2023 IL App (4th) 230424-U

NO. 4-23-0424

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 12, 2023
Carla Bender
4th District Appellate
Court, IL

In re N.D., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Morgan County
Petitioner-Appellee,	)	No. 21JA3
v.	)	
Casey D.,	)	Honorable
Respondent-Appellant).	)	Jeffery E. Tobin,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's fitness and best-interest determinations were not against the manifest weight of the evidence.

¶ 2 Respondent, Casey D., appeals the trial court's judgment terminating her parental rights to her minor child, N.D. (born in January 2020). On appeal, respondent challenges both the court's fitness and best-interest determinations. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 19, 2021, the State filed a petition for adjudication of wardship with respect to N.D., alleging she was neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2020)) because she was "not receiving necessary support, education, medical or other care necessary for her well-being,

including adequate food, clothing and/or shelter." Respondent stipulated to the allegation in the State's petition, and on February 26, 2021, the trial court entered an adjudicatory order finding N.D. was neglected. On June 17, 2021, the court entered a dispositional order finding respondent unfit, unable, and unwilling to care for N.D. and making her a ward of the court.

¶ 5 On September 29, 2022, the State filed a petition seeking to terminate respondent's parental rights to N.D. The State alleged respondent was an unfit parent within the meaning of section 1(D)(m)(i), (ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i), (ii) (West 2022)) because she (1) failed to make reasonable efforts to correct the conditions that led to the minor's removal during any nine-month period following the adjudication of neglect and (2) failed to make reasonable progress toward the minor's return during any nine-month period following the adjudication of neglect. The State provided notice that the relevant nine-month period was December 30, 2021, to September 29, 2022.

¶ 6 On April 20, 2023, the trial court conducted a fitness hearing. Respondent failed to appear at the hearing. Emily Burgett was the only witness to testify.

¶ 7 Burgett, who became N.D.'s caseworker in September 2021, testified that N.D. was initially removed from respondent's care in January 2021, when respondent ran out of gas on the side of the highway with N.D. in the vehicle; N.D. did not have on appropriate clothing for the cold weather and respondent appeared impaired. Burgett testified that after N.D.'s removal, a service plan was designed to accomplish the goal of N.D.'s return to respondent's care. Burgett testified the services in respondent's plan included "visitation, cooperation, substance abuse treatment, mental health counseling, and then stable housing." With respect to visitation, respondent was allowed weekly visitation with N.D. for two hours. Respondent attended visitation from October 2021 until March 3, 2022, but she failed to attend after March

3, 2022. As for cooperation, respondent was required to maintain monthly contact with Burgett. However, Burgett testified that respondent "was in touch a few months, but not the entire period." Burgett testified that respondent was also required to receive inpatient substance abuse treatment. According to Burgett, respondent never complied with this requirement. Burgett further testified that respondent failed to attend any mental health services or secure stable housing. Burgett explained that respondent had been living with friends or her grandmother throughout the case. Burgett testified that there was never a time during the relevant nine-month period that she would have been able to recommend N.D. be returned to respondent's care.

¶ 8 In arguing against a finding of unfitness, respondent's counsel stated, "we would submit to the Court that [respondent's] inability to comply with the service plan was due to financial reasons alone, and because of that the Court should find that she is not an unfit parent."

¶ 9 Before making its fitness finding, the trial court indicated that it had taken judicial notice of "all prior orders and reports in this case." The court then found the State had proven respondent unfit by clear and convincing evidence as alleged in both counts of its termination petition.

¶ 10 Upon issuing its fitness determination, the trial court immediately proceeded to the best-interest hearing. Burgett testified that N.D. had been living with her maternal grandparents since the case opened in January 2021. Burgett went to the grandparents' home once or twice per month throughout the case to observe N.D.'s interactions with them. According to Burgett, the grandparents were meeting all the minor's needs, and she had observed a strong bond between them. Burgett stated N.D. had informed her that "she loves them and that she is just happy in the home." The grandparents had also informed Burgett that they loved N.D. like their own child and had expressed their desire to adopt her. Burgett testified that N.D.'s

biological brother also lived in the home and the two minors were "well bonded." Burgett opined that it was in N.D.'s best interest to terminate respondent's parental rights so she could be adopted by her grandparents.

¶ 11 On cross-examination by respondent's counsel, Burgett acknowledged that respondent had asked her for a ride to the hearing, but she had denied respondent's request. Counsel then made an oral motion to continue the proceedings so respondent could be present for the conclusion of the best-interest hearing. The trial court granted the motion and continued the hearing to May 4, 2023.

¶ 12 On May 4, 2023, counsel continued his cross-examination of Burgett. Burgett testified that respondent had recently been attending virtual visits with N.D. once per month for one hour. Respondent had also been maintaining monthly contact with Burgett by telephone. Burgett testified respondent had recently been attending substance abuse counseling, but she did not believe her progress in the counseling sessions was satisfactory. Burgett stated that respondent complied with a random drug screening in January 2023 and tested negative. Burgett testified that she had received documentation indicating respondent had engaged in mental health services on March 16, 2023.

¶ 13 Respondent testified that she was living in a hotel with her oldest child at the time of the hearing. She stated a "shelter program" had helped her to secure a room in the hotel. Respondent testified that prior to October 2022, she had been "[f]ully homeless. No shelter, no hotel. Just wherever I could." In October 2022, respondent's cousin informed her of the "Samaritan Well" shelter program. According to respondent, the shelter program aided her in finding employment and enrolling in mental health and substance abuse services. Respondent testified that she had begun attending mental health and substance abuse services toward the end

of 2022. An exhibit admitted into evidence shows respondent completed the "Cooperative Parenting and Divorce" program on March 1, 2023. Respondent testified that she did not have a driver's license but that she was working at a factory and planning to move into a two-bedroom apartment in June.

