2020 IL App (4th) 200293-U

NOS. 4-20-0293, 4-20-0295, 4-20-0296 cons.

FILED
November 24, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re J.W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 18JA127
v.	)	
Nina S.,	)	
Respondent-Appellant).	)	
	)	
In re T.J., a Minor	)	
	)	No. 18JA128
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v.	)	
Nina S.,	)	
Respondent-Appellant).	)	
	)	
In re P.S., a Minor	)	
	)	No. 18JA131
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v.	)	Honorable
Nina S.,	)	Karen S. Tharp,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The termination of respondent's parental rights is affirmed.

¶ 2 In November 2019, the State filed motions to terminate the parental rights of respondent, Nina S., to her youngest three children, J.W. (born in August 2015), T.J. (born in

July 2009), and P.S. (born in July 2014). In February 2020, the circuit court found respondent unfit for termination purposes. In June 2020, the court found it was in the children's best interests to terminate respondent's parental rights. The fathers of the children in this case are not parties to this appeal. The termination of respondent-father Tyree J.'s parental rights to T.J. has already been affirmed by this court. See *In re T.J.*, 2020 IL App (4th) 200264-U. Respondent appeals, arguing the court erred by finding (1) her unfit and (2) it was in the minors' respective best interests to terminate her parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2018, the State filed a petition for adjudication of wardship, alleging (1) J.W., T.J., and P.S. were neglected pursuant to section 2-3(1) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1) (West 2018)) because their environment was injurious to their welfare when they resided with respondent as evidenced by (a) domestic violence between respondent and her paramour and (b) respondent's drug use; (2) they were abused pursuant to section 2-3(2) of the Juvenile Court Act (705 ILCS 405/2-3(2) (West 2018)), in that their environment was injurious to their welfare because one of the children, P.S., was sexually abused by respondent's paramour; and (3) they were neglected pursuant to section 2-3(1) of the Juvenile Court Act (705 ILCS 405/2-3(1) (West 2018)), in that they were not receiving proper care and supervision necessary for their well-being because respondent (a) failed to make a proper care plan for the children and (b) failed to abide by the safety plan.

¶ 5 In August 2018, the circuit court accepted respondent's stipulation the children were neglected because they were in an injurious environment as evidenced by the domestic violence between respondent and her paramour. In November 2018, the court entered a dispositional order finding respondent unfit, unable, or unwilling to care for, protect, train, or

discipline the children for some reason other than financial circumstances alone. The court made the children wards of the court and appointed the guardianship administrator for the Department of Children and Family Services (DCFS) as their guardian and custodian.

¶ 6 In November 2019, the State filed a motion to terminate the parental rights of respondent and the named and unnamed fathers of the children. The motion asserted respondent was unfit as defined by section 1 of the Adoption Act (750 ILCS 50/1 (West 2018)) because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2018)); (2) make reasonable efforts to correct the conditions which were the basis for the children's removal from her within nine months after the adjudication, specifically August 22, 2018, to May 22, 2019 (750 ILCS 50/1(D)(m)(i) (West 2018)); and (3) make reasonable progress toward the minor children's return within nine months after the neglect adjudication, specifically August 22, 2018, to May 22, 2019 (750 ILCS 50/1(D)(m)(ii) (West 2018)).

¶ 7 On January 16, 2020, the circuit court held a fitness hearing. Brianna Simonson, who was the caseworker from May 2018 through October 2019, testified the children were removed after respondent's paramour was accused of sexually abusing one of the children. Further, Simonson stated the children were living in an environment injurious to the children's welfare because of domestic violence in the home between respondent and her paramour.

¶ 8 According to Simonson, respondent's initial service plan required respondent to (1) cooperate with the agency; (2) engage in substance abuse treatment; (3) complete (a) parenting, (b) domestic violence, and (c) anger management classes; (4) engage in mental health services; and (5) visit with her children. Respondent admitted she was using crack cocaine when the case was opened, she was bipolar, and she had other unspecified mental health

problems. Further, she had been involved in an incident of domestic violence with her paramour and had a physical altercation with an investigator.

¶ 9 Simonson noted respondent's progress was reviewed in November 2018. Her cooperation was deemed unsatisfactory, mainly because she did not furnish appropriate information to the agency regarding where she was living in a timely manner. She was also rated as unsatisfactory on the basic needs task because she was still residing with the paramour and not keeping her caseworker informed where she was living. With regard to mental health services, she was rated as satisfactory because she had chosen to pursue "internal counseling," but her services had not yet begun. She was rated unsatisfactory with regard to domestic violence services because she had been discharged from a program due to absences and a lack of engagement.

