2019 IL App (4th) 190281-U

NO. 4-19-0281

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re C.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 17JA12
v.	)	
Apolinar S.,	)	The Honorable
Respondent-Appellant).	)	Charles C. Hall,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the judgment of the trial court that terminated respondent's parental rights because the trial court's findings were not against the manifest weight of the evidence.

¶ 2 Respondent, Apolinar S., is the father of C.S. (born April 2012). In February 2019, the trial court found respondent was an unfit parent, and in May 2019 it found termination of respondent's parental rights would be in the minor's best interests. Respondent appeals, arguing that the trial court's (1) fitness determination and (2) best-interest determination were against the manifest weight of the evidence. We disagree and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Procedural History

¶ 5 In March 2017, the State filed a petition for adjudication of wardship, alleging C.S. was a neglected or abused minor as defined by the Juvenile Court Act (Act) in that

(1) respondent created a substantial risk of physical injury by other than accidental means (705 ILCS 405/2-3(2)(ii) (West 2016)) and (2) his environment was injurious to his health and welfare as evidenced by respondent's (a) drug use and (b) mental health issues. *Id.* § 2-3(1)(b). Also in March, following a shelter care hearing, the trial court entered an order placing temporary custody and guardianship with the guardianship administrator of the Department of Children and Family Services (DCFS).

¶ 6 In May 2017, the trial court conducted an adjudicatory hearing. After considering the evidence presented, the court found C.S. was a neglected and abused minor.

¶ 7 In July 2017, the trial court conducted a dispositional hearing. Following the hearing, the court entered a written order in which it found that it was in the best interest of C.S. and the public that C.S. be made a ward of the court and adjudicated a neglected minor. The court further found respondent unfit and unable for reasons other than financial circumstances alone to care for, protect, train, educate, supervise or discipline the minor, and it would be contrary to the minor's health, safety, and best interest to be in his custody. The court placed guardianship and custody with the guardianship administrator of DCFS. At the conclusion of the hearing, the court orally admonished respondent "that you must cooperate with the Illinois [DCFS] and comply with any service plans and correct any conditions that required the minors to be placed into care or you risk, ultimately, termination of your parental rights."

¶ 8 B. The Termination Hearing

¶ 9 In November 2018, the State filed a motion for termination of respondent's parental rights. The State alleged respondent was an unfit parent because he (1) failed to make reasonable efforts to correct the conditions which were the bases for the removal of C.S. within the nine-month period between January 2018 and October 2018, (2) failed to make reasonable pro-

gress toward the return of C.S. within the nine-month period between January 2018 and October 2018, and (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to C.S.'s welfare. 750 ILCS 50/1(D)(b), (m)(i)(ii) (West Supp. 2017).

¶ 10 1. *The Fitness Proceedings*

¶ 11 In February 2019, the trial court conducted a termination hearing regarding respondent's parental fitness.

¶ 12 a. The State's Case

¶ 13 The State first presented the testimony of Bob Jones, a probation officer for Vermilion County. Jones testified that he performed a drug test on respondent in July 2018. The test was positive for cocaine and benzodiazepines.

¶ 14 Amanda Carpenter testified that she was the caseworker assigned to the case, except for a period of absence between August 2018 and November 2018. Carpenter testified that the initial service plan goals consisted of (1) parenting education, (2) substance abuse services, and (3) mental health services, including individual therapy. Carpenter stated that respondent completed parenting classes in May 2018 but she did not know if he completed "one-on-one parenting" as recommended because respondent did not sign new consent forms after the originals expired.

¶ 15 Regarding substance abuse treatment, Carpenter testified that respondent was required to attend a treatment program three times per week. Respondent did not complete substance abuse treatment. Further, Carpenter stated that respondent did not take any drug tests that she requested. The only time respondent took a drug test was when he was ordered to by the court. Respondent tested positive for cocaine and benzodiazepines at that drug test.

¶ 16 Regarding mental health, Carpenter testified that respondent was referred to two

different facilities for mental health services. However, because respondent never completed the consent forms, Carpenter did not know if he ever attended services.

¶ 17 Carpenter further testified that she initially had successful phone contact with respondent. However, in February 2018, she could not reach him, and in April 2018, the phone number she had no longer worked. Carpenter stated respondent never provided her with another phone number. Respondent did not attempt to contact Carpenter, and the only contact she had with him was in court. Carpenter testified respondent had made "[v]ery limited progress" in the case.

¶ 18 On cross-examination, Carpenter agreed that she was aware of testimony from the parenting services provider from a July 2018 hearing that respondent was receiving one-on-one parenting classes but had not completed them. Carpenter also agreed respondent informed her that he wanted his attorney to review the consents before he signed and that drug drops and mental health services were difficult for him because he "had some insurance issues." Carpenter stated respondent had not had contact with C.S. because there was a no contact order in place stemming from a felony criminal proceeding.

