2015 IL App (1st) 142912

SECOND DIVISION
February 18, 2015

No. 1-14-2912

IN THE INTEREST OF MALAYSIA P.,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Petitioner-Appellee	)	No. 11 JA 00235
v.	)	
	)	
MELISSA S,	)	Honorable
	)	Robert Balanoff,
Mother-Respondent-Appellant.)	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 2 Respondent Melissa S., appeals from an order of the circuit court of Cook County finding her unfit. The sole issue on appeal is whether the trial court's finding of unfitness was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the

circuit court.

¶ 3 BACKGROUND

¶ 4 Malaysia P. was born on August 12, 2010, to Melissa S. and Shannon H.[1] On February 8, 2011, Malaysia was diagnosed with non-organic failure to thrive based on her failure to gain weight due to inadequate feeding. At six months old she weighed 10 pounds.

¶ 5 On April 7, 2011, the State filed a petition for adjudication of wardship and a motion for temporary custody of Malaysia alleging that she was neglected because she was not adequately fed, was neglected because she was subject to an injurious environment and was abused because she was at substantial risk of physical injury. The State alleged the following facts in support of these allegations:

> "Mother has one prior indicated report for environmental neglect. In September of 2008, an intact case was opened to provide services for the family. Mother needs to complete services, including individual counseling and mental health assessment. * * * Mother has a history of domestic violence incidents, including in May and October of 2010, while in the presence of minor and minor's siblings. On February 8, 2011, minor was diagnosed with nonorganic failure to thrive. Medical personnel states that minor was not gaining weight because of inadequate feeding. Paternity has not been established."

¶ 6 On April 24, 2012, Malaysia was adjudicated abused and neglected based on neglect, injurious environment and a substantial risk of physical injury. A disposition order was entered on the same date finding that Melissa S. was unable to care for, protect, train or discipline Malaysia. On February 4, 2013, Malaysia's permanency goal was changed from return home

[1] Shannon H. is not a party to this appeal.

within 12 months, to substitute care pending termination of parental rights.

¶ 7 On May 24, 2013, the State filed a petition to appoint a guardian with the right to adoption, alleging that the parents were unfit pursuant to sections 1(D)(b) and1(D)(m) of the Adoption Act (Act). 750 ILCS 50/1(D)(b), 1(D)(m) (West 2010). In the petition, the State alleged that pursuant to ground (b), Melissa S. failed to maintain a reasonable degree of interest, concern or responsibility for Malaysia's welfare, and under ground (m), Melissa S. failed to make reasonable efforts to correct the conditions that were the basis of Malaysia's removal and she failed to make reasonable progress toward Malaysia's return home within nine months after the adjudication of neglect and abuse and/or within any nine month period after said finding.

¶ 8 At the May 27, 2014, unfitness hearing, the State proceeded on allegations contained in the petition filed on May 24, 2013, for the first nine month period after Malaysia was adjudicated abused and neglected, from April 24, 2012 to January 24, 2013. The following testimony was adduced at the hearing.

¶ 9 Rachel Kravitz testified that she was a caseworker from Ada. S. McKinley Agency and was assigned to this case on April 30, 2012 and remained on the case until she left the agency on May 30, 2013. When she was first assigned to the case, Melissa S. was participating in individual therapy. Melissa S. was also to participate in parenting coaching, visits with Malaysia and complete a parenting capacity assessment. When the goal was changed from return home within 12 months to substitute care pending termination of parental rights, Melissa S. was still in need of individual therapy.

¶ 10 Melissa S. had supervised visits with Malaysia in her foster home in Hoffman Estates. Kravitz supervised those visits about once a month. The other visits were supervised by the

foster parents, Sheila C. and her husband. Malaysia also had some visits with her siblings, two brothers and two sisters, and those visits were also supervised by Kravitz. Unsupervised visits were not recommended because Malaysia struggled so much during those visits. The agency provided Melissa S. with bus cards so that she could travel from Evanston, where she lived, to Hoffman Estates.

¶ 11 Kravitz was present for a sibling visit in Melissa S.'s home on August 8, 2012. During this visit, Melissa S. was busy and talking to the other children and Malaysia wandered off on her own and ate a candle. During an October 18, 2012, visit in the foster home that Kravitz observed, Malaysia had a difficult time and could not be comforted by Melissa S. Malaysia did not want Melissa S. to change her diaper. Kravitz testified that Malaysia was very resistant to Melissa S. and Sheila would have to step in when Malaysia was struggling. Malaysia would reach for Sheila.

¶ 12 Kravitz testified that respondent was anywhere from 30 minutes to 90 minutes late for most of the two-hour visits, but that respondent traveled 150 to 180 minutes to visits with Malaysia. While Kravitz was the caseworker, respondent visited Malaysia consistently. She attended 35 out of 41 visits between April 2012 and February 2013. Respondent attempted to engage Malaysia during visits and brought her gifts for her birthday and Christmas.

