie Garver, a former child-welfare specialist for Lutheran Social Services of Illinois (LSSI), testified she worked with the family from August 2017 through April 2018. She communicated with respondent through written correspondence due to his incarceration. His case plan included the following tasks: individual counseling, parenting and substance-abuse counseling, cooperation with DCFS, maintain employment, secure adequate housing, and participate in visitation with H.K.-G. Due to his incarceration, respondent did not participate in any services, as his facility did not offer "many at all."

¶ 9 Garver testified she received two or three letters from respondent while she was involved with the case. She said he always asked for photos of H.K.-G. and asked about her well-being. Garver thought she recalled respondent asking for permission to write to H.K.-G. at her foster home, but she could not recall if that ever happened.

¶ 10 Alexis Noggle, the child-welfare specialist for LSSI who replaced Garver, testified she worked with the family from May to August 2018. Like Garver, Noggle communicated with respondent through written correspondence. She said respondent reported participating in a substance-abuse class, general education classes, and a mental-health evaluation. Noggle contacted the prison for verification, but according to her, prison officials indicated a release of information was required. Before Noggle could submit the release, she was no longer the caseworker. Noggle acknowledged respondent expressed interest in H.K.-G.'s well-being.

¶ 11 Nikki Smith, the child-welfare specialist for LSSI who replaced Noggle in August 2018, testified she also communicated with respondent through written correspondence.

Respondent sent her documentation of his substance-abuse classes and his college-course transcripts. He was planning to participate in a program called Inside Out Dads. He also mentioned to her that he had appointments to have his facial tattoos removed. Smith testified that despite his participation in these prison programs, if respondent was released, he would still have to participate in his required case-plan tasks.

¶ 12 Smith testified that the foster mother advised her that respondent was "in constant contact" with H.K.-G. by sending her letters "all the time." In the letters, respondent expressed his desire to see H.K.-G. and his intent of doing everything he could to be reunited with her.

¶ 13 Upon the State's motion and without objection, the trial court took judicial notice of all findings and orders entered in the case. The State rested.

¶ 14 Respondent presented the testimony of Amber Hickman, his sister. Hickman said she had been in daily contact with respondent, who "always asks" about H.K.-G. Hickman said she has maintained contact with H.K.-G. and her foster parent pursuant to respondent's request. She spoke with the family on the phone and in person. Hickman said respondent is "really, really proud of himself" for working toward his associate's degree, as well as his award "for his excellence in recovering from addiction." She believes respondent's participation in these prison programs has helped him become a better parent.

¶ 15 Frances G., respondent's grandmother, also testified about respondent's interest in H.K.-G.'s well-being. She said, "That's all he talks about[.]" She said he was thrilled when the paternity tests confirmed he was H.K.-G.'s father because the mother had repeatedly told him he was not.

¶ 16 Respondent testified and agreed he was "in fact thrilled" when he was confirmed to be H.K.-G.'s father. He was currently housed in the Jacksonville Correctional Center with an

expected release date of May 2019. He said he speaks with the foster parent on the phone because H.K.-G. is too young to talk. He said he has written his daughter "so many" letters and has sent her gifts. He had even recorded his voice reading children's books and sent her the recordings.

¶ 17 Respondent said he is a member of the GEO Reentry program, which consists of parenting classes, substance-abuse classes, and behavioral modification. The following exchange occurred:

> "Q. What parts of that program have you actually completed?
>
> A. I've completed phase one, which touches on—basically it helps you identify different characteristics of your addiction wherein associate labels to them characteristics so you're able to identify triggers and things that happen in your recovery that may result in relapse. And now I'm in—currently halfway through phase two, and that touches more on real life thing, like it breaks everything down so you get a better understanding of yourself. And also I do one-on-one substance-abuse meetings with my personal counselor every month. It's just so many—so much stuff that I can't—I don't even—I can't even explain it all.
>
> Q. Okay. Hard to remember everything that's involved in the program?
>
> A. Yes, sir.
>
> Q. All right. And are you still in good standing in that program?
>
> A. Yes. Right now I hold a job in the community. I'm the clerk. I help maintain everyone's good time, and you've got to sign in every group and I help

the counselors, and I also facilitate a substance-abuse group every Monday at 3:30 p.m. for all the new coming guys, help them get acclimated to the system."

¶ 18 Respondent introduced as exhibits (1) a certificate for being an outstanding member of the therapeutic community as voted on by his peers and staff, (2) a letter from the director of the reentry program explaining respondent's role and progress, and (3) course information from Lakeland College about obtaining an associate's degree in liberal studies, which he said he completed.

