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2024 IL App (3d) 230656-U

Order filed March 26, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

| | | |
|---------------------------------------|---|----------------------------------|
| <i>In re</i> Aa. C. and Ao. C., |) | Appeal from the Circuit Court |
| |) | of the 12th Judicial Circuit, |
| Minors |) | Will County, Illinois, |
| |) | |
| (The People of the State of Illinois, |) | |
| |) | |
| Petitioner-Appellee, |) | Appeal No. 3-23-0656, 3-23-0657 |
| |) | (cons.) |
| v. |) | Circuit No. 21-JA-259, 21-JA-260 |
| |) | |
| Michelle M.-A., |) | Honorable |
| |) | Paula A. Gomora, |
| Respondent-Appellant). |) | Judge, Presiding. |

JUSTICE DAVENPORT delivered the judgment of the court.
Presiding Justice McDade and Justice Albrecht concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's finding that mother was unfit for failing to make reasonable progress during the specified nine-month period and that it was in the minors' best interests to terminate her parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent, Michelle M.-A., appeals from an order terminating her parental rights to her minor children, Aa. C. and Ao. C.¹ She argues (1) the trial court’s finding she was an unfit parent pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2022)) was against the manifest weight of the evidence, (2) the trial court’s finding it was in the best interests of the minors to terminate her parental rights was against the manifest weight of the evidence, and (3) the trial court abused its discretion when it ordered the State to review the file for filing necessary petitions. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 3, 2021, the State filed petitions alleging Aa. C. (born October 2020) and Ao. C. (born August 2021) were neglected as substance-exposed babies (705 ILCS 405/2-3(1)(c) (West 2020)). Both minors had been taken into protective custody at the same time.

¶ 5 At the adjudicatory hearing on November 30, 2021, respondent stipulated both minors were born exposed to a controlled substance not as a result of medical treatment. The court accepted the stipulation and found the minors to be neglected. The court admonished respondent that she must cooperate with the Department of Children and Family Services (DCFS), comply with the terms of the service plan, and correct the conditions that required the children to be in care, or risk termination of her parental rights.

¶ 6 At the dispositional hearing on January 24, 2022, the court found respondent to be dispositionally unfit for some reason other than financial circumstances alone to care for, protect, train or discipline the minor children. It also found it was in the best interests of the minors and the public that the minors be made wards of the court. At that time, respondent had completed 3 out of 10 parenting classes and was receiving substance abuse treatment and mental health

¹The minors’ father is the respondent in appeal Nos. 3-23-0654 and 3-23-0655.

counseling, but she still needed to complete services within her service plan. The court specifically stated, “[M]other needs to establish a history of sobriety so the services are reasonable and necessary in order for the children to return home safely to parents’ care.” The permanency goal was for the minors to return home within 12 months. According to the caseworker’s report filed the same day, respondent refused to share her employment and housing information with the caseworker. The report also stated respondent failed to appear for a drug test on January 5, 2022, because she was out of town.

¶ 7 According to the January report from the Court Appointed Special Advocate (CASA), the minors began receiving services the previous fall to address a number of concerns. The foster mother reported Aa. C. had trouble eating and standing. Aa. C. was receiving physical therapy to address low muscle tone and muscle weakness throughout her body. The foster mother took Ao. C. to the doctor for concerns of withdrawal symptoms, tremors, and seizure-like symptoms. He was diagnosed with obstructive sleep apnea following a sleep study and he was required to be on oxygen at all times. An early intervention assessment recommended Ao. C. receive developmental, speech/feeding, physical, occupational, and nutrition therapies. In November, the agency determined Ao. C. required specialized foster care, and his foster parents were in the process of becoming licensed for it.

¶ 8 At an April 2022 permanency review hearing, the court found respondent had made no efforts or progress due to a positive drug screen for cocaine and two drug tests being diluted. According to CASA’s report filed the same day, respondent was not consistent with therapy sessions in February, having attended only one session, but her attendance was otherwise consistent in January and March. Respondent completed substance abuse treatment and a six-hour aftercare program in January. Ao. C. was not in specialized foster care, but he was improving

physically and only needed oxygen at night. Both minors were making progress in their therapeutic services but did not receive these services after their placement changed to fictive kin.² According to the caseworker's report, from January 17 to February 25, respondent had three negative drug tests, missed four drug tests due to a conflicting work schedule, and tested positive for cocaine on February 25. Respondent's visits with the minors, initially unsupervised, became supervised after the positive drug test. Respondent was reenrolled in substance abuse treatment and was to start a 75-hour program in April. Respondent was residing in a motel room and was actively looking for an apartment. She had quit her job at a restaurant but had a scheduled job interview with a grocery store.

