2021 IL App (3d) 210188-U

Order filed September 10, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

In re D.A. JR.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Mercer County, Illinois
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-21-0188
Petitioner-Appellee,	)	Circuit No. 16-JA-3
	)	
v.	)	
	)	
David A. Sr.,	)	Honorable
	)	Gregory G. Chickris,
Respondent-Appellant).	)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err when it terminated respondent's parental rights where evidence established father was unfit and termination was in the child's best interests.

¶ 2 The trial court found that the respondent was unfit and it was in the child's best interests that his parental rights be terminated. Respondent appealed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 D.A. Jr., was born on July 29, 2006, to respondent David A. Sr. and Soraya A. R. D.A.'s maternal grandmother was granted guardianship of him. In July 2016, the State filed a juvenile neglect petition and a petition for temporary custody. The neglect petition alleged in the first count that D.A. was a neglected or abused minor in that he was in an injurious environment where his guardian allowed him to live in a trailer where drugs were used and the conditions were unsanitary because of dog feces. The second count alleged that D.A.'s environment was injurious where his mother took him with her to purchase illegal drugs. Petitions were also filed on behalf of D.A.'s half-sister, H.S., who was born in June 2016. Both children were placed together in traditional foster care.

¶ 5 David could not be located and was served by publication on August 24, 2016. Soraya stipulated to the allegations in count I and the court set a permanency goal of return home within 12 months. The Department of Children and Family Services (DCFS) was unable to contact David. He was located after he was arrested in May 2017 and held in the Rock Island County jail until June 25, 2017. David contacted the caseworker and set up a meeting, which the caseworker later had to cancel. David was asked to again contact the caseworker to reschedule but apparently, he did not. On September 12, 2017, the permanency goal was changed to substitute care pending termination of parental rights. The State filed a petition to terminate David's parental rights on September 27, 2017. David was in custody in Rock Island again from September 27 to October 27, 2017. Also in October 2017, D.A.'s mother signed specific consents for the foster parents to adopt D.A. and his sister.

¶ 6 On December 12, 2017, David signed a specific consent for the foster parents to adopt D.A. The permanency goal was set at adoption. A July 31, 2018, permanency hearing report indicated that the foster parents had adopted H.S. but were experiencing issues with D.A. that hindered the

adoption. Specifically, D.A.'s "mental health and behavioral issues put [his] placement at risk." He was removed from the foster home in September 2018 and placed in another traditional foster home. The goal for D.A. was changed from adoption to substitute care pending court determination on termination of parental rights. An April 2019 permanency hearing report indicated that D.A.'s current foster family was struggling to meet his needs and a return to his original foster family was contemplated. At a May 2019 review hearing, the trial court changed D.A.'s permanency goal to "return home within 12 months," noting that the prior adoption to which the parents consented did not take place. In December 2019, David was sentenced to a four-year term of imprisonment for a Class 2 felony burglary, which occurred on September 26, 2017.

¶ 7 The State filed a petition to terminate parental rights on September 8, 2020. The allegations included that David failed to maintain a reasonable degree of interest (750 ILCS 50/1(D)(b) (West 2018)); failed to make reasonable efforts to correct the conditions that resulted in removal or make reasonable progress toward the return of the child (*id.* § 1(D)(m)); failed to maintain meaningful visitation or communication (*id.* § 1(D)(n)); and was unable to discharge his parental duties for two years because of incarceration (*id.* § 1(D)(r)). A fitness hearing took place on the petition.

¶ 8 Kristy Hutchinson, a child welfare specialist and D.A.'s caseworker, testified. David had not met with her agency or taken advantage of its services during the entirety of the proceedings. David had not visited with D.A. since the case began in July 2016. He had one unauthorized phone contact with D.A. when David called his mother while D.A. was visiting. Hutchinson sent David paperwork, including the integrated assessment, while he was incarcerated and he never responded. She sent the integrated assessment three times. She also sent him every court order and administrative case review. She informed David that the adoption did not go through.

