2020 IL App (4th) 190699-U

NO. 4-19-0699

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 9, 2020
Carla Bender
4th District Appellate
Court, IL

In re I.S., R.M., Tomi. J., and Toma. J., Minors	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 17JA76
v.	)	
Tommy J.,	)	Honorable
Respondent-Appellant).	)	Brett N. Olmstead,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's fitness finding was not against the manifest weight of the evidence.

¶ 2 On September 30, 2019, the trial court terminated the parental rights of respondent, Tommy J., as to his children, Tomi. J. (born December 6, 2006) and Toma. J. (born January 26, 2008). Respondent mother, Jennifer M., is not a party to this appeal. On appeal, respondent argues the trial court's fitness finding was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Proceedings

¶ 5 In December 2017, the State filed a petition for adjudication of neglect, alleging Tomi. J. and Toma. J. were neglected in that their environment was injurious to their welfare

when they resided with respondent mother or respondent due to exposure to domestic violence. 705 ILCS 405/2-3(1)(b) (West 2016). In May 2018, the trial court entered an adjudicatory order finding Tomi. J. and Toma. J. neglected. In a June 2018 dispositional order, the trial court (1) made Tomi. J. and Toma. J. wards of the court, (2) found respondent unfit, (3) ordered the children remain in the custody of respondent mother, whom it determined to be fit, and (4) placed guardianship with the Illinois Department of Children and Family Services (DCFS). Respondent appealed the trial court's finding of neglect. This court affirmed. See *In re I.S.*, 2018 IL App (4th) 180440-U.

¶ 6 In August 2018, respondent was incarcerated at Shawnee Correctional Center. He is serving a five-year sentence for violation of an order of protection and a six-year sentence for domestic battery. His projected parole date is May 18, 2023.

¶ 7 B. Respondent's Termination Proceedings

¶ 8 On May 14, 2019, 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 progress toward the return of Tomi. J. and Toma. J. within nine months after an adjudication of neglect, specifically August 10, 2018, to May 10, 2019 (750 ILCS 50/1(D)(m)(ii) (West 2018)) (count II) and (2) was depraved where he had been criminally convicted of at least three felonies and at least one of the convictions took place within the last five years (750 ILCS 50/1(D)(i) (West 2018)) (count III).

¶ 9 1. *Fitness Hearing*

¶ 10 On August 19, 2019, the trial court conducted a bifurcated hearing on the motion for termination of parental rights, first considering respondent's fitness. Respondent appeared in

the custody of the Illinois Department of Corrections (DOC). The parties presented the following relevant testimony.

¶ 11 a. Respondent's Felony Convictions

¶ 12 The trial court took judicial notice of respondent's felony convictions. On December 4, 2000, respondent was convicted of robbery in Champaign County case No. 00-CF-1617. On October 5, 2007, respondent was convicted of unlawful delivery of a controlled substance in Champaign County case No. 07-CF-1050. On May 26, 2009, respondent was convicted of a violation of an order of protection in Champaign County case No. 08-CF-221. On August 27, 2018, respondent was convicted of domestic battery in Champaign County case No. 17-CF-1648. On June 26, 2018, respondent was convicted of a violation of an order of protection in Champaign County case No. 18-CF-338.

¶ 13 b. Whitney Welch

¶ 14 Whitney Welch, a child welfare specialist for DCFS, testified she served as the caseworker on respondent's case from the very beginning of the case through November 2018. Welch testified that when she first came onto the case respondent was in the Champaign County jail. Welch met with respondent in August 2018 and assessed him for services. At that time, an order of protection prohibited contact between respondent and his children. Due to limited services at the jail, Welch recommended respondent serve his time, "do what he could while incarcerated[,]" and "further services would be assessed later." Welch testified that after she met with respondent in August 2018, she mailed respondent a copy of the service plan as well as consent forms to sign but she never received anything back.

¶ 15 Later in August 2018, respondent moved to the custody of the DOC where he would be provided with more opportunities for services. Welch testified that, after transfer,

respondent failed to maintain contact with DCFS or participate in any services. While Welch worked on respondent's case, she testified to having no knowledge of any services respondent participated in.

