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2024 IL App (3d) 230654-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. 3-23-0654, 3-23-0655
)	(cons.)
v.)	Circuit No. 21-JA-259, 21-JA-260
)	
Kevin C.,)	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 father was unfit for failing to make reasonable progress during the specified nine-month period was not against the manifest weight of the evidence.

¶ 2 Respondent, Kevin C., appeals from an order terminating his parental rights to two minor children, Aa. C. and Ao. C.¹ He argues the trial court’s finding that he 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. 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 he must cooperate with the Department of Children and Family Services (DCFS), comply with the terms of the service plan, and correct the conditions that require the children to be in care, or risk termination of his parental rights.

¶ 6 At the dispositional hearing on January 24, 2022, the court found respondent 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 completed 3½ of 10 parenting classes and had been passing drug tests, but he still needed to complete services within his service plan. 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 his

¹The minors’ mother is the respondent in appeal Nos. 3-23-0656 and 3-23-0657.

employment and housing information with the case worker. The report also stated respondent failed to appear for a drug test on January 5, 2022, because he was out of town.

¶ 7 At the April 2022 permanency review hearing, the court found respondent had made no efforts or progress, citing diluted drug screens and a positive test for cocaine. According to a report from the Court Appointed Special Advocate (CASA) filed the same day, respondent reported he could not afford an apartment. Both parents had lost their jobs, but they had upcoming job interviews scheduled. Respondent did not go to several drug drops in March because he was “too busy.” The parenting class instructor advised CASA in March that although respondent had one more parenting class to complete, “she would not call [his] attendance consistent as [he had] been in classes for some time now.” According to the caseworker’s report, during the period of January 17 to March 11, respondent had four 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. He had a substance abuse assessment and was supposed to start a 75-hour substance abuse treatment program in April.

¶ 8 According to the caseworker’s October 2022 report, respondent had not engaged in any services since May 2022. He reportedly did not want to start services because he anticipated going to jail soon. From April 22 to September 23, 2022, respondent tested positive for cocaine on five occasions, tested positive for cannabis on seven occasions, and missed eleven drug tests.

¶ 9 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. *** Father's last positive test for cocaine was in September.

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.”

¶ 10 The matter was up for legal screening on January 26, 2023. It was rejected from legal screening, however, because both parents were participating in services and needed more time. The court ordered the “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.”

¶ 11 The State petitioned to terminate respondent’s parental rights on February 28, 2023. The State alleged respondent was an unfit parent because he (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 which 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 petition, the court changed the permanency goal to substitute care pending court determination on termination of parental rights.

¶ 12 On March 30, 2023, respondent was taken into custody for outstanding traffic warrants. He spent approximately one month in jail. The caseworker’s April 2023 permanency hearing report

relayed respondent was not consistent in obtaining employment and was unemployed. From October 7, 2022, to March 30, 2023, he tested positive for cannabis eight times, tested positive for cocaine four times, failed to appear for drug tests five times, and tested negative for all substances five times. CASA's April 2023 report reported respondent began an intensive outpatient drug treatment program in November 2022, but additional hours were added after he tested positive for cocaine in January. He was not participating in any therapy sessions as recommended in the service plan. At the permanency review hearing on April 25, 2023, respondent was still incarcerated. He had not made efforts or progress while incarcerated and had not completed substance abuse treatment.

¶ 13 At the hearing on the State's petition, 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 prior to the date of that service plan, and the service plans are updated every six months. According to respondent's March 1, 2022, service plan, he was to complete substance abuse treatment, parenting classes, and maintain stable housing and employment. Respondent completed parenting classes in March 2022. He did not complete substance abuse treatment within this six-month period. Although he had some employment, it was not stable, and he did not have stable housing. The September 22, 2022, service plan contained the same recommendations, but respondent was also to complete a second mental health assessment. From November 30, 2021, to August 30, 2022, respondent still had services to complete according to the service plan. Respondent tested positive for cocaine in February 2022. He did not reengage in substance abuse treatment until September 2022.

¶ 14 Cruz also testified regarding the second nine-month period, August 31, 2022, to May 31, 2023. Respondent tested positive for cannabis. He was not attending all of his drug drops due to his work schedule or being out of town. He told the case worker he was employed but refused to provide his pay stubs. Initially, he refused to tell the case worker where he was living. Later, he said he was staying with family or friends. He never provided proof during this nine-month period that he was staying at some residence on a consistent basis. As of this hearing date, respondent still needed to obtain stable housing and employment, and reenroll in substance abuse treatment after testing positive for cocaine in July 2022. Throughout the entire case, respondent was consistent in visiting with the children.

¶ 15 The court found by clear and convincing evidence that respondent was unfit in that he failed to make reasonable progress toward the return of the children to his care from November 30, 2021, to August 30, 2022. Although respondent began substance abuse treatment, he did not complete treatment. There was no movement toward reunification because respondent was still using cocaine and had not demonstrated a history of sobriety.

¶ 16 The best interests hearing took place on October 10, 2023. The court found by a preponderance of the evidence that it was in the minors' best interests to terminate respondent's parental rights. The court denied respondent's motion to reconsider on November 13, 2023. Respondent appeals.

¶ 17 **II. ANALYSIS**

¶ 18 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 in 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. On appeal, respondent only challenges the trial court’s finding that he was unfit. He does not challenge the trial court’s final order that it was in Aa. C. and Ao. C.’s best interests to terminate his parental rights. Accordingly, we confine our discussion to the finding of respondent’s unfitness.

¶ 19 “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.*

¶ 20 Respondent was found unfit pursuant to section 1(D)(m)(ii) of the Adoption Act because he failed 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.*

¶ 21 Respondent argues the record demonstrates he was making reasonable progress and had substantially fulfilled his obligations under the service plan during the nine-month period beginning November 30, 2021, and ending August 30, 2022. He maintains that he consistently visited with his children and attempted to meet the goals of his service plan. Further, there was no testimony he was under the influence during his visits, that the visits were not appropriate, or that the children were in danger during his visits. We disagree.

¶ 22 During this time period, respondent was ordered to complete parenting classes, substance abuse treatment, and attend random drug testing. He was also required to maintain stable housing and employment. Although respondent completed parenting classes, he failed to satisfy the other conditions of his service plan. He did not complete substance abuse treatment and, in fact, continued to misuse drugs. Out of 27 drug tests scheduled during this timeframe, respondent only tested negative on 4 occasions. The drug test results were positive on eight occasions—five of those for cocaine—and he missed fifteen drug drops during this time. Respondent’s unwillingness to cooperate with the service plan’s drug-related recommendations is especially problematic because the children were adjudicated neglected due to drug exposure.

¶ 23 Finally, respondent failed to maintain stable housing and employment. He refused to provide the case worker with pay stubs or housing information. He allegedly left and started multiple jobs. He moved around between motel rooms, family, and friends. This is the opposite of stability. In short, respondent made no meaningful progress where he consistently failed to comply

with the court's directives or with the service plan. The trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 24

III. CONCLUSION

¶ 25

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

¶ 26

Affirmed.