¶ 14 During argument, respondent acknowledged that the purpose of a best-interest hearing was to focus on the needs of the child, not "a rehashing to what we learned or knew at the fitness hearing." Nonetheless, respondent highlighted the progress she had been making since October 2022, and she argued it was not in the minor's best interest to terminate her parental rights until it became clear she was unable to make further progress with her services.

¶ 15 After hearing the arguments of the parties, the trial court determined that it was in N.D.'s best interest to terminate respondent's parental rights.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent argues the trial court erred in finding her unfit and that it was in the best interest of N.D. to terminate her parental rights.

¶ 19 A. The Fitness Determination

¶ 20 Respondent argues, in part, the trial court erred in finding she failed to make reasonable progress towards N.D.'s return during the nine-month period of December 30, 2021, to September 29, 2022. In support of her argument, respondent notes that she attended visits with N.D. and "was unable to be at the [fitness] hearing due to [a] lack of transportation and so it can be surmised that [the] lack of transportation was a huge barrier for [her] throughout the case."

¶ 21 "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500 (2011).

¶ 22 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In making such a determination, the trial court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re D.D.*, 196 Ill. 2d 405, 417 (2001). Under the Adoption Act, an unfit parent includes, in relevant part, any parent who fails to make reasonable progress toward his or her child's return during any nine-month period following the neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2022). In addressing section 1(D)(m) of the Adoption Act, our supreme court has stated the following:

> "[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." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001).

This court has described reasonable progress as "an 'objective standard,' " which exists "when '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 F.P.*, 2014 IL App

(4th) 140360, ¶ 88 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991)).

¶ 23 Here, the relevant nine-month period identified by the State in its termination petition was from December 30, 2021, to September 29, 2022. During that period, respondent's service plan required her to (1) attend weekly visits with N.D., (2) maintain monthly communication with Burgett, (3) engage in substance abuse treatment, (4) engage in mental health counseling, and (5) secure and maintain stable housing. However, Burgett testified that respondent did not make satisfactory progress towards completing any of these requirements during the relevant period. According to Burgett, respondent attended visits with N.D. and maintained contact with her until early March 2022 but did not continue to attend visits or maintain contact after March 2022. Burgett further testified that respondent never provided her with proof that she had even once engaged in substance abuse treatment or mental health counseling. Further, respondent did not have stable housing at any time throughout the nine-month period. Based on this evidence, we cannot say the trial court's fitness determination was against the manifest weight of the evidence.

¶ 24 We reject respondent's argument that her lack of transportation should somehow excuse her inability to make reasonable progress. As noted above, "reasonable progress" in this context is an objective standard that does not account for an individual's unique situation. See *id.* If imprisonment does not excuse a parent's inability to comply with their service plan, we fail to see, and respondent does not attempt to explain, why a lack of transportation should. See *In re J.L.*, 236 Ill. 2d 329, 340-43 (2010) (holding that "time spent in prison does not toll the nine-month period"). Accordingly, we reject respondent's argument and need not address her remaining argument concerning unfitness. See, *e.g.*, *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005)

("A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.").

¶ 25 B. The Best-Interest Determination

¶ 26 Respondent also argues the trial court erred in finding termination of her parental rights was in N.D.'s best interest. In support, she points to her testimony at the best-interest hearing indicating she was beginning to make progress with her service plan.

¶ 27 We will not reverse a best-interest determination absent a finding it was against the manifest weight of the evidence, which occurs "only if the facts clearly demonstrate that the court should have reached the opposite result." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009).

¶ 28 Section 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2022)) "delineates a two-step process in seeking termination of parental rights involuntarily." *J.L.*, 236 Ill. 2d at 337. Relevant to the instant appeal is the second step—*i.e.*, the best-interest stage—at which the trial court must determine whether the State has proven by a preponderance of the evidence that termination of the respondent's parental rights is in the minor's best interest. 705 ILCS 405/2-29(2) (West 2022). At the best-interest stage, the focus shifts from the parent to the child, and the issue is "whether, in light of the child's needs, parental rights should be terminated." (Emphasis omitted.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Thus, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* Section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)) lists the best-interest factors for the court to consider, in the context of the minor's age and developmental needs, when making its best-interest determination: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachments; (5) the child's wishes and long-term

goals; (6) the child's community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks associated with substitute care; and (10) the preferences of the persons available to care for the child.

¶ 29 Here, the trial court's best-interest determination was not against the manifest weight of the evidence. Burgett testified that N.D. had been living with her maternal grandparents since the case opened in January 2021. N.D.'s biological brother also lived in the home, and the two minors were "well bonded." According to Burgett, the grandparents were meeting all the minor's needs and there were no safety concerns. Burgett testified that she went to the foster home monthly and observed a strong bond between N.D. and her grandparents. Burgett stated N.D. had informed her that "she loves them and that she is just happy in the home." The grandparents had also informed Burgett that they loved N.D. like their own child and wished to adopt her. Burgett opined that it was in N.D.'s best interest to terminate respondent's parental rights so she could be adopted by her grandparents. On the other hand, despite having already been found unfit, respondent only testified about the progress she had been making with her service plan and never mentioned N.D.'s needs. See *D.T.*, 212 Ill. 2d at 364 (noting that the focus shifts from the parent to the minor at the best-interest stage). Based on this evidence, we cannot say the court's best-interest determination was against the manifest weight of the evidence.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment.

¶ 32 Affirmed.