2016 IL App (4th) 160550-U

NO. 4-16-0550

FILED
December 13, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.R., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 14JA15
SARAH RILEY,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The factual findings underlying the termination of respondent's parental rights are not against the manifest weight of the evidence.

¶ 2 Respondent, Sarah Riley, appeals from the judgment terminating her parental rights to C.R., born February 3, 2014. She challenges the factual findings underlying that judgment, namely, that she was an "unfit person" and that terminating her parental rights would be in C.R.'s best interest. Because we are unconvinced that either of those findings is against the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Why C.R. Was Removed From Respondent's Custody

¶ 5 On February 10, 2014, in a temporary-custody hearing (see 705 ILCS 405/2-10 (West 2014)), the trial court found probable cause to believe that C.R. had been neglected or

abused. The court based its probable-cause finding on the following facts: "[Respondent's] rights [were] terminated on [a] previous child due to her relationship with this father, now her husband [(Carl E. Riley)]. Issues have been domestic violence, substance abuse, [and] mental health." Citing those reasons, as well as the shelter care report, the court found an "immediate and urgent necessity to remove the minor from the home and [that] leaving the minor in the home [would be] contrary to the health, welfare[,] and safety of the minor."

¶ 6 The shelter care report to which the trial court referred was dated February 7, 2014, four days after C.R.'s birth, and was signed by two employees of the Illinois Department of Children and Family Services (DCFS): Kimberly J. Wilson, who was a child protection advanced specialist, and Cynthia Carroll, who was a public service administrator. According to the shelter care report, Wilson had received a copy of an emergency order of protection, dated December 5, 2013, in which respondent alleged that Carl E. Riley—who had a second degree murder conviction—not only had threatened her with physical violence but had inflicted it on her. She alleged he had (1) threatened to kill her; (2) thrown a telephone at her head, "split[ting] [her] head open"; (3) "threatened to beat [her] ass if [she] didn't come home with him"; and (4) "called [her] phone multiple times[,] telling [her] if [she] didn't come home[,] [she] would regret it." Nevertheless, she went ahead and married Carl E. Riley on December 29, 2013— two or three months after these incidents and four months after the circuit court terminated her parental rights to her other daughter, C.R.'s older sister. Thus, this man, Carl E. Riley, threatened her and battered her, and because of her relationship with him, a court terminated her parental rights to C.R.'s sister—and then she married him.

¶ 7 Wilson writes in her shelter care report that respondent has unspecified "mental health issues," for which she has been prescribed medication but that she was "unable to take her

medication" during her pregnancy with C.R. Nevertheless, respondent admitted she smoked marijuana during this pregnancy. "She also tested positive for such upon delivery."

¶ 8 Under the heading of "Risk Factors and Summary," Wilson writes:

> "[Respondent's] parental rights were terminated on her daughter and Carl [E. Riley] surrendered on his two children [(in 2007)]. Both parents have a history of domestic violence as outlined by [respondent] in the Emergency Order of Protection and past police reports. When both [respondent] and Carl [E. Riley] were opened for services they both failed to engage in services. It is reported that [respondent] did not complete her substance abuse and or mental health treatment nor follow the recommendations. Based on each parent's past history it would not be in the best interest to place a newborn child, who is incapable of protecting herself[,] in their care."

¶ 9 B. The State's Motion for the Termination of Parental Rights

¶ 10 On December 8, 2015, the State moved to terminate respondent's parental rights to C.R. The State alleged as follows in its motion. The parental rights of the father, Carl E. Riley, were terminated on July 29, 2015. Respondent's parental rights likewise should be terminated because she met several of the definitions of an "unfit person" in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) and terminating her parental rights would be in C.R.'s best interest. One of the cited subsections of section 1(D) defined an "unfit person" as a parent who had "fail[ed] *** to make reasonable progress toward the return of the child during any 9-month period following the adjudication of [abuse or neglect]." 750 ILCS 50/1(D)(m)(ii) (West 2014). The motion specified March 8 to December 8, 2015, among other nine-month periods.

