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2020 IL App (3d) 200345-U

Order filed December 24, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

<i>In re</i> Ki.H. and Ka.H.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	
	)	Appeal Nos. 3-20-0345 and
Petitioner-Appellee,	)	3-20-0346
	)	Circuit Nos. 16-JA-225 and
v.	)	18-JA-153
)	
Shamika S.,	)	Honorable
	)	Timothy J. Cusack,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Lytton and Justice Daugherty concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that the mother was unfit on the grounds of failure to make reasonable progress toward the return of the minors during the nine-month period of April 1, 2019, to January 1, 2020, was affirmed as not against the manifest weight of the evidence. The finding that it was in the minors' best interest to terminate the mother's parental rights was also affirmed as not against the manifest weight of the evidence.

¶ 2 The respondent mother, Shamika S., appeals the finding that she is unfit to parent her children, the minors, Ki.H. and Ka.H., and the termination of her parental rights as to both minors. We consolidated the two appeals.

¶ 3 **FACTS**

¶ 4 A petition for adjudication of neglect was filed on September 20, 2016, as to Ki.H., who was born on August 24, 2016. The petition alleged that Ki.H. was neglected due to an environment injurious to her welfare in that the mother had been previously been found unfit, the mother had not been restored to fitness and had not had Ki.H.'s siblings returned to her, and the mother had a criminal history of retail theft and endangering the life/health of a child. Ki.H. was adjudicated neglected on March 14, 2017. On April 25, 2017, a dispositional order was entered finding the mother unfit due to her prior unfitness and her failure to complete services to restore her fitness. The mother was ordered to: cooperate with the Department of Children and Family Services (DCFS); execute all authorizations for release of information; submit to a psychological examination (which had already been completed); participate and successfully complete counseling; obtain and maintain stable housing; provide the caseworker any change in address and/or phone number and any change in members of household within three days; provide information requested by DCFS of anyone whom it had reason to believe had a relationship or would develop a relationship affecting the minor; and visit as scheduled with visitation supervised.

¶ 5 On April 17, 2018, a petition for adjudication of neglect was filed as to Ka.H., who was born on April 13, 2018. The petition alleged Ka.H. was neglected due to an injurious environment in that the mother had been previously been found unfit; the mother had not been restored to fitness nor completed services that would result in a finding of fitness; there were two instances of domestic violence with Ka.H.'s father; and the mother and father's criminal histories. Ka.H. was

adjudicated neglected on August 28, 2018. A dispositional order finding the mother unfit was entered on October 2, 2018, ordering the mother to perform many of the same tasks as previously ordered, with the additional tasks of participating and successfully completing a parenting course and a parenting capacity assessment, participating in and successfully completing a domestic violence course, and using best efforts to obtain/maintain a legal source of income.

¶ 6 Petitions to terminate both parents' parental rights were filed on January 9, 2020. With respect to the mother, the petitions sought termination of her parental rights on the basis that she failed to make reasonable progress toward the return of Ki.H. and Ka.H. during a nine-month period following the adjudication of neglect, specifically, April 1, 2019, to January 1, 2020.

¶ 7 At the adjudication hearing, the court admitted, without objection, the mother's 2019 parenting capacity assessment and records from the Center for Youth and Family Solutions (CYFS). The parenting capacity assessment indicates that although the mother made minimal progress prior to 2018, she had started to participate in many of the court-ordered services by early 2019. The mother was making progress, but there were concerns regarding her ability to parent the minors. Prior psychological evaluations indicated the mother had an overall IQ score in the extremely low range and that, along with mental health diagnoses of defensiveness, paranoia, anxiety, and narcissism, affected her ability to parent. She was a moderate risk in the categories of inappropriate parental expectations and parent-child role reversal, both improvements from high risk in 2018, and the mother remained a moderate risk in the category of strong belief in the use and value of corporal punishment. She remained a high risk in the categories of lack of an empathic awareness of the children's needs and oppressing the children's power and independence, despite completing multiple parenting services. The assessment noted that these two categories were correlated and were a significant concern if the minors were returned to the mother in that they

increase the risk of the minors being abused. The conclusion was that the mother could parent the minors over short periods of time, but there were areas of concern that made it doubtful that the mother would have the ability to appropriately and safely parent the minors if they were returned to her care.

¶ 8 Megan Gray, a caseworker for CYFS, testified that she was the mother's caseworker during the relevant nine-month period. Gray addressed the findings of the parenting capacity assessment, testifying that she observed the mother struggling to understand the development of the minors and the mother's expectations for the minors. Gray testified that the mother had to be redirected a few times when Ki.H. was going through developmental stages. During the relevant timeframe, Gray did not see any improvement in the mother's understanding of the minors' growth and expectations for the minors, nor any improvement in empathizing with the minors or understanding their needs. Gray testified that she observed the mother struggling to understand Ka.H.'s independence and developmental growth when Ka.H. was learning to walk. During the relevant time period, Gray did not see the mother make any progress toward meeting minimum parenting standards. However, Gray testified that the mother had been generally cooperative and completed her services.

¶ 9 The CYFS permanency hearing report for the January 7, 2020, hearing indicates that the mother was present for 19 of 25 visits with the minors and that both parents appeared nurturing and concerned for the minors during visits. The mother had completed all services to mitigate risk except that her discharge from counseling was based on the conclusion that she had reached the maximum benefit that her intellectual ability allowed and her parenting capacity assessment indicated that areas of concern regarding the mother's ability to parent. The mother testified that

she never refused to visit between April 1, 2019 and January 1, 2020. The mother recalled helping Ka.H. to walk but she does not recall Ka.H. getting upset.