¶ 19 Kelly Cooper testified she was currently the supervisor for the case and was the caseworker while Carpenter was on leave between mid-August and early November of 2018. Cooper stated the recommended services for respondent included (1) individual counseling, (2) parenting classes, and (3) substance abuse treatment. Respondent had completed some parenting services, but they were still listed in his service plan. Cooper indicated that, to her knowledge, respondent was not participating in any of the necessary services while she was the caseworker.

¶ 20 Cooper noted there were no valid consents while she had the case and she was

unable to get in contact with respondent. Cooper stated respondent did contact her by phone in November 2018 to report he was re-engaged in parenting services and that he wanted to participate in substance abuse services at Iroquois Mental Health Center. Cooper informed him that he needed to sign current releases and gave him times she was available to meet. Cooper never heard back from respondent.

¶ 21 On cross-examination, Cooper stated it was her understanding that respondent had completed parenting classes and he did not need any further. Cooper testified she only spoke with respondent on one occasion while she was handling the case.

¶ 22 b. Respondent's Case

¶ 23 Chris Bell testified that he was respondent's one-on-one parenting teacher at the Family Advocacy Center. Bell stated respondent completed regular parenting classes in November 2017 and started one-on-one parenting sessions with Bell in February 2018. Respondent met with Bell once a week and completed sessions in November 2018. Bell reported that respondent was engaged, took notes, and even stayed late for further guidance.

¶ 24 Minister Earl Eells testified he had known respondent since respondent was a child. Respondent attended Eells' church and sought his counsel as a minister. Eells was aware of the criminal case that brought C.S. into DCFS custody and testified respondent was distressed during that time. Eells had extensive contact with respondent between January and October 2018 and stated respondent was "[m]uch improved" and had a "tremendous change." Eells testified the church and its members provided support for respondent.

¶ 25 Respondent did not testify.

¶ 26 c. The Trial Court's Findings

¶ 27 In March 2019, the trial court entered a written order, finding that the State had

proved all three allegations of unfitness listed in the petition—that is, that respondent (1) failed to make reasonable progress, (2) failed to make reasonable efforts, and (3) failed to maintain a reasonable degree of interest—by clear and convincing evidence. The court noted that respondent failed to (1) perform any substance abuse treatment or individual counseling, (2) cooperate with DCFS, (3) keep in contact with caseworkers, and (4) participate in drug screenings. The court further noted that when respondent did submit to drug tests ordered after court hearings, respondent tested positive on both occasions. Because respondent completely failed to engage in substance abuse treatment and individual therapy, the court found respondent was an unfit parent.

¶ 28 2. *The Best-Interests Proceedings*

¶ 29 In May 2019, the trial court conducted proceedings regarding whether it was in C.S.'s best interests to terminate respondent's parental rights. Carpenter testified that C.S. lived with his maternal great-grandparents in Indiana, who were willing to offer permanency through adoption. Carpenter noted that C.S. had expressed to her a desire to stay with his great-grandparents and expressed to his therapist a fear of having contact with respondent. C.S. was doing well in school, had ties to the community through sports and church, and had other biological family in the area. Carpenter stated the great-grandparents met C.S.'s, financial, medical, and emotional needs. The great-grandparents continued to take C.S. to see his therapist in Illinois despite the long travel time because C.S. had established a bond and rapport with his therapist. Carpenter testified it was in C.S.'s best interest for his great-grandparents to adopt him.

¶ 30 On cross-examination, Carpenter acknowledged that respondent had always been barred by his criminal felony case from contacting C.S. C.S.'s great-grandparents were ages 58 and 59, but they had a successor plan in place for another relative of C.S. to assume care if some-

thing should happen. Carpenter agreed that C.S. had lived in multiple foster homes since the case was opened, including with his half-brother's mother and his maternal grandmother. Carpenter explained that the delay was due to his great-grandparents' living in another state. She also said his great-grandparents continued to foster a relationship between C.S. and his half-brother.

¶ 31 Respondent called his father—C.S.'s paternal grandfather—Apolinar S. Sr. (hereinafter Senior), to testify on his behalf. Senior testified that he had 4 children and 10 grandchildren, most of whom lived in Vermilion County. Senior further testified that he was taking care of three of his grandchildren. Senior stated he was willing and financially able to take care of C.S. and other members on C.S.'s paternal side of the family were willing as well.

¶ 32 The trial court found that it was in C.S.'s best interests to terminate respondent's parental rights. The court explained that C.S. had suffered significant trauma and fear from his experience with respondent and respondent had not addressed his mental health or drug issues. Meanwhile, C.S. had found stability with his great-grandparents and they were providing access to therapy, a return to normalcy, "a sense of being loved, attachment, belonging and having advantages in life economically, socially and culturally that the child has not had in the past ***." The court noted the fact that the great-grandparents were willing to adopt was "appealing" and it was not concerned with their advanced age because they had a successor plan in effect and the caseworker believed they were the best placement. Accordingly, the court found it was in C.S.'s best interest to terminate respondent's parental rights.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 Respondent appeals, arguing that the trial court's (1) fitness determination and (2) best-interest determination were against the manifest weight of the evidence. We disagree

and affirm the trial court's judgment.