¶ 9 The court held another permanency review hearing in October 2022. According to CASA's October 2022 report, although respondent started substance abuse classes in September and was in compliance, having attended 12 out of 75 hours, she was not engaged in individual therapy services per the service plan. She was also not maintaining consistent employment or housing, but she would soon begin a job in a factory. The minors were receiving therapeutic services again, and Ao. C. no longer needed developmental, speech/feeding, or occupational therapies. According to the caseworker's October 2022 report, respondent moved between Joliet and Elgin, living either with family or in a motel room. From April 22 to September 23, 2022, respondent tested positive for cocaine once, tested positive for cannabis on 7 occasions, missed 11 drug tests, and failed to complete the test once. There were no negative drug tests during this time period. The caseworker started the legal screening packet.

²Aa. C. and Ao. C. were placed with one foster family from September 2021 to March 2022, and then again beginning in March 2023. The foster parents wanted Aa. C. and Ao. C. removed from their home because they were accused of giving Aa. C. bruises. The marks on Aa. C. were not bruises but were due to eczema. In the meantime, from March 2022 to March 2023, Aa. C. and Ao. C. were moved to a fictive kin foster placement.

¶ 10 At the October 2022 permanency review hearing, the court noted

“The case was adjudicated in November. And we are still at square one as far as the addiction issues.

So far as reasonable efforts towards the goal of return home, I would say that neither parent has made reasonable efforts towards the goal of return home, nor progress because they still need to have substance abuse treatment and show a history of sobriety. Mother’s last positive test for cocaine was in August. ***

So addiction is clearly a huge issue here that has not at all been addressed. And *** since we are more, we are past nine months past adjudication, the case should have been sent to legal screening.”

¶ 11 The matter was up for legal screening on January 26, 2023, and was rejected because both parents were participating in services and needed more time. The court ordered “State to review the file. And if you decide, you know, that parents are being compliant, that’s fine.” The court’s written order noted, “State to review the file for filing necessary petition.”

¶ 12 The State motioned to terminate respondent’s parental rights on February 28, 2023. The State alleged respondent was an unfit parent because she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the children’s welfare (750 ILCS 50/1(D)(b) (West 2022)), (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children (*id.* § 1(D)(m)(i)), (3) failed to make reasonable progress toward the children’s return within a nine-month period after an adjudication of neglect, beginning on November 30, 2021, and ending on August 30, 2022 (*id.* § 1(D)(m)(ii)), and (4) failed to make reasonable progress toward the children’s return during any nine-month period after an adjudication of neglect, that period beginning on August 31, 2022, and ending on May 31, 2023

(*id.*). Upon the filing of the motion, the court changed the permanency goal to substitute care pending court determination on termination of parental rights.

¶ 13 The court held a permanency review hearing in April 2023. The caseworker's April 2023 report relayed respondent was not consistent in obtaining employment, as she was unemployed from November 2022 until only recently, when she began working at a grocery store. From October 7, 2022, to March 7, 2023, she tested positive for cannabis seven times, failed to appear for drug tests two times, failed to complete the test one time, and tested negative for all substances five times. Respondent tested positive for opiates on one occasion, but she had a prescription. On March 24, respondent tested positive for "amphetamines/methamphetamine," but stated she did not know why. CASA's April 2023 report confirmed respondent's participation in weekly therapy sessions from August 25 to December 26, 2022. Respondent completed an intensive outpatient drug treatment program in January 2023, and was participating in a six-month aftercare program. She had not maintained consistent housing or employment. CASA's report also noted the minors were no longer with the fictive kin placement and they no longer needed any therapeutic services. At the April 2023 permanency review hearing, the court found respondent had made efforts but there was no progress due to positive drug results, and the failures to appear for drug testing also count as positive.

¶ 14 At the September 2023 hearing on the State's motion, caseworker Yaritza Cruz testified as follows. She was assigned to this case in September 2021. There were service plans dated September 27, 2021, March 1, 2022, September 22, 2022, and April 10, 2023. Each service plan pertains to the six months before the date of that service plan, and the service plans are updated every six months. According to respondent's March 1, 2022, service plan, respondent was to complete substance abuse treatment and aftercare, individual counseling, parenting classes, and

maintain stable housing and employment. Respondent completed substance abuse treatment in January 2022, but had to reenroll in the program after testing positive for cocaine in February. Respondent completed parenting classes in March 2022. She was engaged in individual counseling.

