2022 IL App (4th) 220710-U

NOS. 4-22-0710, 4-22-0711, 4-22-0712 cons.

FILED
December 19, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re J.M., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	No. 19JA356
v. (No. 4-22-0710)	)	
Tiffany M.,	)	
Respondent-Appellant).	)	
	)	
In re T.M., a Minor	)	
	)	No. 19JA357
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-22-0712)	)	
Tiffany M.,	)	
Respondent-Appellant).	)	
	)	
In re A.M., a Minor	)	
	)	No. 19JA358
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-22-0711)	)	Honorable
Tiffany M.,	)	Francis M. Martinez,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding respondent was unfit under section 1(D)(m)(ii) of the Adoption Act was not against the manifest weight of the evidence.

¶ 2 In August 2021, the State filed motions for the termination of the parental rights of respondent, Tiffany M., as to her minor children J.M. (born in December 2017), A.M. (born in

October 2013), and T.M. (born in July 2016). The Winnebago County circuit court held the fitness hearing and found respondent unfit in May 2022. After the June 2022 best-interests hearing, the court found it was in the minor children's best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court's unfitness finding was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The minor children's respective fathers and respondent's fourth minor child, R.T., are not parties to this appeal.

¶ 6 In August 2019, the State filed petitions for the adjudication of wardship of J.M., A.M., and T.M. The petitions alleged the minor children were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West Supp. 2019)) because their environment was injurious to their welfare in that domestic violence occurs in their home between respondent and Farad P., respondent's paramour and the father of J.M. At the January 2020 adjudicatory hearing, respondent stipulated the minor children were neglected as alleged in the petitions. At the August 19, 2020, dispositional hearing, respondent agreed she was unfit or unable to care for the minor children. The court made the minor children wards of the court, found respondent unfit, and placed custody and guardianship of the minor children with the Department of Children and Family Services (DCFS).

¶ 7 On August 4, 2021, the State filed motions to terminate respondent's parental rights to the minor children, as well as the parental rights of the minor children's fathers. As to respondent, the motions asserted respondent failed to make reasonable progress toward the minor children's return during any nine-month period after the neglect adjudication (750 ILCS

50/1(D)(m)(ii) (West 2020)). The relevant nine-month period alleged was October 6, 2020, to July 6, 2021.

¶ 8 On February 16, 2022, the circuit court commenced the fitness hearing. The State presented the testimony of (1) Stacie Young, a counselor at Clarity Counseling; (2) Mary Ann Kelly, a senior addictions counselor at Rosecrance; (3) Latoya Walker, a therapist with Youth Services Network; and (4) Jaimi Kitchen, the caseworker. The State also presented numerous exhibits. Respondent did not testify but presented the June 21, 2021, DCFS permanency review report.

¶ 9 Young testified that, during the period of between October 1, 2020, to July 6, 2021, she was to meet with respondent weekly for one hour of individual counseling. The counseling was not for parenting skills or anything else directly related to the minor children. Young and respondent developed goals for respondent's counseling. The goals established were stabilization and resourcing, which was building coping skills to regulate emotions. Respondent also had psychoeducation goals, which included learning more about her diagnosis and healthy relationships. Last, respondent had goals related to trauma based on the experiences and events in respondent's life. Young kept individual progress notes for respondent. Young explained progress was established when they worked through the goal and the patient self-reported having learned the skill and was able to demonstrate the skill. "In progress" means she and the patient were continuing to work on the particular goal. Young's progress notes for respondent were admitted into evidence (State's exhibit Nos. 5 through 14). During the period of October 2020 to July 2021, respondent attended 23 out of 36 visits. Young testified she had explained to respondent the importance of being at counseling sessions in person and on time and respondent did make some progress in that area during the relevant nine-month period. In July 2021,

respondent was on stage two of the three stages of trauma treatment and, thus, had not completed treatment. Young testified respondent had "moments of progress" during the relevant nine-month period. She explained respondent was still working on numerous goals in her treatment plan but declined to label the amount of work needed to complete treatment as "significant." The progress notes did identify areas in which respondent had made progress, such as appropriately expressing emotion. Young also testified respondent could have been further along in her goals if her attendance would have been better. Additionally, Young testified respondent continued to express a desire to do whatever was necessary to regain custody of the minor children.