¶ 19 Respondent said he also participated in programs at his previous facilities, with the exception of Pinckneyville Correctional Center. He said, although he is not yet participating in the Inside Out Dads program, he has observed some of the sessions. He said he "know[s he's] going to learn a lot when [he] get[s] there." He attends his group sessions for seven hours every day. He said he has never missed a day except for "these court dates and [for] dental work." He said he planned and has made arrangements to get his facial tattoos removed immediately upon release because he does not want H.K.-G. to "ask questions and have to answer them."

¶ 20 After considering the evidence and counsels' closing statements, the trial court found the State had sufficiently proved respondent to be an unfit parent on the grounds set forth in count I in that he failed to make reasonable progress toward the return of the minor within the nine-month period between December 1, 2017, and September 1, 2018. However, the court found the State had not proved that respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare, as set forth in count II.

¶ 21 On February 6, 2019, the trial court conducted the best-interest hearing. The court noted it would consider the best-interest reports from LSSI and the court-appointed special advocate (CASA). The LSSI best-interest report noted respondent was incarcerated at the

Jacksonville Correctional facility with a projected parole date of August 2, 2019. He was working as a clerk in the GEO Reentry Level Two Intensive Outpatient Program within the facility. This program helps inmates prepare for release by providing assistance and counseling for their substance-abuse issues. The caseworker also noted respondent was involved in parenting education through the Inside Out Dads program, which "offers parenting classes, tools for being a better father, and steps for working with the mother of the child and reconnecting with the child once released." The report also noted respondent had received his associate's degree in liberal arts. With regard to the minor, the caseworker noted H.K.-G had been residing with her maternal great-aunt since July 2016. The two share a strong bond. Although H.K.-G. was unable to verbalize her feelings due to her young age, she reportedly demonstrated behavior that indicated she was "very secure in her current placement." The caseworker described the home as stable and comfortable. The foster mother has expressed her desire to adopt the minor.

¶ 22 CASA's best-interest report similarly described H.K.-G.'s living environment. CASA had no concerns about the minor's safety, health, or welfare. She was thriving in the home of her maternal great-aunt and family. The foster mother told CASA she corresponds with respondent and he had sent several Christmas gifts to the home for the minor. The foster mother also reported she has taken the minor to visit respondent's grandmother. In CASA's opinion, the minor was residing in a permanent, stable, and caring home. In her opinion, respondent's parental rights should be terminated.

¶ 23 The parties presented no further evidence. After considering the evidence, the best-interest reports, the arguments of counsel, and the statutory best-interest factors, the trial court found the State sufficiently proved it was in the minor's best interest to terminate respondent's parental rights. The court noted respondent's efforts while incarcerated but found

"it would be at best a very lengthy and arduous process for a child to establish a relationship of care even with a really well-motivated parent, as [it] believe[d] [respondent] is and would be."

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent argues the trial court's determinations he was an unfit parent pursuant to section 50/1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)) and it was in H.K.-G.'s best interests to terminate his parental rights were against the manifest weight of the evidence. We disagree and affirm.

¶ 27 A. Finding of Unfitness

¶ 28 Respondent argues the trial court erred when it found he failed to make reasonable progress solely because he was incarcerated. That finding, he contends, would mean it would be impossible for a parent to make reasonable progress toward reunification during the period in which he was incarcerated. He claims such a finding contradicts the Second District's decision in *In re Keyon R.*, 2017 IL App (2d) 160657. We will discuss *Keyon R.* after a brief recitation of the procedures involved.

¶ 29 The termination of parental rights is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); 705 ILCS 405/2-29(2) (West 2016). The trial court must first find a parent is unfit as defined in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2016). Section 1(D) lists several grounds upon which a finding of unfitness can be made. 750 ILCS 50/1(D) (West 2016). Under section 1(D)(m)(ii) of the Adoption Act, a parent may be found unfit if he fails to make reasonable progress toward the return of the child within any nine-month period after an adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2016). The statute also provides:

> "If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987." 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 30 The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship, and as such, the State must prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(4) (West 2016); *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The trial court's decision should not be reversed on appeal unless the finding was against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208. Only if the record shows it is clearly apparent the court should have reached the opposite conclusion will the court's decision be deemed to be against the manifest weight of the evidence. *Id.* The court is to consider evidence occurring only during the relevant nine-month period to determine whether a parent has made reasonable progress toward the return of the minor. *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 31 In this case, the trial court found respondent was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act because he failed to make reasonable progress during the nine-month period between December 1, 2017, and September 1, 2018. See 750 ILCS 50/1(D)(m)(ii) (West 2016). Our supreme court has interpreted section 1(D)(m)(ii) as requiring a parent make demonstrable movement toward the goal of reunification. *C.N.*, 196 Ill. 2d at 211. The

benchmark for measuring a parent's reasonable progress under section 1(D)(m)(ii) of the Adoption Act includes compliance with service plans and court directives in light of the condition that gave rise to the removal of the child and other conditions that later become known that would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. Reasonable progress exists when the court can conclude the progress being made by a parent to comply with the directives given for the return of the minor is sufficiently demonstrable and of such quality that the court would be able to order the child returned to the parent's custody in the near future. *In re J.H.*, 2014 IL App (3d) 140185, ¶ 22. The standard regarding whether a parent has made reasonable progress toward unification is an objective one, and at a minimum, a finding a parent has made reasonable progress requires there was some movement toward the goal of reunification with the child. *In re B.W.*, 309 Ill. App. 3d 493, 499 (1999).