¶ 11 C. The Unfit-Person Hearing

¶ 12 On May 26, 2016, in the unfit-person hearing, the State presented evidence that respondent had accomplished most of the goals in her service plan. She had completed the parenting classes. She had completed substance-abuse treatment. She had consistently visited C.R. She had attended domestic-violence counseling, administered by the AWARE program, until she was excused from doing so any longer after it was determined that she had always been the victim rather than the aggressor. She had consistently maintained communication with Lutheran Child and Family Services (Lutheran), the social-service organization that DCFS had hired to handle her case. She had consistently maintained legal means of employment.

¶ 13 However, according to the testimony of Tori Canary, who was a child welfare specialist at Lutheran, respondent had made insufficient progress toward the achievement of two goals. One such goal was individual counseling (as distinct from domestic-violence counseling). After undergoing a mental-health assessment on August 4, 2015, respondent was supposed to attend a counseling session every week. But she failed to show up every other week—and she not only failed to show up, but she failed to telephone Lutheran and reschedule the session, even though Canary had emphasized to her the importance of doing so. In November 2015, she was dropped from the counseling program because of her absenteeism.

¶ 14 Canary thought the counseling goal was important in that it would have addressed respondent's tendency to get into intimate relationships with people who had problematic backgrounds. Since July 2015, she had been in three or four different relationships with men (she told her caseworkers) without checking out these men's backgrounds ahead of time. As it turned out from investigations that Lutheran performed, all these men had significant criminal records

of domestic violence and substance abuse. It seemed to Canary, from her experiences with respondent, that respondent had an emotional need to live with someone but she had difficulty understanding that it mattered—not only to her but also to C.R.—whom she chose to have relationships with. Canary thought that individual counseling could have helped in this regard if only respondent had consistently attended counseling, but she did not. She was a no-call, no-show every other week.

¶ 15 The assistant State's Attorney asked a counselor at Lutheran, Angell Mack:

"Q. *** How long do counseling sessions usually last with regard to those particular issues?

A. At minimum, six months.

Q. A minimum of six?

A. Uh-huh.

Q. Since she has not engaged, does [that] not lengthen the time?

A. Yes."

¶ 16 The second goal toward which respondent's progress was less than reasonable, Canary testified, was maintaining housing suitable for C.R. Lindsay Horcharik, a child welfare specialist for DCFS, testified to the same effect. Between July 2015, when Horcharik took over the case, to December 2015, she was aware of five different housing plans. At first, during that period, respondent resided with her sister in cramped quarters, a bedroom, in Decatur, Illinois. They were planning to move to a larger residence in Warrenville, but she and her sister had a falling out and parted ways. Consequently, respondent then moved in with her mother and stepfather, even though she knew her stepfather was a registered sex offender. When Horcharik told respondent that C.R. could not live in a house in which one of the residents was a registered

sex offender, respondent began looking for alternative housing. She reconciled with her sister and moved in with her, but then they had a falling out, and respondent moved out. Her mother then decided she was going to divorce the stepfather because of his status as a registered sex offender, and she and respondent began looking for housing with a view to living together. Then her mother backed out of the idea of divorcing him. Apparently, as of December 2015, respondent still was in limbo as to where to live.

¶ 17 The assistant State's Attorney asked Horcharik:

> "Q. So, she's, basically, relying on other people?
>
> A. Yes. And I had that conversation with her and as did her counselor about her codependence. She admitted to me that she—she kind of knew that she was codependent. She feels more comfortable if somebody is living with her. Um—and to be honest I feel that she—she does better at her parenting and personally if she was living with somebody, especially if they were [a] positive influence.
>
> * * *
>
> A. *** [I]n my time of having the case, even her familia[l] relationships consisted of a lot of drama um—which always ended up resulting in a negative way for [her]. *** I think that every time a new dramatic situation would come up she would kind of be at a loss because she [had] invest[ed] all of herself into one plan and then it would never come to follow through.
>
> *** [T]he other issue that I ran into is that a lot of the people that she would connect with she wouldn't really look at their backgrounds or their histories before she would um—really get into that relationship with them. Um—