¶ 10 Kelly testified she was the primary counselor for Project Safe, which was an extended, intensive outpatient program for substance abuse for women who are engaged or in danger of being engaged with child welfare. The treatment groups in Project Safe met for 12 hours every week. During the relevant nine-month period, respondent completed a substance-abuse assessment and Project Safe was recommended for respondent. Respondent enrolled, and a treatment plan was created for her, which was reviewed every 28 days. Respondent's treatment goals were the following: (1) addiction education and understanding the disease process; (2) looking at the impact on the family and developing and fostering positive parenting skills; (3) relapse prevention, which included identifying triggers and high-risk scenarios and developing a sober support network; and (4) a monitoring goal regarding respondent's mental health. During the relevant nine-month period, respondent had a pattern of partial attendance where she would either be late joining the group session, not answer when called upon in group, or leave early for a variety of reasons. Kelly also testified respondent received addiction education and education on the 12 steps. According to Kelly, respondent

would appear to grasp the concepts at times, but then at other times, respondent would not remember the words of the steps or how to apply them. It was difficult for Kelly to tell how internalized the information was for respondent. Additionally, on July 5, 2021, respondent completed a urine drop that was positive for "extended alcohol." Respondent was very upset and stated she had not drunk alcohol. After the relevant nine-month period, respondent talked with Kelly's supervisor and was transferred to a different counselor.

¶ 11 Walker testified she received respondent as a client and treatment was started in August 2020. Every 90 days, she would review respondent's treatment and note any growth or concerns. Initially, Walker was to meet weekly with respondent for parent coaching. However, it was difficult to get a consistent schedule with the minor children, so Walker changed to providing individual counseling with an emphasis on parenting. As such, Walker never observed respondent with the minor children. During the first 90-day review period, respondent only missed one appointment and made progress toward her goals. Walker noted respondent was able to identify her coping skills. In the June 2021 review, Walker also noted respondent made progress on her goals and could identify her coping skills. Walker further noted respondent reported utilizing mindfulness skills, such as emotional regulation and interpersonal effectiveness, to cope with life dynamics. According to Walker, respondent was making the progress Walker hoped she would make. However, Walker was unaware respondent had "police contact" in March 2021 and a second "police contact" before July 2021. Walker successfully discharged respondent from the counseling two weeks before the February 2022 unfitness hearing. However, Walker agreed respondent had "much more after that [the period of October 2020 to July 2021] that she needed to deal with."

¶ 12 Kitchen testified she became the caseworker for this family in December 2019 or

January 2020. The minor children had come into care as a result of domestic violence between respondent and one of the minor children's fathers. She explained how service plans were created and reviewed. DCFS held an administrative case review every six months to review the case, the service plan, and the minor children's well-being. The reviews also were used to make sure all necessary and recommended services were in place and ample progress was being made on the permanency goal. DCFS also held child and family team meetings quarterly with the parents, the DCFS team, and the service providers to review the services and talk about progress on the case or make further recommendations. On October 6, 2020, Kitchen testified the service plan required respondent to attend counseling at Clarity Counseling, parenting classes through Youth Services Bureau, and additional parenting support through Youth Services Network. At that time, respondent was not involved in parenting classes because she was unsuccessfully discharged from the program due to testing positive for marijuana. Additionally, as a result of the positive test, Kitchen referred respondent for a substance-abuse assessment, which respondent completed. Respondent was recommended for intensive outpatient treatment. Kitchen also explained respondent was assigned to attend individual counseling because respondent had completed domestic-violence classes but the service provider recommended respondent attend individual counseling to address her past trauma and continue to work on skills to handle conflict appropriately. Moreover, respondent was assigned individual parenting counseling because of concerns that arose during visitation about respondent's ability to manage all of the minor children. Kitchen noted respondent's boys had a "pretty high level of behavioral needs."

¶ 13 Kitchen further testified, from October 6, 2020, to July 6, 2021, she noticed respondent did not always tell Walker about incidents that occurred involving police and

substance use. Kitchen would provide Walker with the information and strongly suggest Walker and respondent's conversations focus on the parent/child relationship because respondent would often talk about superficial topics and not really dive into the goals of that counseling. Kitchen also noticed respondent was not providing Young with the same information and also informed Young of respondent's police involvement, physical altercations, and substance use. As to respondent's visitation with the minor children, Kitchen testified respondent never had unsupervised visitation with the minor children.