¶ 10 The guardian *ad litem* (GAL) argued that there was no question that the mother had performed services and made efforts during the relevant time period, but the conditions that led the minors coming into care still existed and the mother was still unable to independently parent without substantial risk to the minors.

¶ 11 The trial court found that the mother was cooperative and completed her required services. However, the mother had not made reasonable progress during the relevant timeframe because her basic attitudes in parenting remained unchanged and the parenting assessment indicated that the mother could not properly care for the minors. The court found that the State had met its burden of showing unfitness by clear and convincing evidence.

¶ 12 The matter proceeded right to the best interest hearing. The mother testified that she had an attachment to both minors, who were now four years old and two years old. The Court Appointed Special Advocates (CASA) best interest report indicated that Ki.H.'s foster home was clean and it appeared the Ki.H.'s needs were being met. Ki.H. had no major health issues, and she appeared to be on track with development. Ki.H. attended church regularly and was able to see Ka.H. at church. The CASA report for Ka.H. stated that she was healthy, other than chronic ear infections that were being addressed by the foster parents. The foster home was clean. Ka.H. had started speech therapy and it was going well. She attended church regularly and had regular visits with siblings and other family members. The permanency review report indicated no concerns with either foster placement, which were adoptive placements.

¶ 13 The trial court found that the best interest of the minors would not be served by maintaining custody with the parents and terminated both parents' parental rights. The mother appealed.

ANALYSIS

¶ 14

¶ 15 The mother contends that the trial court’s finding of unfitness was against the manifest weight of the evidence, arguing that she made reasonable progress toward the return of the minors during the relevant nine-month period. The State contends that the evidence was sufficient to show that the mother was unfit for failure to make reasonable progress, arguing that the mother failed to comprehend or apply the knowledge and skills she was taught during the court-ordered services.

¶ 16

Section 2-29 of the Juvenile Court Act of 1987 sets forth a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2018). The first step is for the court to find, by clear and convincing evidence, that a parent is an unfit person as defined in section 1 of the Adoption Act. *In re M.I.*, 2016 IL 120232, ¶ 20. Section 1(D) of the Adoption Act defines an unfit person as “any person whom the court shall find to be unfit to have a child.” 750 ILCS 50/1(D) (West 2018). If the parent is found unfit, the second step in the process is to consider the best interest of the child. *M.I.*, 2016 IL 120232, ¶ 20.

¶ 17

The termination of parental rights is an extraordinary measure; therefore, the State must prove its allegations of unfitness by clear and convincing evidence. *In re Michael M.*, 364 Ill. App. 3d 598, 606 (2006). On appeal, we will only reverse the trial court’s finding of unfitness if the finding was against the manifest weight of the evidence. *Id.*

¶ 18

The basis for the finding of unfitness in this case was that the mother failed to make reasonable progress toward the return of the minors to her care during the nine-month period of April 1, 2019, to January 1, 2020. 750 ILCS 50/1(D)(m)(ii)(West 2018). Reasonable progress is measured by an objective standard based upon the amount of progress from the conditions that existed at the time custody of the child was taken from the parent toward the return of the child to the parent. *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17. Progress is measured by the parent’s

compliance with the service plans and court's directives in light of the conditions that gave rise to the removal of the child and other conditions which later become known. *Id.* The State argued that the mother had made progress, but not reasonable progress, toward the return of the minors because the mother failed to comprehend or apply the knowledge and skills she was taught during services. After services, the mother remained high risk in two of the five assessment areas and only improved from high to moderate risk in two other areas.

¶ 19 There is not any dispute that the mother participated in services and made efforts to correct the conditions that led to the removal of the minors. Unfortunately, efforts do not always result in progress. The determination of whether a parent has made reasonable progress toward correcting the circumstances that lead to the removal of the minors necessarily requires looking at whether the parent has learned new behaviors and retained the information. An objective standard is used that considers whether the parent's progress is reasonable in light of the conditions that lead to the removal of the child. *Id.*

¶ 20 We evaluate the reasonableness of the mother's progress in light of the fact of her cognitive status and mental health diagnoses. Those circumstances, though, do not fix a different standard of reasonableness. *In re M.I.*, 2016 IL 120232, ¶ 29. The State presented evidence that the mother, despite participating in parenting services and counseling, remained a high risk in two categories of risk in the parenting capacity. We find that the State proved by clear and convincing evidence that the mother, despite participating in services, had not retained and incorporated the information she received from the various classes into new behaviors that would allow her to successfully parent the minors. Thus, the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 21 Next, the mother contends that the trial court’s termination of her parental rights was against the manifest weight of the evidence. After a finding of unfitness, the lower court then shifts its focus to make a determination of what is in the best interest of the minor. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). The State must prove by a preponderance of the evidence that termination of parental rights is in the best interest of the minor. *Id.* at 698. We review the lower court’s determination that it was in a minor’s best interest to terminate a parent’s rights using a manifest weight of the evidence standard. *Id.* at 697.

¶ 22 Courts must consider the following factors when making a best interest determination:

“(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***

* * *

(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) (West 2018).

¶ 23 The evidence presented at the best interest hearing was that both foster homes were clean and neat and the minors' needs were being met. The minors were able to keep connected with each other as they saw each other almost every Sunday at church. Both minors had developed strong relationships with their respective foster families, and both foster families were willing to adopt. We find that the trial court's conclusion that it was in both minors' best interest to terminate the mother's parental rights was not against the manifest weight of the evidence.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Peoria County finding the mother to be unfit and terminating her parental rights to the minors is affirmed.

¶ 26 Affirmed.