¶ 36 A. The Fitness Determination

¶ 37 Respondent argues the trial court's findings that the State proved all three grounds of unfitness by clear and convincing evidence were against the manifest weight of the evidence. The State responds that all three of the trial court's findings were proper. It is well settled that "[a]s the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003). Based on our review of the record, we conclude that the trial court's finding that respondent failed to make reasonable progress within the applicable nine-month period was not against the manifest weight of the evidence. Accordingly, we discuss only that finding.

¶ 38 1. *The Standard of Review*

¶ 39 A determination of parental unfitness involves factual findings and credibility determinations that the trial court is in the best position to make. *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007). A trial court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001). A decision is against the manifest weight of the evidence when the opposite conclusion is clearly the proper result. *In re Nylani M.*, 2016 IL App (1st) 152262, ¶ 48, 51 N.E.3d 1067.

¶ 40 2. *Reasonable Progress*

¶ 41 The State must prove unfitness as defined in section 1(D) of the Adoption Act by clear and convincing evidence. 750 ILCS 50/1(D) (West 2016); *In re D.D.*, 196 Ill. 2d at 417. Section 1(D)(m)(ii) of the Adoption Act defines an unfit person as a parent who fails to make

"reasonable progress toward the return of the child" during any nine-month period following an adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(ii) (West 2016). The Illinois Supreme Court has held that "the 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 ***." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001); see also *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17, 83 N.E.3d 485. Likewise, this court has defined "reasonable progress" as follows:

> " 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that 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. 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).

¶ 42 3. *The Trial Court's Finding in This Case*

¶ 43 Here, the State presented evidence that respondent never participated in substance abuse treatment or individual counseling. Respondent points out that he completed parenting services and his minister testified he was doing much better. However, Carpenter and Cooper could not confirm that respondent had even completed all his necessary parenting services because respondent refused to sign updated consents and failed to maintain contact with them. Fur-

ther, the circumstances that caused C.S.'s removal are deeply troubling and directly related to substance abuse and mental health. Respondent's utter failure to even begin to engage in these services is sufficient to sustain the trial court's finding. Accordingly, we conclude the trial court's determination that respondent failed to make reasonable progress toward the return of C.S. was not against the manifest weight of the evidence.

¶ 44 B. The Best-Interest Determination

¶ 45 1. *The Applicable Law and Standard of Review*

¶ 46 At the best-interest stage of a termination proceeding, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights 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). In reaching a best-interest determination, the trial court must consider, within the context of the child's age and developmental needs, the following factors:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006); see also 705 ILCS 405/1-3(4.05) (West 2016).

¶ 47 A reviewing court affords great deference to a trial court's best-interest finding

because the trial court is in the superior position to view the witnesses and judge their credibility. *In re Jay. H.*, 395 Ill. App. 3d at 1070. An appellate court "will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Id.* at 1071. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the trial court should have reached the opposite result. *Id.*

¶ 48 2. *This Case*

¶ 49 At the best-interest hearing, the trial court began its ruling by noting that "this is a situation where the facts and circumstances that brought the child into care were extremely serious." We note that the court earlier found after the adjudicatory hearing as follows:

> "[Respondent] held his two children, ages 5 & 6[,] in their home during a 5 h[our] standoff with police. Prior to this, he appeared at the Hoopeston police station earlier in the evening, claiming to being engaged in high speed chases for several days with VMEG [(Vermilion County Metropolitan Enforcement Group)] agents while his two children were in the vehicle.
>
> During the standoff, [respondent] was seen at one point holding a knife to one child's throat and when police made forced entry, he held one child in front of him as a human shield.
>
> [Respondent] admitted to consuming quantities of controlled substances during the standoff, engaged in clearly erratic behavior, threatening the life of himself and children while engaging in mood swings clearly evidencing mental health issues."

¶ 50 The trial court repeatedly noted C.S.'s great-grandparents provided him with a sense of safety and stability. Carpenter testified that C.S. was doing well in school, was engaged

in church and extracurricular activities in the community, and had lots of family in the area. The great-grandparents continued to take C.S. to his preferred therapist in Illinois and fostered a relationship with his half-brother. The court specifically found they provided a return to normalcy, "a sense of being loved, attachment, belonging and having advantages in life economically, socially and culturally that the child has not had in the past," and the evidence presented supports that finding. Although respondent's family was in the area and willing to provide for C.S., C.S. had been living with his great-grandparents for a substantial period of time and established a sense of permanency with them.

¶ 51 Further, respondent had not made any demonstrable progress with his substance abuse or mental health, and the court could have concluded keeping C.S. in the area would exacerbate his fear of being contacted or harmed by respondent. Given this context, we conclude the trial court's finding that it was in C.S.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 52 We thank the trial court for its detailed written orders and oral findings, which this court found particularly helpful to the resolution of this case.

¶ 53 III. CONCLUSION

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

¶ 55 Affirmed.