specifically, the men in her life. Um—she would often get into relationships with different men or—um—spend time with different men who were not—who did not have a positive background whatsoever. And, so, I would look them up for her um—and tell what was on their backgrounds. And she say—and she would, basically, say, well, 'I didn't know that'. And had multiple conversations with her telling her that she really needed to do those thorough checks before she really investigated [*sic*] herself in these people, but she continued to do that.

Q. Do you feel, at any time, that it would be safe to return [C.R.] home?

A. No."

¶ 18 The trial court found, by clear and convincing evidence, that respondent was an "unfit person" as alleged in the motion to terminate her parental rights.

¶ 19 D. The Best-Interest Hearing

¶ 20 On July 19, 2016, the trial court held a best-interest hearing, in which Canary was the sole witness to testify. She testified that C.R. had been with the same foster parents, the Rhodeses, since her birth, and that her half-sister lived with them, too. C.R. was accustomed to addressing the Rhodeses as "[M]ommy" and "[D]addy," and they wanted to adopt both C.R. and her half-sister. All of C.R.'s physical and medical needs were being met. Canary testified: "She is active in church and Sunday school. They have a very active family life. I believe, actually, my last home visit [C.R.] was ready for me to leave because they were going swimming at grandma and grandpa's. She goes to daycare and loves it at daycare. She's thriving in this home."

¶ 21 II. ANALYSIS

¶ 22 A. The Finding That Respondent Was an "Unfit Person"

¶ 23 To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proven, by a preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. 705 ILCS 405/2–29(2) (West 2014); *In re D.T.*, 212 Ill. 2d 347, 366 (2004); *In re M.M.*, 226 Ill. App. 3d 202, 209 (1992).

¶ 24 Respondent did not execute a voluntary surrender of her parental rights and a consent to adoption. Therefore, the first prerequisite to the termination of her parental rights was a finding, by clear and convincing evidence, that she was an "unfit person" within the meaning of any subsection of section 1(D) the State cited in its petition (750 ILCS 50/1(D)(a), (D)(b), (D)(c), (D)(m)(i), (D)(m)(ii) (West 2014)). See 705 ILCS 405/2-29(2) (West 2014); *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20. Because conformance to any one of the subsections of section 1(D) makes a parent an "unfit person" (*In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004)), we may confine our discussion to one of the cited subsections and may disregard the other cited subsections (*id*. at 891). We choose to review the evidence supporting the finding that, during the period of March 8 to December 8, 2015, respondent failed to make reasonable progress toward the return of C.R. See 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 25 In undertaking this review, we apply a deferential standard. *Tiffany M.*, 353 Ill. App. 3d at 890. We defer to the trial court's finding of a lack of reasonable progress unless we conclude that the finding is against the manifest weight of the evidence. *Id.* The finding is against the manifest weight of the evidence only if it is "*clearly evident*" that the State did *not* prove, by clear and convincing evidence, that respondent failed to make reasonable progress from March 8 to December 8, 2015. (Emphasis added.) *Id.* In other words, to overturn the trial court's finding of a lack of reasonable progress, we would have to conclude the finding is "unreasonable, arbitrary, and not based on the evidence." *Id.*

¶ 26 Respondent argues that, for the following reasons, the trial court's finding of a lack of reasonable progress was unreasonable, arbitrary, and not based on the evidence:

> "Ms. Canary, one of [respondent's] caseworkers, testified that as of the six months prior to December of 2015, [respondent] had remained ready and willing to complete her drug screens as requested. She also admitted that [respondent] completed parenting, completed substance abuse treatment, engaged in counseling, visited consistently with the child, attended the AWARE groups until she no longer needed to and was discharged through no fault of her own. [Respondent] made more than reasonable progress and she has done all that was asked of her in this case."

