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2012 IL App (3d) 120102-U

Order filed June 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

In re N.B.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor,)	Peoria County, Illinois,
)	
(THE PEOPLE OF THE STATE OF)	
ILLINOIS))	
)	Appeal No. 3-12-0102
Petitioner Appellee,)	Circuit No. 08 JA 164
)	
v.)	
)	Honorable
CHERINELL B.,)	Chris L. Fredericksen,
)	Judge, Presiding.
Respondent-Appellant).		

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's determination that respondent was unfit was not against the manifest weight of the evidence. The trial court's determination that it was in the minor's best interest to terminate respondent's parental rights was also not against the manifest weight of the evidence.
- ¶ 2 Respondent, Cherinell B., appeals from an order finding her to be an unfit parent and

terminating her parental rights to her minor child, N.B. For the reasons that follow, we affirm.

¶ 3

FACTS

¶ 4 A petition alleging that N.B., then age two, was a neglected minor by reason of an injurious environment was filed August 5, 2008. The petition alleged, *inter alia*, that respondent and father were both previously found unfit with no subsequent finding of fitness as to either; that father was found to be a child sex offender in a prior juvenile case; that respondent and father had been involved in many incidents of domestic violence, including one incident where they were drinking, N.B. fell off the bed, father became violent towards respondent, and then father attempted to elude the police; that father had an extensive criminal history involving many convictions; and that respondent had a criminal history including convictions for theft, child endangerment and prostitution. N.B. was adjudicated neglected on September 22, 2008.

¶ 5 On September 24, 2008, a dispositional order was entered, declaring respondent unfit and ordering tasks for respondent to complete. On February 5, 2009, respondent filed a motion for restoration of fitness. A permanency review order was entered July 15, 2009, restoring respondent to fitness and adopting the recommendations in the permanency review hearing report, which included that respondent cooperate with the Department of Children and Family Services (DCFS) and individual counseling, provide a safe and protective residence for her children, and not have further issues with domestic violence altercations. Father remained unfit, and had failed to make reasonable efforts.

¶ 6 On January 27, 2010, the next permanency review hearing, the trial court found that respondent was not making reasonable efforts. The trial court adopted the recommendations in the December 23, 2009 permanency review hearing report, and ordered respondent to attend

alcoholics anonymous sessions and to submit to at least four drug drops or breathalyzer tests per month. The State filed a motion for unfitness on May 19, 2010, and mother was found unfit at the July 21, 2010 permanency review hearing.

¶ 7 The petition for termination of respondent's parental rights was filed on August 16, 2010, alleging that respondent was an unfit person on the ground that she failed to make reasonable progress toward the return of N.B. within a 9-month period following the adjudication of neglect. The nine-month time period was later amended to the 9-month period commencing January 18, 2010 and ending October 18, 2010. The cause proceeded to an adjudicatory hearing. At the State's request, and without objection from respondent, the trial court took judicial notice of the procedural history of the case as evidenced by pleadings and orders.

¶ 8 The State next introduced several exhibits into evidence. State's Exhibits 1-18 were certified copies of father's convictions. Specifically, State's Exhibit 18 is a conviction for a violation of an order of protection, based upon a May 29, 2010 incident where father was at the home of respondent and he refused to leave. State's Exhibit 19 is certified copy of respondent's conviction for domestic battery committed against father on October 17, 2010. State's Exhibit 20 consists of certified copies of orders of protection filed August 26, 2009, and August 11, 2009, prohibiting father from committing further acts of abuse or threats of abuse against respondent and N.B. Father was also ordered to stay away from respondent and N.B. The People later introduced State's Exhibit 21, an April 8, 2010 DCFS report indicating respondent for substantial risk of sexual abuse - sex offender has access to a child.

¶ 9 At the parental unfitness hearing, Mel Devall testified that he was a DCFS investigator. On April 8, 2010, he began an investigation in a case involving N.B., with three allegations:

substantial risk of sexual abuse, sex offender has access to a child, and substantial risk of physical injury. At the time of the allegation, N.B. was four years old and had unsupervised overnight visits with respondent. Devall spoke with N.B., who said "that she had slept between her mommy and daddy, that her daddy had wiped her and it hurt." She said that her mommy and daddy live at Apartment 2; respondent lived in an Apartment 2. N.B. later said she lived with her foster parents. N.B. was able to distinguish between her biological parents and her foster parents.

¶ 10 Devall spoke with respondent, who admitted that father had been at her house with N.B. present at least three times, and that father had come into contact with N.B. several other times. Respondent said she knew that there was to be no unsupervised contact between N.B. and father, and that there was an active order of protection restricting father from having contact with both respondent and with N.B. As a result of Devall's investigation, respondent mother was indicated for substantial risk of physical injury, environment injurious to the health and welfare of a child by neglect, and sex offender has access to a child.

¶ 11 Craig Johnson testified that he was a detective assigned to the Child Advocacy Center. On May 7, 2010, he interviewed respondent, while Devall observed from another room. Respondent said that father had been living with her for the past 2 ½ months. At first she denied that father had any contact with N.B., then she admitted that he had. Respondent had told N.B. not to tell anyone that father was there.