¶ 10 Although respondent completed inpatient substance abuse treatment, she was rated unsatisfactory with regard to her substance abuse treatment because she relapsed on crack cocaine after failing to participate in recommended outpatient treatment. She had a prescription for an opiate for rheumatoid arthritis and benzodiazepines for anxiety and depression. Because of her history of addiction, respondent was frequently encouraged to pursue alternative pain management but never did.

¶ 11 Respondent was also discharged from parenting classes after missing sessions. With regard to respondent being dropped from parenting classes and parent coaching, respondent claimed she had to leave some parenting classes early to go to work and missed some classes for medical reasons. Simonson did not believe respondent was being open and honest regarding her excuses for leaving classes early or missing them completely.

¶ 12 Simonson had encouraged respondent to get a job even though respondent was

receiving social security benefits because the benefits seemed insufficient to support the children. When the case opened, respondent and her children were living in a condemned home without electricity or running water. Respondent was rated satisfactory with regard to child visitation.

¶ 13 In May 2019, respondent's cooperation was again rated as unsatisfactory. From approximately Thanksgiving 2018 to the middle of March 2019, respondent had a full drug relapse and did not engage in services or attend authorized visits with her children. She was rated as unsatisfactory with regard to her basic needs task and her mental health treatment. When she reengaged with the agency in March 2019, she was able to begin mental health treatment and individual counseling. She was also rated as unsatisfactory with regard to her domestic violence task based on her lack of engagement from November 2018 to March 2019. Near the end of the second reporting period, she had started to engage in anger management.

¶ 14 Respondent also received an unsatisfactory rating with regard to her substance abuse treatment task because of her significant relapse and failure to appear for toxicology screens. Simonson noted respondent did reengage with services for drug abuse and parenting after her relapse. However, respondent appeared to be high and smelled of marijuana at a family team meeting in April 2019. She started a partial hospitalization drug program on April 15, 2019, and completed it on May 7, 2019, and started intensive outpatient programming on May 8, 2019, and was successfully discharged in July 2019. She also successfully completed parenting education classes and parent coaching after her relapse. However, respondent had another relapse and disengaged with services in July 2019.

¶ 15 Simonson testified respondent had approximately 60 to 75 opportunities to visit with her children but only attended about 40 visits. According to Simonson, when respondent

had visits with the children, she frequently sent the children back to their respective foster families with clothes, make-up, and other things the children enjoyed. Respondent also brought snacks and drinks to the visits. Regardless, Simonson was never close to being able to return the children to respondent. According to Simonson:

> "[Respondent] was sober for a short amount of periods in the life of the case. We would be looking for her to maintain her sobriety, and that would help to mitigate the safety concern of the children being appropriately supervised.
>
> There's also another significant concern that she was still seeing her paramour who was the registered sex offender from case opening. We continued to receive community reports in regards to that ongoing relationship, and that was substantiated when we had a hotel receipt that a room was checked out for about a week's time in July to both [respondent] and the sex offender."

¶ 16 Respondent testified on her own behalf. She claimed Simonson wanted to keep the respondent's children from her, contending Simonson did not want to hear anything she had to say and was not trying to work with her. Prior to receiving a service plan, she completed 28 days of inpatient drug treatment. However, after she received the service plan, Simonson overwhelmed her with classes and services and made her get a job even though she is disabled. Between May 2018 and November 2018, respondent was submitting to random drug tests as part of her services and going to Alcoholics Anonymous and Narcotics Anonymous support groups. She participated in a parenting program from July 2018 to October 2018 at the Parent Place. She claimed she missed classes for medical reasons after she got hurt at work and left other classes early because she had to go to work.

¶ 17 Respondent blamed her November 2018 relapse on the stress caused by having to

work and attend all the required services. After her relapse, she reengaged with her addiction and parenting services. She denied still being in a relationship with her paramour and claimed her children were not present when she and her paramour had a physical altercation at the beginning of this case. She also denied the paramour acted as a caretaker for her children. Respondent believed she had made reasonable efforts and reasonable progress toward the children's return.

¶ 18 The circuit court found respondent unfit because she did not (1) maintain a reasonable degree of interest, concern, and responsibility for her children, (2) make reasonable efforts to correct conditions necessary to return the children to her during the period from August 22, 2018, to May 22, 2019, and (3) failed to make reasonable progress towards the children's return during the same nine month period. The court noted it was not concerned with respondent's paramour or respondent's alleged continued contact with him. Instead, the court focused on respondent's drug abuse and its impact on respondent throughout the case. The court noted respondent did inpatient and then outpatient drug treatment but relapsed in November 2018. She failed to participate in services or have authorized contact with the children from November 2018 to March 2019. After reengaging with services, she then had another relapse just months later. The court acknowledged respondent completed some services like parenting and parenting coaching but not anger management. The court also did not find any alleged conflict between respondent and Simonson excused respondent's drug relapse. According to the court, respondent's continued drug use prevented it from returning the children to respondent.