¶ 9 David testified. Between 2017 and 2018, he had ongoing criminal charges he was fighting. He spent five months in the Rock Island County jail. He was currently incarcerated at Sheridan Correctional Center and had been there for 15 months. Services were available at Sheridan, although the facility was on COVID-19 restrictions. He had been participating in a substance abuse program since his arrival at the prison and was on a waiting list for a parenting class. The facility also offered mental health treatment. He planned to participate in an early release program, which would allow him to leave prison in early to late summer 2021. When released, he would return to his five-bedroom marital residence and his self-employment as a landscaper. David testified he did not receive any paperwork from DCFS while he was incarcerated.

¶ 10 He wanted to retain his parental rights. He had raised his son, taking him fishing and exploring the outdoors on the property of D.A.'s maternal grandparents. He had difficulty seeing D.A. because Soraya and her boyfriend were hostile and would attack him. David called DCFS on D.A.'s grandparents in 2016, describing them as chronic alcoholics. In response to questioning from the court, David explained that he never pursued establishing paternity or sought visitation with D.A. He last saw D.A. at a gas station in 2017. He was uncomfortable with certain tasks DCFS asked him to complete and he was busy fighting his criminal cases in 2017.

¶ 11 The trial court found David failed to maintain a reasonable degree of interest, concern or responsibility for D.A., failed to make reasonable efforts or progress and intended to forgo his parental rights by a lack of any meaningful visitation or communication with D.A. for over 12 months. It found the State failed to prove that David could not discharge his parental duties for two years due to his incarceration.

¶ 12 A best interest hearing ensued. The trial court took judicial notice of the evidence presented at the fitness hearing and admitted the best interest report into evidence. David called caseworker

Kristy Hutchinson as a witness. She testified that D.A.'s foster placement was disrupted in September 2018 and he was returned to the foster home in June 2019. During the period between his removal and return, the foster family remained in contact with and committed to D.A. He began treatment with new mental health providers and was more stable. In her opinion, it was in D.A.'s best interests to rejoin his original foster family. She stated that D.A. had been under the guardianship of his maternal grandmother, not in his father's care, and that David's interactions with D.A. had been inconsistent. According to Hutchinson, the last time David saw D.A., the child was six or seven years old.

¶ 13 On cross-examination by D.A.'s guardian *ad litem* (GAL), Hutchinson testified the foster home was appropriate and posed no safety risks. D.A. had made "significant improvements in his overall behavior." She believed it was in D.A.'s best interests that he remain with the foster family and be adopted by them. On cross-examination by the State, Hutchinson said the foster parents were dedicated to D.A., both spouses were employed, lived in a suitable house and enjoyed a large support system. They offered D.A. a secure and consistent living environment and were willing to adopt him. She also stated that D.A.'s parents could not provide consistency.

¶ 14 David testified. He was "there" every day with his son until D.A. was 10 years old. He would take D.A. fishing and engage in outdoor activities. They rode go-carts and dirt bikes. He cooked and cleaned for his son. D.A.'s grandparents always supervised the visits. He called DCFS in 2016 because D.A.'s grandparents were chronic alcoholics. He had a good relationship with his son. In the last four years, his contact with D.A. consisted of a brief phone call, where they both agreed they loved and would not give up on each other. He had a place to live and employment awaiting him when he was released from prison.

¶ 15 Following the presentation of evidence, the trial court found it was in D.A.'s best interests that David's parental rights be terminated, stating that it was "not a close case." David timely appealed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, David challenges both the unfitness and best interest findings, arguing that the trial court erred when it terminated his parental rights. David also argues that he was denied due process because several different trial court judges heard the case throughout the pendency of the proceedings.

¶ 18 The termination of a parent's rights involves two steps. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). First, the court determines whether the parent is unfit. 750 ILCS 50/1(D) (West 2018); *C.W.*, 199 Ill. 2d at 210. If unfitness is found, the next step is to decide whether it is in the child's best interests that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2018); *C.W.*, 199 Ill. 2d at 210. We will not reverse a trial court's decision to terminate parental rights unless it was against the manifest weight of the evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004).