¶ 12 Tonya Welch testified that she was respondent's caseworker since the case began in August 2008. During the relevant 9-month period, respondent had maintained a residence, and she had completed other service plan tasks such as counseling and domestic violence class. However, while respondent was required to submit to random urine drops four times a month,

she failed to do so for six months of the nine-month period. She complied with all four in January, February, and April, in March she only complied with two, in May she did none, and in June only one. She had not completed any since June. Respondent was supposed to notify Welch of any changes in her household or with any relationship affecting the child. Respondent allowed father to move in with her in March, but Welch did not find out about that until May following a DCFS investigation. Welch had previously made respondent aware of the fact that father was unfit and was under no circumstances to receive unsupervised visits, and that respondent was not to use alcohol or drugs and was to comply with drug drops.

¶ 13 Kris Kampas testified that he worked for the Peoria Police Department on October 17, 2010, when he was called to 714 Northeast Glendale. When he arrived, he spoke with respondent, who appeared intoxicated. She said she had come to talk with father, she had consumed five beers, and they had gotten into an argument. Respondent admitted she knew there was an order of protection, but father had invited her over so she came. Kampas also spoke with father, who said he had invited respondent over, they got into an argument, and he left and went to a friend's house. Respondent followed him and saw him kissing another woman. Father told respondent to leave, but she refused and she slapped him.

¶ 14 Respondent then testified about her compliance with certain tasks. She had completed individual counseling, domestic violence classes and parenting classes. She remained employed at Walmart and had been attending visits regularly during the relevant period.

¶ 15 At the end of the parental unfitness hearing, the trial court noted that while mother had completed various court-ordered services, it was clear "that this mother has not learned or utilized the information that she [] was provided during these services to improve herself and to

make, in effect, reasonable progress toward the return of the child." The trial court stated further:

"Despite having an order of protection which prohibited the father from having unsupervised contact with the minor, as well as this Court making that finding, the mother clearly allowed the father to live with her for a substantial period of time.

It's also clear to this Court that, at some point in time during this visit, this child may have been sexually abused by the father based on the evidence submitted [] to the Court. And it's clear that the father had unsupervised contact with the minor in violation of both the order of protection and the prior orders of this Court.

Mother did do domestic violence classes. She completed one program. Almost completed the other. But then she was convicted of domestic battery the last day or one day prior to the last day of the completion of the nine-month period."

¶ 16 Thus, the trial court concluded that the State had proven by clear and convincing evidence that respondent failed to make reasonable progress toward the return of the minor.

¶ 17 A best interest hearing report was filed with the court. The report indicated that N.B. was 5 ½ years old and had been living in her current foster placement for approximately 1 ½ years. She had been in foster care since age two; she had come to the current placement after she was removed from the first placement because the foster parents there could not handle her behavior issues. The current foster family was willing and able to adopt N.B.

¶ 18 The report states that the foster parents provided for N.B.'s needs. The foster home was

in excellent condition and N.B. was enrolled in school. She had issues with stubborn and dishonest behavior in the classroom, however the foster parents frequently followed up with meetings and parent teacher conferences. N.B. was very comfortable and familiar with her home and the area where she lived. She had developed friendships with children her age in the neighborhood and within her school.

¶ 19 When N.B. first came to the foster home, she had issues with self-esteem. The foster parents worked with her to build her self-confidence. N.B. stated that she loved living with her foster parents because she receives lots of hugs and kisses and feels loved. With the foster family, N.B. had family play dates on the weekends, birthday parties, and phone calls with extended family members who live out of town. She refers to her foster parents' extended family as her aunts and uncles, and she has bonded with them. N.B. stated that she wished to reside with her foster parents and that she considers her foster mother to be her family. N.B. says she loves her foster mother. The foster mother could not imagine N.B. not being in their lives, and looked forward to the possibility that they could make N.B. a permanent part of their family.

¶ 20 N.B. was aware that respondent is her biological mother. Respondent testified that she had a good relationship with N.B. and N.B. would occasionally want to leave with respondent at the conclusion of their visits. Respondent's friend also vouched for respondent's ability to parent and the fact that respondent had a good relationship with N.B.

¶ 21 The caseworker recommended that it was in N.B.'s best interests to terminate respondent's parental rights. The guardian *ad litem* agreed with the State's position that it was in the best interests of N.B. to terminate respondent's parental rights.

¶ 22 In rendering its best interest determination, the trial court stated that it specifically

considered the best interest hearing report, the statutory best interest factors, and the evidence presented. The trial court then stated:

"With regard to mother, it is true that mother did do services; however, she did not internalize what she learned in these services. Even though she was directed that [father] was not to have sup-unsupervised [sic] contact with this minor, she in fact allowed the father to live with them for approximately two and a half months and directly placed this child in safety imperil [sic] based on father's previous misconduct.