¶ 16 c. Atrous Lollar

¶ 17 Atrous Lollar, a child welfare specialist for DCFS, testified she previously worked on respondent's case from November 21, 2018, to June 31, 2019, while employed with Lutheran Social Services of Illinois (LSSI). Lollar testified she contacted respondent via letters—which she was unsure he received—and she had a conversation by telephone with him in June 2019. Also, in June 2019, Lollar sent respondent a copy of his service plan, and she testified the plan involved "continuing with services that [were] implemented though the [DOC]. We didn't really have any other services recommended at that time for him."

¶ 18 d. Respondent

¶ 19 Respondent testified he was incarcerated at Shawnee Correctional Center and not eligible for parole until May 2023. Respondent stated that while incarcerated he had not received a service plan. Respondent testified that he spoke with Lollar once over the telephone and that they discussed a consent form that he signed. Respondent stated that Shawnee Correctional Center offered no services but that he was on a waiting list for a general education diploma program. Respondent testified that since May 2019, he had been trying to transfer to a different correctional center that offered access to services for substance abuse, anger management, domestic violence, and parenting time.

¶ 20 Respondent testified he wanted visits with Toma. J. and Tomi. J. and that he told Lollar he wanted visits. Respondent asked Lollar about supervised visits with the children, and respondent stated that Lollar told him the children had been moved to a new foster parent.

Respondent testified that, prior to his incarceration, he had a wonderful relationship with both his children. Specifically, respondent stated he provided Toma. J. and Tomi. J. with a home, took them shopping, transported them to and from school, and responded when they had issues in school. Respondent testified he could control their misbehavior because they respected him.

¶ 21 e. Trial Court's Findings

¶ 22 Following the fitness hearing, the trial court found the State proved respondent unfit by clear and convincing evidence. On count II, the court found the State established that respondent failed to make reasonable progress toward the return of Toma. J. and Tomi. J. by May 10, 2019. The court found that respondent's incarceration played a role in respondent failing to make reasonable progress but that there were other problems. The court stated, "I find that [respondent's] testimony about receiving nothing to frankly not be credible. I've watched him testify. I've observed his demeanor. That's just not correct. [DCFS] reached out. Some of that was successful. Some of it was not. [Respondent] did not meet [DCFS] halfway and fulfill—and hold up his end of reaching out to [DCFS] to establish that communication." The court, in finding respondent failed to make reasonable progress, stated, "So if you're in prison and because of that, services are unavailable to you in your specific facility, you try to be transferred to another facility and that's unsuccessful, you may be able to call that reasonable efforts under the statute judging from a subjective standpoint considering the challenges that you have, but it does not meet the requirement of reasonable progress."

¶ 23 On count III, the court found the State established a *prima facie* case of depravity where respondent had been convicted of at least three felonies and at least one of those took place within the last five years. The court stated,

> "[Respondent], also you go back, and what you see are a repeated choice to commit a felony, incarceration, choice to commit a felony, incarceration over and over and over again all the way up until today where he's currently serving these multiple sentences of incarceration in the [DOC]. Those are all the result of choices he made to disregard serious laws: by the time you get to the last three cases, serious laws protecting the mother of these children. That is depravity. The State has proven by clear and convincing evidence Count II [*sic*] as regards to [respondent]."

¶ 24 On August 19, 2019, the trial court entered an adjudicatory order finding respondent unfit.

¶ 25 2. *Best-Interest Hearing*

¶ 26 On September 30, 2019, the trial court held a best-interest hearing. The court considered the record and best-interest reports from LSSI and court-appointed special advocates. After hearing recommendations from counsel, the court found it was in Tomi. J.'s and Toma. J.'s best interest to terminate respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent argues the trial court's fitness finding was against the manifest weight of the evidence. We disagree and affirm.

¶ 30 We do note that respondent identifies whether or not the circuit court's finding that it was in best interest of the minor children to terminate his parental rights was against the

manifest weight of the evidence as an issue presented for review. However, given respondent makes no argument regarding this issue, we limit our review to the finding of unfitness.