¶ 19 We start with David's challenge to the trial court's finding that he was an unfit parent. The State alleged that David was unfit under four grounds. First, the State alleged failure to maintain a reasonable degree of interest, concern or responsibility for D.A.'s welfare. 750 ILCS 50/1(D)(b) (West 2018). The next allegation was failure to take reasonable efforts to correct the conditions that resulted in D.A.'s removal and failure to make reasonable progress toward D.A.'s return home. *Id.* § 1(D)(m)(i), (ii). Third, the State alleged David intended to forgo his parental rights as shown by his failure to visit D.A. for a 12-month period. *Id.* § 1(D)(n). The fourth allegation was that David's incarceration would prevent him from discharging his parental duties for D.A. for more than two years following the filing of the petition to terminate. *Id.* § 1(D)(r). Where, as here,

multiple grounds of unfitness are alleged, a finding that one of the grounds has been proven is sufficient to sustain an unfitness finding. *In re D.H.*, 323 Ill. App. 3d 1, 9 (2001). David submits that the State failed to prove any of the other allegations of unfitness it set forth in the petition to terminate. The trial court found the State did not prove the allegations regarding section 1(D)(r) and it is not an issue on appeal. We will address the other three grounds in turn.

¶ 20 The first unfitness ground alleged by the State was that David failed to maintain a reasonable degree of interest, concern or responsibility for D.A. 750 ILCS 50/1(D)(b) (West 2018). To determine this ground, the court looks at the conduct of the parent in light of the circumstances in which that conduct occurred. *In re Adoption of Syck*, 138 Ill. 2d 255, 278 (1990). The court uses the following factors in making its determination: the difficulty for the parent to visit the child; the parent's financial circumstances; actions and statements by others that hinder the parent's attempts to visit his child; and "whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his *** life or by true indifference to, and lack of concern for, the child." *Id.* at 278-79. Where visits are impractical, the court may look at whether the parent sent letters or gifts or called the child, including the "content, tone, and frequency of those contacts under the circumstances." *Id.* at 279. The court considers the parent's efforts to show interest, not the success of the efforts. *Id.*

¶ 21 David never attempted to obtain visitation rights to or custody of his son. D.A.'s maternal grandmother had guardianship of him until the beginning of the neglect case. However, according to David, he was involved in D.A.'s life daily until D.A. was 10 years old at which time D.A.'s mother's new partner would threaten David when he attempted to visit his son. David last saw D.A. in 2017 at a chance encounter at a gas station. Also in 2017, he had an unauthorized phone conversation that took place when David called his mother's home and D.A. happened to be there

for a visit. There was no other contact during the pendency of the neglect proceedings. David claimed to have sent several letters to D.A., while also asserting he was sure D.A. did not receive them. There was no indication by the caseworker that David made any attempts at communicating with D.A. David also points to his legal difficulties and criminal cases that were pending concurrent with the neglect case as a reason that he was not able to direct his attention to D.A. and why he initially consented to the adoption. Although he further claims that he dedicated himself to D.A. after the adoption failed to take place, he did not meet with DCFS and never engaged in any services the agency offered him. Furthermore, although David was facing criminal charges, he was out on bail and seemingly able to visit or communicate with D.A. He did not. We find the State proved that David failed to show interest, concern or responsibility for D.A.

¶ 22 The next unfitness ground alleged by the State was that David failed to make reasonable efforts to correct the conditions that lead to D.A.'s removal or make reasonable progress toward D.A.'s return home during the "nine (9) month period [*sic*]" from May 14, 2019, to May 12, 2020. 750 ILCS 50/1(D)(m)(i), (ii) (West 2018).