¶ 13 Kravitz testified about the April 6, 2013, service plan which was admitted into evidence. The service plan stated that respondent's progress in individual therapy was unsatisfactory even though respondent consistently attended therapy. Kravitz testified that the progress was unsatisfactory because Kravitz's supervisor believed that was the correct assessment. Kravitz also testified that respondent successfully completed parenting coaching but that Malaysia rarely

participated.

¶ 14 Kravitz testified that the agency did not recommend the February 2013 goal change from return home to substitute care pending termination of parental rights. Kravitz testified that at no point did she feel that she was able to recommend unsupervised visits due to Malaysia's behavior and struggles during the visits.

¶ 15 Karolynn Mitchell was the supervisor at Ada S. McKinley assigned to Malaysia's case. Mitchell supervised caseworker Kravitz and met with her frequently because Kravitz was new. With respect to the April 2013 service plan, Mitchell testified that respondent's performance was unsatisfactory because she had been in services since 2008 and did not become fully involved in the recommended services until 2012. Mitchell acknowledged that respondent's therapist reported that as of April 6, 2013 respondent was making progress. Mitchell and Kravitz had several meetings regarding their disagreement over respondent's progress. Mitchell stated that respondent had not progressed to the point where she could parent five children.

¶ 16 Melissa S. gave birth to another child, Paris T., who was screened into court for temporary custody, on December 22, 2011. At the time, Melissa S. was in a relationship with Paris T.'s father. Services were recommended for both of them. Melissa S. was referred for a Juvenile Court Assessment Program (JCAP) assessment, a psychological evaluation, a psychiatric evaluation, domestic violence assessment, individual therapy, parenting classes, parenting coaching, to attend the children's medical appointments, and to locate appropriate housing. Melissa S. completed parenting classes in September 2011. She also completed a psychological evaluation and a psychiatric assessment in November 2011. She completed a JCAP assessment and was not referred for substance abuse services. Melissa S. obtained

appropriate housing in April 2012 and completed a parenting capacity assessment (PCA).

¶ 17 When the agency first received the case, respondent wanted Malaysia to stay with her foster parents and wanted them named as her godparents. Respondent visited Malaysia at their home. Unsupervised visits were never considered by the agency. At some point, respondent complained that the foster parents were preventing her from interacting with Malaysia. After that, caseworker supervised visits were conducted somewhere outside of the foster parent's home.

¶ 18 When the agency first received this case, it did not immediately refer Melissa S. for individual therapy, because she was already in individual therapy with Metropolitan Family Services. Melissa S. began individual therapy with Ada S. McKinley in October 2011.

¶ 19 Because respondent made such little progress, the agency requested a PCA to determine what other services were appropriate. Dr. Zashin completed the PCA on June 8, 2013 and made observations and recommendations. That report was admitted into evidence. Dr. Zashin indicated that there were several visits where respondent was with all five of her children and Malaysia was left to play on her own. Respondent had difficulty managing all five children and had difficulty bonding with Malaysia. Dr. Zashin noted that respondent had a close relationship with her other four children but Malaysia's attachment to respondent was "quite weak." Dr. Zashin opined that Malaysia should not be returned to respondent because she had not bonded with respondent. Dr. Zashin also stated that removing Malaysia from her foster parents would create traumatic loss from Malaysia that would have significant long-term negative consequences.

¶ 20 Sheila C., Malaysia's foster mother, testified that she and her husband were part of a

program called Safe Families and would bring children in to their home for a short time until the child could be returned to their parents. Malaysia was placed with them through Safe Families before DCFS became involved. When DCFS took temporary custody, respondent asked that Malaysia be placed with Sheila.

¶ 21 Initial sibling visits took place at their home every Saturday. They would pick up respondent and her other children from Woodfield mall and bring them back to their home. These visits were arranged during the week by phone call or text.

¶ 22 Although Tuesdays and Thursdays were set up for respondent to visit Malaysia, she did not visit twice a week. Sheila estimated that respondent visited Malaysia an average of twice a month. Each visit was two hours long but when respondent was late, Sheila allowed her additional time. The visits were initially at their home, but when visits became stressful for Malaysia, the caseworker asked Sheila to go upstairs to give respondent an opportunity to soothe Malaysia. When this did not prove helpful, the visits were moved to a neutral location.