¶ 27 Respondent says she "engaged in counseling." That is true as far as it goes. She engaged in individual counseling in the sense of attending a counseling session every other week. Because, however, she was supposed to attend counseling every week, not every other week, she was dropped from the counseling program for excessive absenteeism.

¶ 28 Respondent is correct, though, that she met most of the goals in her service plan. The question is whether a trier of fact could reasonably find that the unmet goals of individual counseling and suitable housing amounted to a failure to make reasonable progress.

¶ 29 Section 1(D)(m) of the Adoption Act provides: "If a service plan has been established *** 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 [of neglect or abuse]." 750 ILCS 50/1(D)(m) (West 2014). The verb "includes" suggests that this definition is nonexclusive. *Id.* The supreme court has defined a "failure to make reasonable progress" as also encompassing a failure to correct conditions which later become known and which would prevent the return of the child. The supreme court held in *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001):

> "[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 become known and which would prevent the court from returning custody of the child to the parent."

This "progress" has to be "reasonable," as the statute says (750 ILCS 50/1(D)(m)(ii) (West 2014)), and we said that reasonableness is an objective standard that requires an imminent arrival at the goal of returning the child to the parent:

> " '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." (Emphasis in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 30 Given those discussions of the concept of "reasonable progress," we are unable to say the trial court made an arbitrary or unreasonable finding when it found that missing every other individual counseling session was a failure to make reasonable progress. There was evidence that counseling would have addressed respondent's apparent tendency to get into unhealthy relationships—and her unhealthy relationship with Carl E. Riley was one of "the conditions that brought the child into care." 750 ILCS 50/1(D)(m) (West 2014). Because the counseling would have taken a minimum of six months, it would not have been completed "in the near future," if at all. (Emphasis omitted.) *L.L.S.*, 218 Ill. App. 3d at 461.

¶ 31 The other unmet goal, suitable housing, fell into the category of "other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d at 216-17. The trial court could not have reasonably returned C.R. to respondent's custody if respondent lacked suitable housing.

¶ 32 For those reasons, we are unconvinced the trial court made a finding that was against the manifest weight of the evidence when it found respondent to be an "unfit person" within the meaning of section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)). We need not address the other cited definitions of an "unfit person." See *Tiffany M.*, 353 Ill. App. 3d at 891.

¶ 33 B. C.R's Best Interest

¶ 34 After an unfit-person finding, the focus of the inquiry shifts to the child. *D.T.*, 212 Ill. 2d at 364. Having found the respondent to be an "unfit person," the trial court may thereafter consider only the best interest of the child (*In re M.C.*, 197 Ill. App. 3d 802, 805 (1990))—specifically, whether termination of parental rights would best serve the child's needs (*D.T.*, 212 Ill. 2d at 364). "Accordingly, at a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.*

¶ 35 In the foster home, C.R. appears to have a stable, loving home life. Respondent does not make much of an argument in opposition to the trial court's best-interest finding. She argues only that "[t]he child needs to grow up with her mother who has continued to fight for her." The trial court disagreed, and we are unconvinced it is "clearly evident, plain, and indisputable" that the evidence called for the opposite finding. *Upper Salt Fork Drainage District v. DiNovo*, 385 Ill. App. 3d 1083, 1097 (2008); see *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005) ("We will not disturb a court's finding that termination is in the children's best interest unless it was against the manifest weight of the evidence."). C.R. has been with the Rhodeses since birth, they are the only mother and father she has ever known, her half-sister lives in the same household, the girls appear to have all their needs met, and the Rhodeses want to adopt them. Several of the statutory best-interest factors favor a termination of parental rights in order for the adoption to go forward. See 705 ILCS 405/1-3(4.05)(a), (d), (f), (g) (West 2014). The best-interest finding is not against the manifest weight of the evidence. See *T.A.*, 359 Ill. App. 3d at 961.

¶ 36 III. CONCLUSION

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

¶ 38 Affirmed.