¶ 14 In January 2021, Kitchen reviewed the service plan in place on October 6, 2020. Respondent received an unsatisfactory rating for not maintaining consistent contact with her minor children's counselors. Respondent also received an unsatisfactory rating for her own counseling because she had attendance issues and was not always completely transparent during counseling. She further was rated unsatisfactory for the task related to domestic violence. Kitchen noted respondent had numerous police contacts involving some level of harassment or violence between her and Farad, as well as other individuals. Respondent had an altercation with a man at a store. She also had an incident, in which she and another person got into a physical altercation and a vehicle was damaged. Kitchen acknowledged respondent did receive some satisfactory ratings on the service plan.

¶ 15 Kitchen further testified respondent smelled of alcohol at two visits, one in January 2021 and one in March 2021. Respondent also did not always follow the details of the visitation plan because she would often call and try to change the dates, the times, or the location of visits at the last minute. Additionally, respondent left visits early, did not show for visits, and struggled to control and manage all the minor children during visits. Those same issues were noted in the July 2021 review of the January 2021 service plan. Kitchen also noted respondent

failed to participate and engage in parenting activities, including knowing about the minor children's counseling, medical, dental, school, and vision needs. The purpose of that task was for respondent to gain a better understanding or update on the minor children's current needs, including their own history of trauma. Kitchen further testified that, in November 2020, when respondent was recommended for intensive outpatient counseling, respondent argued she did not (1) have an addiction, (2) see a need for services, and (3) have time available to engage in intensive outpatient services. After respondent appeared to be intoxicated at two visits, respondent's substance-abuse treatment was discussed at the April team meeting and a "higher level of care" was recommended for respondent. Respondent did not agree with the recommendation and never obtained a higher level of care. Respondent also was required to do urine drops and missed some of them. All of the drops respondent did complete were negative (a total of 13 negative drops). Additionally, respondent did complete a mental-health assessment at Rosecrance, and no services were recommended.

¶ 16 After hearing the parties' arguments, the circuit court found respondent unfit as alleged in the petition. The court also found the fathers unfit.

¶ 17 On June 10, 2022, the circuit court held the best-interests hearing. The State presented the testimony of (1) Kitchen; (2) Amanda Warren, the current caseworker; (3) Nicholas B., the current foster father; and (4) Seth W., the former foster father. Respondent testified on her own behalf and presented certificates of completion for a nurturing program, parenting program, and domestic-violence program and a letter of discharge from Rosecrance's continuing care program. Respondent does not challenge this portion of the termination proceedings, and thus we do not set forth the evidence established at the best-interests hearing.

¶ 18 On July 18, 2022, the circuit court announced its decision, finding termination of

respondent's parental rights was in the best interests of the minor children. The court also terminated the parental rights of the minor children's fathers. It entered a written termination order on July 19, 2022.

¶ 19 On August 16, 2022, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases also govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of the appeal pursuant to Illinois Supreme Court Rule 307(a)(6) (eff. Nov. 1, 2017).

¶ 20 II. ANALYSIS

¶ 21 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2020)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2020)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor children's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). On appeal, respondent only asserts the circuit court erred by finding her unfit.

¶ 22 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not

disturb a circuit court's unfitness finding unless it is contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 23 Here, the circuit court found respondent unfit under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2020)), which provides a parent may be declared unfit if he or she fails "to make reasonable progress toward the return of the child[ren] to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act." Section 1(D)(m) further provides the following:

> "If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act [(325 ILCS 5/8.2 (West 2020))] to correct the conditions that were the basis for the removal of the child[ren] 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[ren] into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987." 750 ILCS 1(D)(m) (West 2020).

Respondent notes section 8.2 provides, "[n]o service plan shall compel any child or parent to engage in any activity or refrain from any activity which is not reasonably related to remedying a condition or conditions that gave rise or which could give rise to any finding of child abuse or neglect." 325 ILCS 5/8.2 (West 2020).

¶ 24 Illinois courts have defined "reasonable progress" as "demonstrable movement

toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007). Moreover, they have explained reasonable progress as follows:

> " '[T]he benchmark for measuring a parent's "progress toward the return of the child[ren]" 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[ren], and in light of other conditions which later became known and which would prevent the court from returning custody of the child[ren] to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001)).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child[ren] returned to parental custody. The court will be able to order the child[ren] 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[ren]." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). We have also emphasized " 'reasonable progress' is an 'objective standard.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387).