¶ 23 After the goal was changed to substitute care pending termination of parental rights, Sheila continued to offer respondent the opportunity to visit twice a week even though respondent was only entitled to one visit a month. Between July 2013 and May 2014, respondent only visited Malaysia twice. Respondent's last visit with Malaysia was in December 2013. Respondent had no presents for Malaysia's birthday in August 2013. Respondent did not show up for a May 15, 2014 visit. Sheila testified that respondent never inquired about Malaysia's well being. Sheila testified that for some reason Malaysia was afraid of respondent and became anxious when they went to pick respondent up at Woodfield mall. She had not seen any improvement in Malaysia's comfort level with respondent.

¶ 24 Respondent moved to have the dispositional orders for two of her other children, Paris. T. and Mariah S., who had been returned home and their cases closed, admitted into evidence. Respondent's motion was granted and the court stated that it would decide whether all or part of the orders were relevant.

¶ 25 The court recalled caseworker Kravitz who testified that during the time period from April 2012 to 2013, Melissa S. was still involved in individual therapy and visitation. During that time, Melissa S. did not attend school or work and did not have any children home with her. She had individual therapy once a week for one hour. Melissa S. had visits with her five children who were split between four different foster homes.

¶ 26 Kravitz testified that from April 2012 to the time the goal changed, Melissa S. visited Malaysia weekly, but did not make all of the visits. Kravitz testified that she supervised visits once per month and that Sheila supervised the remaining visits.

¶ 27 Dawn McIntosh, a caseworker at Ada S. McKinley, was assigned to respondent's case in June 2013. Melissa S. was in individual therapy and was successfully discharged in August 2013. Since August 2014, Melissa S. and her attorney have asked McIntosh if she or someone from the agency could facilitate visits between Melissa S. and Malaysia. The agency did not have the manpower to facilitate the visits Melissa S. requested. Beginning at the end of 2013, Melissa S. complained to McIntosh that she was having difficulty scheduling visits with the foster parents. After respondent made this complaint, McIntosh asked the foster parents to obtain their phone logs so that McIntosh could review them to determine if there was any indication that the foster parents prevented respondent from visiting Malaysia. McIntosh testified that she reviewed those logs and since she had been assigned to the case, she had not

observed any attempts by the foster parents to obstruct or prevent respondent from visiting Malaysia.

¶ 28 The trial court then requested that the parties submit their closing arguments in written form.

¶ 29 On July 7, 2014, the court found respondent unfit under both grounds alleged for the time period between April 24, 2012 to January 24, 2013. As to ground (b), the court found that the evidence was uncontroverted that respondent did not visit Malaysia for the six month period between December 2013 and May 2014. Between July 2013 and May 2014 respondent only visited Malaysia three times, the last visit being in December 2013 when the foster parents brought Malaysia to respondent's home. Respondent did not provide any explanation as to why she didn't visit her daughter. The court acknowledged that respondent attended 35 out of 41 visits during the first nine months after adjudication, but stated that the foster parents actually permitted respondent to visit Malaysia twice a week and therefore, respondent actually attended 35 out of 82 potential visits. The court also stated that respondent not only did not take advantage of all of the visits offered, she was often late for the visits. Despite the fact that respondent traveled far to the foster parent's home, the court pointed out that respondent knew where they lived when she chose them to be the foster parents and Malaysia's godparent. Furthermore, the court noted that respondent was not in school or working, and that she had no other children at home to impede her ability to find the time to travel to visit Malaysia. She was even given bus cards and the foster parents went out of their way to ensure she made it to and from the bus.

¶ 30 The court also found that with respect to ground (m), respondent had been in therapy for

over a year and a half at the time of the permanency hearing and still needed more time to address issues such as domestic violence and her role as a parent. Respondent also still needed parent coaching to learn to set boundaries and how to manage all five children. Respondent also needed couples therapy since she continued her relationship with the father of her fifth child and wanted him to live with respondent and her five children. However, the trial court had entered an order preventing him from being present during any visits with the children. Because he still needed services, it was unknown when couples therapy could begin. The court also referenced respondent's lack of progress during visits, which was demonstrated by the fact that she still did not have unsupervised visits.

¶ 31 After a best interest hearing, the court found it was in Malaysia's best interest to terminate respondent's parental rights. Respondent now appeals the trial court's finding that she is unfit. She does not contest the trial court's best interests determination.

¶ 32 ANALYSIS

¶ 33 Melissa S. argues that the trial court's finding that she is unfit under sections 1(D)(b) and 1(D)(m) of the Act (750 ILCS 50/1(D)(b), (D)(m) (West 2010)), is against the manifest weight of the evidence.