¶ 23 To determine whether a parent made reasonable efforts, the court considers the parent's efforts to correct the conditions resulting in the child's removal using a subjective standard based on what is reasonable for the particular parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). To determine whether a parent made reasonable progress, the court looks at the parent's compliance with the service plan and court directives in light of the conditions giving rise to the removal of the child. *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17. Reasonable progress takes place where the parent's conduct is "sufficiently demonstrable and of such a quality" that the child could be returned home in the near future. *Id.* Where a parent does not substantially fulfill his service

tasks and correct the conditions resulting in the child's removal, he fails to make reasonable progress. *Id.* Reasonable progress is judged by an objective standard. *Id.*

¶ 24 When the juvenile neglect petition in this case was filed on July 5, 2016, David could not be located. His whereabouts were still unknown until July 2017, when it was discovered that David had been in the Rock Island County jail until June 25, 2017. He contacted the caseworker in August 2017, and a meeting was scheduled which the caseworker had to cancel. The meeting was never rescheduled. David signed a consent to specific adoption in December 2017. The adoption did not occur and D.A.'s placement disrupted in September 2018. David indicated at a March 2019 court hearing that he wanted D.A. to live with him. He set up a meeting with the caseworker but did not show. During period from May 14, 2019, to May 12, 2020, he did not take any actions to participate in D.A.'s life. He did not take the integrated assessment, meet with DCFS staff, or engage in any services. He had no service plan requirements with which he could comply because he never met with the caseworker. In December 2019, David was sentenced to a four-year term of imprisonment. While incarcerated, David did not participate in any services through the prison. Moreover, while he claims his efforts were hampered by his criminal troubles, the caseworker mailed to him in prison the necessary paperwork, including the integrated assessment, which she sent three times. He claimed he did not receive any of it and did not complete it. We find the State proved that David failed to make reasonable efforts or reasonable progress and the trial court did not err in finding him unfit on these grounds.

¶ 25 The third unfitness ground alleged by the State was that David intended to forgo his parental rights by failing to visit or communicate with D.A. for more than a year. 750 ILCS 50/1(D)(n) (West 2018). The court presumes that the parent has "the ability to visit, communicate, maintain contact, pay expenses and plan for the future," absent contrary evidence. *Id.* A parent's

subjective intent that is not supported by evidence manifesting that intent does not prevent the court from finding the parent intended to forgo his parental rights. *Id.* The relevant 12-month period begins with the parent's last contact or communication with the child. *In re Adoption of H.B.*, 2012 IL App (4th) 120459, ¶ 35.

¶ 26 The evidence established that D.A. lived with his grandmother under her guardianship until he was removed by DCFS in July 2016. At that point, David apparently had not seen D.A. for three or four years. In 2017, David had an unauthorized phone call with his son and saw him at a gas station, although it is unclear that they spoke at the encounter. Taking the gas station encounter or phone call as David's last contact or communication with D.A., the evidence establishes his intent to forgo his parental rights by failing to visit or communicate with his son for more than a year. From 2017 to the time of the petition to terminate parental rights was filed, David had no communication with D.A. He did not see him or attempt to see him. He did not phone him or send cards or gifts. The trial court did not err when it found David unfit under this basis.

¶ 27 The next issue is whether the trial court erred when it found it was in D.A.'s best interests that David's parental rights be terminated. David argues that the evidence did not establish that D.A.'s best interests would be served by termination of his parental rights. David submits that the basis for the State's argument that termination was in D.A.'s best interests was that D.A. would be adopted but he asserts the State failed to present any evidence the adoption would occur.

¶ 28 In deciding whether it is in a child's best interests that his parent's rights be terminated, the court considers the following factors, in the context of the child's age and developmental needs:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) the continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05)(a)-(j) (West 2018).

¶ 29 At the best interest hearing, the focus in on the child. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State must prove by a preponderance of the evidence that termination is in the child's best interests. *Id.* at 366. We will not reverse a trial court's best interest decision unless it was against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53.