¶ 15 The September 22, 2022, service plan contained the same recommendations, but respondent did not complete any other services from March to September 2022. She tested positive for illegal substances. She failed to appear for a number of drug tests, even when the caseworker found a facility closer to respondent's residence. She did not attend some drug screens, allegedly due to her work schedule, but she refused to provide paystubs to the caseworker to confirm her employment. Respondent stopped attending individual therapy in May 2022 because Family Guidance no longer had a counselor. She was referred to Guardian Angels for counseling in August 2022. For the time period of November 30, 2021, to August 30, 2022, respondent still had services to complete according to the service plan, particularly to participate in and complete substance abuse treatment, random drug tests, and individual counseling, as well as to maintain stable employment and housing.

¶ 16 Cruz also testified regarding the second nine-month period, August 31, 2022, to May 31, 2023. In March 2023, respondent tested positive for "amphetamines/methamphetamines," but the lab could not confirm the result with certainty. As of May 31, 2023, respondent was engaged in substance abuse treatment and therapy, but she still needed to obtain stable housing and employment. Initially, she refused to tell the case worker where she was living. Later, she said she was staying with family or friends. She never provided proof during this nine-month period that she maintained a consistent residence. As of September 2023, respondent still needed to obtain

stable housing and employment. Throughout the entire case, respondent was consistent in visiting with the children.

¶ 17 The court found by clear and convincing evidence that respondent was unfit in that she failed to make reasonable progress toward the return of the children to her care from November 30, 2021, to August 30, 2022. Although respondent completed substance abuse treatment in January 2022, she tested positive for cocaine in February 2022 and was required to complete an additional 75 hours of substance abuse treatment with aftercare, which did not occur during this time period. Further, respondent tested positive for cocaine on August 16, 2022, near the end of the subject time period. Thus, the court found there was no demonstrable movement toward reunification during this time period since respondent was still using drugs and had not established a history of sobriety.

¶ 18 At the best interests hearing, Cruz testified as follows. Aa. C. and Ao. C. were two years old and had been living with the foster family for at least six months. The foster home was clean, safe, and appropriate. The foster parents were loving toward and had bonded with Aa. C. and Ao. C., and the two children loved their foster parents, calling them mom and dad. Aa. C. and Ao. C. got along like siblings with the other four children in the home. The foster parents signed a permanency commitment. There was an issue in the past when the foster parents wanted Aa. C. and Ao. C. removed from their home due to false allegations and not wanting to put their own children at risk, but Cruz had no present concerns that the foster parents would change their minds about adopting Aa. C. and Ao. C. Respondent also shared a bond with Aa. C. and Ao. C. During respondent's visits with the minors, she would bring them snacks and take them to the park or the mall to play. They would also color, play games, and take pictures together. She would give birthday and Christmas gifts. Aa. C. and Ao. C. were happy with respondent during these visits. 23

photographs of respondent with the minors were admitted into evidence. The court found by a preponderance of the evidence that it was in the minors' best interests to terminate respondent's parental rights.

¶ 19 The court denied respondent's motion to reconsider. Respondent appeals.

¶ 20 II. ANALYSIS

¶ 21 The involuntary termination of parental rights is a two-step process. See 705 ILCS 405/2-29(2) (West 2022). "Parental rights may be involuntarily terminated where (1) the State proves, by clear and convincing evidence, that a parent is unfit pursuant to grounds set forth section 1(D) of the Adoption Act, and (2) the trial court finds that termination is in the child's best interests." *In re K.I.*, 2016 IL App (3d) 160010, ¶ 37.

¶ 22 A. Unfitness

¶ 23 "We afford great deference to a trial court's finding of unfitness because the trial court is in the best position to view and evaluate the parties and their testimony, and thus we will not reverse unless the trial court's finding was against the manifest weight of the evidence." *In re Je. A.*, 2019 IL App (1st) 190467, ¶ 46. A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record. *Id.*

¶ 24 Respondent was found unfit pursuant to section 1(D)(m)(ii) of the Adoption Act for failing to make reasonable progress toward the return of the children during the nine-month period of November 30, 2021, to August 30, 2022. See 750 ILCS 50/1(D)(m)(ii) (West 2022) (a ground of parental unfitness is the failure "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of" neglect). "Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. "The benchmark for measuring

a parent's reasonable progress under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and court directives, in light of the condition that gave rise to the removal of the child and other conditions that later become known that would prevent the court from returning custody of the child to the parent." *In re Ay. D.*, 2020 IL App (3d) 200056, ¶ 56. "Reasonable progress occurs when the trial court can conclude that the progress being made by a parent to comply with the directives given for the return of the minor is sufficiently demonstrable and of such quality that the court would be able to order the child returned to the parent's custody in the near future." *In re Z.M.*, 2019 IL App (3d) 180424, ¶ 68. "In determining whether a parent has made reasonable progress toward the return home of the minor, the trial court is to consider evidence occurring only during the relevant nine-month period." *Id.*

¶ 25 Respondent argues the court's finding that she was unfit was against the manifest weight of the evidence. According to respondent, she completed the required substance abuse program within the first nine months after the children were adjudicated neglected. And, although she tested positive for a controlled substance after completing the program, she reengaged in the program and was progressing according to the service plan. Thus, it was error to find she did not make reasonable progress. We disagree.