¶ 25 In support of her argument, respondent cites *In re Gwynne P.*, 346 Ill. App. 3d 584, 596, 805 N.E.2d 329, 339 (2004), in which the Appellate Court, First District, held the circuit court's finding the respondent failed to make reasonable progress was against the

manifest weight of the evidence because the respondent "made a minimum measurable or demonstrable movement toward reunification." However, this court has adhered to *L.L.S.* and declined to follow *Gwynne P.* because that case applied an incorrect definition of " 'reasonable progress.' " *F.P.*, 2014 IL App (4th) 140360, ¶ 88. Accordingly, we will apply the definition of progress set forth in *L.L.S.*

¶ 26 Additionally, in determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the nine-month period alleged in the petitions was October 6, 2020, to July 6, 2021.

¶ 27 While respondent does not argue the service plans in her case violated section 8.2, she does suggest the circuit court did not consider the service plans "in light of the condition which gave rise to the removal of the child[ren], and in light of other conditions which later become known and which would prevent the court from returning custody of the child[ren] to the parent." *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050. We disagree.

¶ 28 The minor children were adjudicated neglected based on domestic violence between respondent and Farad. Kitchen explained the reason for individual counseling was respondent completed domestic-violence classes and, at discharge, it was recommended she receive additional services for individual counseling to address her past trauma and to continue working on skills to handle conflict appropriately. Thus, the need for counseling was directly tied to the condition that resulted in the minor children's removal. While Young testified

respondent made some progress in counseling, respondent had attendance issues and was not transparent with Young about respondent's police contacts. In July 2021, respondent was still on stage two of three stages in her counseling and still had more work to do. Young further testified respondent could have been further along in her goals if her attendance had been better.

¶ 29 As to the parenting counseling through the Youth Services Network, Kitchen explained that service was put into place because of concerns raised during visitation about respondent's ability to manage all of the minor children due their "pretty high level of behavioral needs." Thus, this service addressed a condition that came to light after the adjudication and directly related to respondent's parenting skills. Respondent did not complete the counseling during the relevant nine-month period. While Walker testified respondent did make some progress, she still had much more to make in July 2021.

¶ 30 Regarding substance-abuse treatment, Kitchen explained respondent was referred to Rosecrance for a substance-abuse assessment after respondent had a urine drop that was positive for marijuana. This condition came to light during the case and prevented respondent from attending parenting classes during the relevant nine-month period. Her alcohol use also prevented her from attending a visit in March 2021 with the minor children. Rosecrance recommended respondent for intensive outpatient treatment. At the April 2021 child and family team meeting, it was discussed respondent needed a "higher level of care." Respondent did not believe she needed a higher level of care and did not seek such during the relevant nine-month period. Respondent also missed several urine drops during the relevant nine-month period, which were considered positive. On July 5, 2021, respondent did have a positive test showing "extended alcohol." Respondent contested the results, insisting she had not been drinking alcohol. Respondent had 13 negative urine drops during the relevant nine-month period.

¶ 31 Additionally, Kitchen testified respondent never received unsupervised visitation during the period of October 2020 to July 2021. She further noted respondent had a pattern of rescheduling and missing visits with the minor children. At a visit in January 2021, the case aide believed respondent had alcohol on her breath during the course of a visit. Also, in March 2021, the case aide did not take respondent to a visit because the case aide believed respondent was intoxicated. Also, respondent continued to have police contacts during the relevant nine-month period involving physical altercations. Respondent and Farad also continued to have harassment issues between them, which was part of the conditions that led to the minor children's removal.

¶ 32 While respondent made some progress in a few areas during the nine-month period, the progress could be found to not be reasonable because respondent was not close to having the minor children returned to her in the near future. She continued to have substance-abuse issues and police contacts. The police contacts showed continued issues with physical violence involving respondent, and the minor children were removed due to domestic violence. Respondent was also not close to completing individual and parenting counseling. She further had issues with attending visits with the minor children. As such, the circuit court's finding respondent failed to make reasonable progress toward the return of the minor children during the nine-month period of October 6, 2020, to July 6, 2021, was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the Winnebago County circuit court's judgment.

¶ 35 Affirmed.