¶ 30 The best interest factors support the trial court's finding. D.A. was secure in the foster home, where the foster parents were meeting his needs for food, shelter, health and clothing. Both foster parents were employed and earned a living sufficient to support D.A. and the rest of the family. Their home consisted of six bedrooms and multiple bathrooms, with a swimming pool and backyard area. The foster parents were dedicated to D.A.'s well-being, ensuring that he engaged in counseling and received the services necessary to assist him with his behavioral and mental health issues. The foster parents promoted the development of D.A.'s identity by maintaining D.A.'s relationship with his half-sister while he was out of the home and by their encouragement of his growth and activities. D.A. was included in the foster family's community, where they enjoyed substantial support. He expressed his desire to be adopted by the foster family and they reciprocated that desire. He felt love, attachment and a sense of value with the foster family, as evidenced by the fact that he returned to their home after his placement was disrupted with the goal of adoption, a decision both he and the foster parents sought. He had been in the foster home for the majority of time since removal and was acclimated to the family and his schooling. Since his return to his initial foster home, D.A.'s behavioral issues had improved. He was involved in extracurricular activities with the encouragement of his foster parents. D.A. was in a home with his half-sister and able to grow up with her. He was bonded into the foster family.

¶ 31 At the best interests hearing, the GAL and caseworker all opined it was in D.A.'s best interests that David's parental rights be terminated. Although the foster parents did not testify at the best interest hearing, their absence does not indicate that the plan for them to adopt D.A. was speculative, as David contends. The evidence demonstrates that the foster family originally planned to adopt D.A.; the plan was not finalized due to D.A.'s behavioral issues; he returned to

the home; and the foster parents were committed to adopting him. We find the trial court did not err when it found it was in D.A.'s best interests that David's parental rights be terminated.

¶ 32 The final issue is whether David was denied due process. He asserts that the termination of his parental rights proceedings did not comply with Illinois Supreme Court Rule 903 (eff. Mar. 8, 2016) and that he was not notified that the adoption did not occur.

¶ 33 Illinois Supreme Court Rule 903 provides that "[w]henever possible and appropriate," child custody cases "shall be conducted by a single judge." Ill. S. Ct. R. 903 (eff. Mar. 8, 2016). The case law speaks to the consolidation of cases from different courts, such as juvenile and family. See *In re G.P.*, 404 Ill. App. 3d 272, 276 (2010) (Rule 903 violated where case transferred to family court after juvenile proceedings were concluded). Here, only the juvenile case proceeded. Although different trial judges presided over the entirety of the proceedings, we consider that the rule was not violated. Contrary to David's assertions that the differing judges precluded any one of them from knowing the complete history of the case, each judge had the complete file. Decisions regarding D.A. were not made in two different courtrooms. We find there was no Rule 903 violation.

¶ 34 David also challenges what he submits was a lack of notice that the adoption to which he specifically consented did not occur. Per statute, he was entitled to notice within 30 days of the adoption disruption. 750 ILCS 50/10(O)(2)(9) (West 2018) ("I understand that if this consent is void, the Department will notify me within 30 days using the addresses and telephone numbers I provided in paragraph 2 of this form"). The statute also includes language placing the onus on the parent to keep his contact information current so DCFS can contact him if the adoption does not occur. *Id.* § 10(O)(2)(11) ("If I do not let the Department know if any of my contact information changes, I understand that I may not receive notification from the Department if this consent is

void[.]"). David was also entitled to written notice at the mailing and email addresses he provided. *Id.*

¶ 35 The record does not establish when the adoption disrupted, voiding the consent and requiring notice to David. He does not offer an exact date either. The permanency reports indicate that D.A. was removed from the foster home in September 2018. The record also suggests that David was aware his consent to specific adoption was void as of March 2019, when he indicated he wanted D.A. to live with him. However, at that point, he failed to take any actions to reach that goal. As discussed above, he did not meet with the caseworker, take an integrated assessment, or seek visitation with D.A. Based on David's conduct and because the specific consent to adopt was void after D.A. was removed from the original foster home, the proceedings started anew. The State filed a petition to terminate, a bifurcated hearing took place at which David testified, and the trial court found both unfitness and best interest grounds to terminate David's parental rights. There was no prejudice to David and his due process rights were not violated.

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Mercer County is affirmed.

¶ 38 Affirmed.