¶ 31 A. Standard of Review

¶ 32 The involuntary termination of parental rights involves a two-step process. 705 ILCS 405/2-29(2) (West 2018). First, the State must prove by clear and convincing evidence the parent is "unfit" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the trial court makes a finding of unfitness, the State must then prove by a preponderance of the evidence it is in the child's best interest for parental rights to be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 33 Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). We will not disturb a trial court's fitness finding unless it is against the manifest weight of the evidence. *Id.* at 354. A finding is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 34 B. Fitness Finding

¶ 35 The trial court found respondent unfit on two grounds: (1) failure to make reasonable progress toward the return of Tomi. J. and Toma. J. within nine months after an adjudication of neglect, specifically August 10, 2018, to May 10, 2019 (750 ILCS 50/1(D)(m)(ii) (West 2018)) and (2) depravity, where respondent had convictions for at least three felonies and at least one of the convictions took place within the last five years (750 ILCS 50/1(D)(i) (West 2018)). We turn first to the issue of reasonable progress.

¶ 36 Reasonable progress is measured by an objective standard that considers the progress made toward the goal of returning the child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391, 757 N.E.2d 613, 617 (2001). A parent has made reasonable progress 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 and internal quotation marks omitted.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227.

¶ 37 Respondent argues the trial court's fitness finding that respondent failed to make reasonable progress toward the return of Tomi. J. and Toma. J. in the relevant time period is against the manifest weight of the evidence because (1) he never received a service plan and (2) the prison where he remains incarcerated does not offer adequate services. Respondent relies on *In re Keyon R.*, 2017 IL App (2d) 160657, 73 N.E.3d 616, in support of his argument.

¶ 38 In *Keyon R.*, 2017 IL App (2d) 160657, ¶¶ 10, 12, the trial court found the incarcerated father unfit for failure to make reasonable progress within a nine-month period. The appellate court reversed the trial court's fitness finding where DCFS never assessed the respondent for services and never provided the respondent with a service plan "due to the nature of [the respondent's] crime." (Internal quotation marks omitted.) *Id.* ¶ 30. The appellate court stated, "[t]o use [the] respondent's lack of compliance with nonexistent services—services that were consciously and intentionally withheld—to terminate his parental rights is paradoxical." *Id.* Our case is distinguishable.

¶ 39 Here, the evidence reflected and the trial court reasonably found that at the end of the nine-month period respondent was no closer to having Tomi. J. and Toma. J. returned to his care than at the start of the nine-month period. Contrary to respondent's assertion that he did not

receive a service plan, Welch, the child welfare specialist on the case until November 2018, testified she met respondent in August 2018 while he was in county jail and assessed him for services. At that time, due to the limited services at the jail, Welch recommended respondent serve his time, "do what he could while incarcerated[,]" and "further services would be assessed later." Welch testified she mailed respondent a copy of the service plan and consent forms which she never received back. Even after respondent moved to the custody of the DOC, respondent failed to maintain contact with Welch. In the time Welch worked on the case, respondent failed to complete any services. Child welfare specialist Lollar also testified that when she took over the case, she contacted respondent and sent him a copy of his service plan which she testified involved continuing with services through the DOC and that no other services were recommended at the time due to respondent's incarceration.

¶ 40 While respondent testified that he made an effort to transfer to a different correctional center offering more services, respondent remained incarcerated for the entire nine-month period from August 10, 2018, to May 10, 2019, and had yet to complete any services or stay in contact with his caseworkers. Given the objective standard applicable pursuant to reasonable progress, respondent's incarceration fails to excuse his lack of progress. See *In re J.L.*, 236 Ill. 2d 329, 340, 924 N.E.2d 961, 967-68 (2010). Finally, with respondent's projected parole date not until May 2023 and respondent's lack of participation in services during the relevant nine-month period, we agree with the trial court that respondent failed to make reasonable progress toward the goal of reunification in the near future. See *F.P.*, 2014 IL App (4th) 140360, ¶ 88.

¶ 41 In light of the foregoing, the trial court's finding was not contrary to the manifest weight of the evidence. That is, the State met its burden of establishing that between August 10,

2018, and May 10, 2019, respondent made no reasonable progress toward the possibility that the court, in the near future, would be able to order Tomi. J. and Toma. J. returned to respondent. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004). Because we have upheld the trial court's finding as to one ground of unfitness, we need not review any other ground. See *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001).

¶ 42 III. CONCLUSION

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

¶ 44 Affirmed.