¶ 19 On June 4, 2020, the circuit court held a best interest hearing where Wynn Leber, a foster care supervisor who was assigned to this case in February 2020, testified the children were doing great in their respective adoptive foster placements. T.J. and P.S. had been placed

with Shantell D. since August 2019. J.W. was placed with Charlene S. in May 2018. All three of the children were developmentally on track, current with regard to immunizations and well-child medical visits, receiving proper care, and bonded with their respective foster parent. Leber had no concerns regarding the health or financial abilities of either foster parent. Even though all of the children were not living together, the children were allowed to communicate and visit with each other.

¶ 20 Respondent's last documented visit with the children was in January 2020, and she only infrequently called to check on J.W. To Leber's knowledge, respondent had not sent any gifts or cards to the children since then. During her time as the caseworker in this matter, respondent never contacted Leber to have visits with the children.

¶ 21 The circuit court found it was in the respective best interests of each child to terminate respondent's parental rights. The court noted respondent, who was not present for the hearing, had not addressed her issues and the respective children were loved and cared for in a stable and potentially permanent placement.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2018)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor children's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214,

1228 (2004).

¶ 25 In matters involving minors, the circuit court has broad discretion, and its decisions are given great deference. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). "The trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses and, therefore, is in the best position to determine the credibility and weight of the witnesses' testimony." *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. A reviewing court will not disturb a circuit court's finding of unfitness or best interests determination unless the court's decision is contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010) (best-interests determination). A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 26 A. Unfitness Finding

¶ 27 Respondent contends the circuit court erred by finding her unfit. In this case, the circuit court found respondent unfit on three separate grounds. One ground was respondent's failure to make reasonable progress toward her children's return during the nine-month period between August 22, 2018, and May 22, 2019. "[A] parent has made reasonable progress 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, 19 N.E.3d 227 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)). Reasonable progress is an objective standard. *F.P.*, 2014 IL App (4th) 140360, ¶ 88.

¶ 28 It appears respondent had done little in the way of services from August 22, 2018, to her drug relapse in November 2018. Her cooperation had been deemed unsatisfactory because she had not kept the supervising agency informed of where she was living. She had not yet begun her mental health counseling. She had missed multiple domestic violence classes in October 2018. She was dropped from her parenting program at the end of October 2018 after she missed multiple classes. Further, even though she had successfully engaged in some drug treatment, she had been unsuccessfully discharged from outpatient drug treatment because of a lack of attendance.

¶ 29 In November 2018, respondent started using drugs again and did not engage in any services from around Thanksgiving until the middle of March 2019. As a result, from August 22, 2018, until the middle of March 2019, which is approximately seven months of the nine month period, respondent made no real progress toward the return of her children. When she reengaged with services in March 2019, she arguably made some minimal progress before May 22, 2019. However, even after she reengaged with services, she came to a family team meeting in April 2019 smelling like marijuana and appearing to be high.

¶ 30 As a result, we do not find the circuit court erred in finding respondent did not make reasonable progress toward the return of her children in the period between August 22, 2018, and May 22, 2019. The opposite conclusion is not clearly apparent based on the evidence in this case. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517. Because we have upheld the circuit court's determination respondent did not make reasonable progress toward the children's return, we need not address the other grounds upon which the court found respondent unfit. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 31 B. Best Interests Finding

¶ 32 Respondent also challenges the circuit court's finding it was in the minor children's respective best interests to terminate her parental rights. The State disagrees and contends the court's finding was proper.

¶ 33 During the best-interests hearing, the circuit court focuses on "the child[ren]'s welfare and whether termination would improve the child[ren]'s future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In so doing, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2018)). See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the child's physical safety and welfare; the development of the child's identity; the child's familial, cultural, and religious background and ties; the child's sense of attachments, including where the child feels love, attachment, and a sense of being valued; the child's sense of security, familiarity, and continuity of affection; the child's wishes and long-term goals; the child's community ties; the child's need for permanence; and the uniqueness of every family and each child. 705 ILCS 405/1-3(4.05) (West 2018).

¶ 34 At the best interests hearing, the circuit court heard evidence respondent had shown little interest in the children during the first five months of 2020. Wynn Leber, who was assigned to this case in February 2020, testified that to her knowledge respondent had not visited with the children or sent them gifts or cards since January 2020 and had only infrequently called Stapleton to check on J.W. According to Leber, respondent had not contacted her to ask to visit the children since February 2020 when Leber was assigned to this case. Further, Leber testified the children were doing well in their respective foster placements. The children were happy, developmentally on track, and current with regard to immunizations and well-child visits. Leber also stated the children were in adoptive placements. While J.W. was not in the same household

as T.J. and P.S., the children were allowed to visit each other. Based on the record in this case, the circuit court's best interests determination is not against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the circuit court's judgment.

¶ 37 Affirmed.