¶ 32 Service plans are an integral part of the statutory scheme, and compliance with the service plans is intimately tied to a parent's progress toward the return of the child. *C.N.*, 196 Ill. 2d at 217. The failure to make reasonable progress includes the failure to substantially fulfill the terms of the service plans. *Id.*

¶ 33 In *Keyon R.*, the trial court found the incarcerated father unfit for his failure to make reasonable progress. The appellate court reversed that finding because the father was never assessed for services and was never given a service plan. The appellate court stated: "To use respondent's lack of compliance with nonexistent services—services that were consciously and intentionally withheld—to terminate his parental rights is paradoxical." *Keyon R.*, 2017 IL App (2d) 160657, ¶ 30. We find *Keyon R.* factually inapplicable to the case before us.

¶ 34 Here, respondent participated in an integrated assessment and was the subject of a service plan. He had a number of required tasks that admittedly he did not complete. The trial

court found respondent unfit for failing to make "sufficient progress demonstrable such that the child could be returned to the parent in the near future." The court explained that "in large part, basically the reason for that [finding of unfitness] is incarceration and the ability or sometimes lack of ability to make progress."

¶ 35 This court has previously held the mere fact of incarceration is not evidence of a parent's failure to make reasonable progress. *In re J.R.Y.*, 157 Ill. App. 3d 396, 403 (1987). However, at the same time, incarceration does not provide a parent with immunity from a petition to terminate for his failure to make reasonable progress. *Id*. That is, there "is no exception for time spent in prison." *In re J.L.*, 236 Ill. 2d 329, 340 (2010).

¶ 36 According to respondent's integrated assessment completed in October 2016, LSSI recommended respondent participate in (1) a substance-abuse assessment and any recommended treatment, (2) individual counseling, (3) parenting education, and (4) visitation with H.K.-G.

¶ 37 According to Garver and Noggle, the caseworkers involved during the majority of the relevant nine-month period of December 1, 2017, through September 1, 2018, even though respondent communicated with them through written correspondence and had expressed an interest in the minor's well-being, they had not received confirmation from prison officials that respondent was participating in any available services. When the third caseworker, Smith, assumed the case in August 2018, she reportedly received from respondent a forwarded document from a program administrator verifying that respondent was planning to participate in a GEO reentry program.

¶ 38 Respondent's plan to participate, or his purported participation, in the programs named do not satisfy the finding the trial court would have to make to conclude respondent's

progress was "sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051 (2003). As such, upon respondent's release, he would be required to participate and successfully complete all services indicated in his case plan. Without any way to assess what, if any, benefit respondent's purported participation in the prison programs had toward completion of his required services, the trial court had no choice but to find that respondent had not made demonstrable movement "of such quality" toward reunification with H.K.-G. See *In re E.M.*, 295 Ill. App. 3d 220, 226 (1998).

¶ 39 We conclude the trial court's finding of unfitness was not against the manifest weight of the evidence. Respondent had never been a caretaker of H.K.-G., so the ultimate task would encompass uniting, not reuniting, the two. Upon his release from prison, respondent would be required to start from the beginning to comply with DCFS's directives. Given that scenario, it would be illogical to find that respondent had made any progress toward unification or that unification could occur in the near future. See *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). Thus, we affirm the court's finding of unfitness.

¶ 40 B. Best-Interest Finding

¶ 41 The State must prove that termination is in the child's best interests by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). "The court's best-interest finding will not be reversed unless it is against the manifest weight of the evidence." *In re Veronica J.*, 371 Ill. App. 3d 822, 831-32 (2007).

¶ 42 At the best-interest hearing, the evidence showed H.K.-G had been in her maternal great-aunt's care since July 2016, from the age of three months. All of her needs were being met, as neither LSSI nor CASA had any concerns for her well-being. This foster home was an adoptive placement and was described as a loving, stable, and caring home. It was obvious to

the caseworker H.K.-G. and her foster mother shared a strong bond and H.K.-G. seemed "very secure in her current placement."

¶ 43 Based on these findings, we conclude the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. We find no error.

¶ 44 III. CONCLUSION

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

¶ 46 Affirmed.