¶ 34 The involuntary termination of a party's parental rights is a drastic measure because it "permanently and completely" severs the parent-child relationship. *People v. Brenda T.*, 212 Ill. 2d 347, 356 (2004)). The involuntary termination of parental rights is a two-step process governed by the Juvenile Court Act (705 ILCS 405/1-1 et seq. (West 2010)) and the Illinois Adoption Act (705 ILCS 50/0.01 *et seq*. (West 2010)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Once a petition to terminate parental rights is filed, the cause proceeds to a fitness hearing. 705

ILCS 405/2-29 (West 2010); *In re J.L.*, 236 Ill. 2d at 337; *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63. At the conclusion of the fitness hearing, if the court finds by clear and convincing evidence that the parent is unfit, the cause proceeds to a hearing to determine whether it is in the best interests of the child that the parental rights be terminated. 705 ILCS 405/2-29(2), (4) (West 2010); 750 ILCS 50/1(D) (West 2010); *In re J.L.*, 236 Ill. 2d at 337; *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63.

¶ 35 Because parents have superior rights against all others to raise their children, the State must prove by clear and convincing evidence at least one ground of parental unfitness under section 1(D) of the Adoption Act before the trial court may terminate parental rights. *In re G.W.*, 357 Ill. App. 3d 1058, 1059-60 (2005). A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. See *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. A trial court's finding regarding the best interest of the child will not be reversed on appeal unless such findings are against the manifest weight of the evidence. *In re J.L.*, 236 Ill. 2d at 344. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the lower court's determination is "unreasonable, arbitrary, or not based on the evidence." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70.

¶ 36 Respondent argues that the trial court's findings of unfitness on both grounds are against the manifest weight of the evidence. We disagree.

¶ 37 Proof of any one ground is sufficient to find a parent unfit. *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 29. Because we determine that the trial court's finding of unfitness was not against the manifest weight of the evidence under section 1(D)(m) of the Act (750 ILCS

50/1(D)(t) (West 2012)), we need not consider whether Melissa S. was also unfit under sections 1(D)(b). 750 ILCS 50/1(D)(m),1(D)(b) (West 2010).

¶ 38 Section 50/1(D)(m), governs the result of a parent's failure to make reasonable progress toward the return of the child to the parent. Section 50/1(D)(m) states in relevant part, that:

> "(m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act [705 ILCS 405/2-4 (West 2010)]. 750 ILCS 50/1(D)(m) (West 2010).

¶ 39 Reasonable progress is judged by an objective standard "based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie* E., 368 Ill. App. 3d 1052, 1067 (2006). Reasonable progress requires some measurable or demonstrable movement toward the goal of unification. *In re Y.B.*, 285 Ill. App. 3d 385, 392 (1996). The standard for measuring a parent's progress is to consider compliance with the service plan and court directives in light of the conditions that lead to removal and any subsequent conditions that would prevent the court from returning custody to the parent. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 40 In this case, the State presented clear and convincing evidence to establish that Melissa S. failed to make reasonable efforts or reasonable progress within the first nine months after Malaysia was adjudicated abused and neglected; during the time period from April 24, 2012 to January 24, 2013.

¶ 41 The court considered respondent's status at the time of the permanency hearing on February 4, 2013, which was just after the first nine-month period after Malaysia was adjudicated abused and neglected. The court found that at the time of the permanency hearing, respondent had been in therapy for a year and a half, but her progress had been rated unsatisfactory after a meeting with the supervisor, caseworker and service providers because she still needed to address issues of domestic violence and parenting. In addition, the court found that at the time of the permanency hearing, respondent still needed parenting coaching to learn how to set boundaries, how to juggle the needs of all of her children, and how to redirect the children. The court noted that because respondent's progress had been so slow, the agency required a PCA to determine if respondent was in need of any other services. Also, at the time of the permanency hearing, respondent had not yet begun couples counseling with the father of her fifth child, who wanted to live with and parent respondent's five children. The court found it important that he was not even allowed to be in the presence of respondent's other four children due to concerns for their safety. The court also noted that at the time of the permanency hearing, the agency had not even supported respondent's unsupervised visits with Malaysia.

¶ 42 The evidence in the record supports our conclusion that the trial court's finding of unfitness was not against the manifest weight of the evidence, given that there was simply not enough evidence to support a finding that there was a demonstrable movement toward reunification. In so finding, we reject respondent's argument that the court used a best interest standard when reaching its conclusion about the respondent's fitness. The court was merely considering evidence from the permanency hearing, which occurred shortly after the nine month period, and not the reasons for its decision regarding permanency. Consequently, we affirm the

court's finding that Melissa S. was unfit under section 50/1(D)(m), where she failed to make reasonable progress toward the return of Malaysia within the nine month period of April 24, 2012 through January 24, 2013. As previously stated, because we affirm the trial court's finding that respondent is unfit under section 50/1(D)(m) we need not determine whether the trial court's finding of unfitness under section 50/1(D)(b) was against the manifest weight of the evidence. 750 ILCS 50/1(D)(b), 1(D)(m) (West 2010).

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 45 Affirmed.