¶ 26 To reiterate, the relevant nine-month period at issue is November 30, 2021, to August 30, 2022. During this time, respondent was ordered to complete substance abuse treatment and aftercare, individual counseling, parenting classes, and maintain stable housing and employment. Respondent completed parenting classes and the substance abuse program during this time period. However, one month after completing the substance abuse program, she tested positive for cocaine, requiring her to reenroll in the program, which she did not do until September. Out of 27 required drug tests during this time, respondent only tested negative on 3 occasions. She missed

16 of the tests. She failed to complete one test and tested positive seven times, including twice for cocaine. Moreover, one of the tests positive for cocaine occurred on August 16, just two weeks before the end of the nine-month period at issue, demonstrating that respondent had not made any demonstrable movement toward reunification during the nine-month period. In addition, between March and August 2022, a five-month period, she did not participate in any services as required by her service plan.

¶ 27 Finally, respondent failed to maintain stable housing and employment during this time. She refused to provide the case worker with pay stubs or housing information. She allegedly left and started multiple jobs. She moved around between motel rooms, family, and friends. This is the opposite of stability. In short, respondent made no meaningful progress where she consistently failed to comply with the court’s directives or with the service plan. She was no closer to reunification than she was at the beginning of the nine-month period. The trial court’s finding of unfitness was not against the manifest weight of the evidence.

¶ 28 B. Best Interests

¶ 29 Once the trial court finds a parent unfit, all further considerations must yield to the child’s best interest. *In re Ay. D.*, 2020 IL App (3d) 200056, ¶ 63. Specifically, “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest to live in a stable, permanent, loving home. *In re K.I.*, 2016 IL App (3d) 160010, ¶ 65. At the best interest stage, the State must prove by a preponderance of the evidence that it is in the child’s best interest to terminate parental rights. *In re Z.M.*, 2019 IL App (3d) 180424, ¶ 73. In determining a child’s best interests, the 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, including food, shelter, health, and clothing; (2) the development of the child’s identity; (3) the child’s background and ties,

including familial, cultural, and religious background; (4) the child's sense of attachment, including love, security, familiarity, and continuity of affection, and the least disruptive placement alternative for the child; (5) the child's wishes and long-term goals; (6) community ties, including church, school, and friends; (7) the child's need for permanence, which includes the child's need for stability and continuity of relationships; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2022). "It is not in any child's best interest to remain without a permanent home for an extended period of time." *In re Ay. D.*, 2020 IL App (3d) 200056, ¶ 63. A trial court's determination that it is in the child's best interest to terminate parental rights will not be disturbed unless it is against the manifest weight of the evidence. *In re K.I.*, 2016 IL App (3d) 160010, ¶ 65.

¶ 30 Respondent argues the court did not consider the strong bond the children share with respondent. According to respondent, the photographs admitted into evidence are a testament of this love and bonding. Further, Aa. C. and Ao. C. do not have stability in the foster home, as the foster parents at one point wanted them out of their home. We disagree.

¶ 31 Aa. C. and Ao. C. deserve permanency and stability which respondent cannot provide. Permanency and stability require more than snacks, trips to the park, and pictures together. Respondent did not substantially comply with her service plan. At no point did she establish stable housing and employment. We acknowledge addiction is a lifelong battle, but Aa. C. and Ao. C. should not have to wait until respondent can establish stability.

¶ 32 The evidence established that the children are thriving in their foster placement. The foster home was clean, safe, and appropriate. Aa. C. and Ao. C. called their foster parents mom and dad, without prompting. They are also bonded like siblings with the other children in the home. The

foster parents signed a permanency commitment, and the caseworker had no concerns that they would renege on this commitment. Given this evidence, the trial court reasonably found it was in the minors' best interest to terminate respondent's parental rights.

¶ 33

C. State's Review

¶ 34

Respondent argues the trial court abused its discretion by ordering the State to review the file for filing a motion to terminate parental rights. However, respondent fails to cite any authority to support her argument. See Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020). Failure to comply with this requirement results in forfeiture. *In re Ay. D.*, 2020 IL App (3d) 200056, ¶ 65. Therefore, respondent has forfeited this argument.

¶ 35

III. CONCLUSION

¶ 36

The judgment of the circuit court of Will County is affirmed.

¶ 37

Affirmed.