It is clear that [N.B.] does have a relationship with this mother, but it's also clear based on the Best Interest Hearing Report – and this Court has determined that the Best Interest Hearing Report is a more accurate statement of history than the mother's testimony – that she's extremely bonded with both the foster mother and the foster father. She does call them Mommy and Daddy respectively. As I indicated, she does have a relationship with her mother, but it certainly is not as strong as she has with the foster parents.

The child has been in foster placement in the same foster care since May 3, 2010 and has that strong bond. It's an adoptive home. The foster parents are able to provide permanence. This

Court has an extreme concern that if this child is returned to the mother that his child would not be in a safe environment based on her conduct with [father] and allowing him to have unsupervised conduct ***. The child's sense of attachment and love and security clearly is with the foster parents, not with the biological mother.

After considering all these factors, the Court finds that it's in the best interest of [N.B.] that the parental rights of [respondent] be terminated and they are so terminated."

¶ 23 ANALYSIS

¶ 24 Failure to Make Reasonable Efforts or Progress

¶ 25 Respondent contends the trial court's finding of unfitness under subsection 1(D)(m)(iii) of the Adoption Act was against the manifest weight of the evidence. Specifically, she calls our attention to the fact that she satisfied the following court ordered tasks: obtained a drug and alcohol evaluation, maintained a residence, maintained employment, completed parenting classes, engaged in individual counseling, received a psychological evaluation and completed domestic violence classes.

¶ 26 Because the trial court is in the best position to assess the credibility of witnesses, a reviewing court may reverse a trial court's finding of unfitness only where it is against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208. A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *C.N.*, 196 Ill. 2d at 208.

¶ 27 Section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2010)) provides that a parent may be declared unfit if she fails "to make reasonable progress toward the

return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor."

¶ 28 Reasonable progress has been defined as " 'demonstrable movement toward the goal of reunification.' " *C.N.*, 196 Ill. 2d at 211 (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)).

"[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 became known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d 216-17, 752 N.E.2d at 1050.

¶ 29 The conditions that led to the removal of N.B. were, *inter alia*, that father was found to be a child sex offender in a prior juvenile case and that respondent and father had been involved in many incidents of domestic violence. Respondent had been ordered to provide a safe and protective residence for N.B., not have further issues with domestic violence, submit to at least four drug drops per month, avoid alcohol and to notify her caseworker of any changes in her household. Respondent did not comply with these tasks during the relevant 9-month period.

¶ 30 Respondent allowed father to move in with her for at least 2 ½ months during which time, she allowed father to have contact with N.B. Respondent intentionally kept this information from her caseworker and directed N.B. not to tell anyone that father was living with her. Although respondent was ordered to avoid domestic violence altercations, she was convicted of domestic violence committed against father at the very end of the 9-month period. Nor did she comply with the four drug drops per month requirement. She also admitted to consuming alcohol on the night she domestically abused father.

¶ 31 We have carefully reviewed the record and find that the respondent's claim that she made reasonable efforts and progress is not clearly evident. Accordingly, we conclude that the trial court's finding that respondent was unfit under subsection 1(D)(m)(iii) was not against the manifest weight of the evidence.

¶ 32 Best Interests Determination

¶ 33 Respondent also contends that the trial court's decision to terminate her parental rights was against the manifest weight of the evidence where N.B. addressed her as "Mama" when she visited, they interacted appropriately during visits, and N.B. would occasionally want to leave with respondent at the conclusion of their visits.

¶ 34 Because the trial court is in the best position to assess the credibility of witnesses, its decision to terminate a parent's rights will not be disturbed absent a finding that it is against the manifest weight of the evidence. *In re D.M.*, 336 Ill. App. 3d at 773. Again, a finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *C.N.*, 196 Ill. 2d at 208.

¶ 35 If the trial court finds a parent unfit by clear and convincing evidence on one or more statutory grounds under the Adoption Act, the trial court then conducts a second, bifurcated proceeding that focuses on whether termination of parental rights and allowance of an adoption petition would be in the child's best interests. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). At a termination hearing, the focus is on the child's welfare and whether termination would improve the child's future financial, social, and emotional atmosphere. *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002). When determining whether termination of parental rights is in a child's best interests, a court must consider the following factors in the context of the child's age and

developmental needs: (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. 705 ILCS 405/1-3 (4.05) (West 2010).

¶ 36 We begin by observing that both the caseworker and the guardian *ad litem* who had direct and personal contact with N.B., believed that it was in her best interests to terminate respondent's parental rights. Moreover, the trial court concluded that N.B. "does have a relationship with her mother, but it certainly is not as strong as she has with the foster parents" and that "the child's sense of attachment and love and security clearly is with the foster parents, not with the biological mother." We hold the record supports these factual findings. Lastly, we note that the trial court expressly found that respondent's testimony (upon which the majority of her argument relies) was not as accurate a picture of the situation as the best interest hearing report. We will not disturb this credibility finding.

¶ 37 We have carefully reviewed the record and find that the respondent's claim that it was not in N.B.'s best interest to terminate respondent's parental rights is not clearly evident. Therefore, the trial court's decision to terminate respondent's rights was not against the manifest weight of the evidence.

¶ 38 Accordingly, we affirm the judgment of the trial court.

¶ 39 Affirmed.