

2019 IL App (2d) 190433-U
No. 2-19-0433
Order filed October 2, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re ISAIAH N., A Minor) Appeal from the Circuit Court
) of Winnebago County.
)
) No. 17-JA-286
)
) Honorable
(The People of the State of Illinois, Petitioner-) Mary Linn Green,
Appellee, v. Amy N., Respondent-Appellant).) Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's finding that mother was unfit and that it was in the best interests of the minor for her parental rights to be terminated was not against the manifest weight of the evidence.

¶ 2 On May 22, 2019, the circuit court of Winnebago County found the respondent, Amy N., unfit and the termination of her parental rights to be in the best interests of her son, Isaiah N. She filed a timely appeal challenging both of those determinations.¹ We affirm.

¶ 3 I. BACKGROUND

¹ Isaiah's father, Jacob N., signed specific consents to the adoption of Isaiah by Jacob's mother. His parental rights are not at issue in this appeal.

¶ 4 Isaiah was born on January 15, 2016. While in the hospital for his birth, Amy disclosed that her three older children had been removed from her care. Isaiah was briefly removed from her care as well. However, on January 27, 2016, he was returned to the care of Amy and Jacob, and they were provided with intact family services.

¶ 5 In October 2016, the Department of Children and Family Services (DCFS) received a hotline report that Amy and Jacob were smoking crack and had sought orders of protection against each other. DCFS eventually found the report unfounded but required both parents to engage in intact family services.

¶ 6 On March 21, 2017, DCFS received another hotline report that Isaiah's parents were physically fighting, and that Amy was taking illegal drugs and had untreated mental illness. DCFS indicated Amy and Jacob for creating an environment injurious to Isaiah's health and well-being. They agreed that Isaiah would live with his paternal grandmother while they engaged in recommended services.

¶ 7 On September 18, 2017, the trial court heard evidence that Jacob, who has bipolar disorder, had been either in jail or in the Elgin Mental Health Center since March. Further, the police had been called to the home twice during the previous week for domestic violence (no one was seriously injured). The caseworker reported that Amy had untreated mental illness and was using cocaine. With Amy's agreement, Isaiah's custody and guardianship was granted to DCFS. Isaiah continued to live with his paternal grandmother, who was designated as his foster parent.

¶ 8 A case report filed a few days later added the following information. Amy had been employed since June 2017 and sometimes contributed money for Isaiah's care. However, she had only attended one session of the domestic violence group. She had missed several drug tests

and the one test she took was positive for marijuana. She was currently allowed one three-hour visit per week with Isaiah. She had missed about half of the visits.

¶ 9 An adjudication and disposition hearing was held on January 24, 2018. Amy was not present. Her attorney requested a continuance, which the trial court denied. The report to the court noted the following history: there was an open family case for Amy and her three older children from 2009 to 2013 due to “severe domestic violence,” and Amy eventually surrendered her parental rights as to those children. Regarding Amy’s progress since the last court date, the report stated that Amy had completed an integrated assessment in December 2017 and signed releases. She had attended two out of five scheduled visits. She had not yet completed a mental health assessment and had missed two drug tests. At the close of the hearing, the trial court found Isaiah to be neglected and continued his custody and guardianship with DCFS. The goal was return home within 12 months.

¶ 10 At the July 2018 permanency review, the trial court received the following information. Amy had made some efforts toward resolving the three conditions that had brought Isaiah into care. As to mental health, she had completed an assessment in February 2018 and a psychiatric assessment (of medication) in March 2018. She was diagnosed with depression, post-traumatic stress disorder, borderline personality disorder, and cannabis use disorder. She was prescribed certain medications, which she was taking. Although she started individual counseling in April 2018, she attended only twice and was eventually discharged for nonattendance. As to substance abuse, she completed an assessment at Rosecrance, which recommended that she stop using marijuana because it worsened her mental illness. However, Amy continued to use marijuana. She had missed two drug tests and the three tests she took were positive for THC. As for domestic violence counseling, she had attended only one session and was discharged for

nonattendance. Her visits with Isaiah were reduced to one hour per week as of January. She attended 11 out of 19 visits (one visit was cancelled by the foster mother due to scheduling conflict). Amy reported that she missed a visit in April 2018 because she broke her foot. She was appropriate and caring during the visits that took place. The trial court found that she had not made reasonable efforts toward the return of Isaiah.

¶ 11 The next permanency review was in January 2019. The report was more positive regarding Amy's mental health: she had completed an assessment and was taking medication and attending sessions at Rosecrance. However, it was negative with respect to Amy's domestic violence problems and substance abuse. Amy had re-started the domestic violence group but was again discharged for nonattendance in October 2018. She was then arrested for domestic violence in late November. Amy had missed three drug tests and twice tested positive for THC. She had not yet completed a new substance abuse assessment as requested in December, and her caseworker did not want to re-refer her for domestic violence services until she had been clean for three months. As for visits, she had attended most but missed two, and one visit had to be cancelled after she showed up intoxicated. Amy was staying in contact and attending meetings at the agency. She was currently homeless (as of December) and unemployed. The trial court found that she had not made reasonable efforts or reasonable progress toward Isaiah's return home, and changed the goal to substitute care pending adoption.

¶ 12 In February 2019, the State filed a motion to terminate Amy's parental rights. The grounds included: (1) failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2018)); (2) failure to make reasonable efforts, during a nine-month period after the child was adjudicated neglected, to correct the conditions that led to the child's removal (*id.* § 50/1(D)(m)(i)); (3) failure to make

reasonable progress, during the same period, toward the return of the child to her care (*id.* § 50(D)(m)(ii)); and (4) failure to protect the child from conditions in his environment that were injurious to his welfare (*id.* § 50/1(D)(g)). The hearing was set for March 14, 2019.

¶ 13 The case report filed in March 2019 noted that Amy had not yet completed the new substance abuse assessment and that she had stopped attending mental health services in late December. She had not been referred for parenting classes because she still was not clean. Her visits had been reduced to once every two weeks after the goal was changed in January. Amy did attend most visits and was appropriate during visits. However, Isaiah had begun acting out after each visit and had been referred for counseling.

¶ 14 The report also contained a summary of Amy's progress during the following periods: January – March 2018; March – September 2018; and September 2018 – March 2019. It noted that, with respect to the three areas that led to Isaiah's removal (mental health, substance abuse, and domestic violence), the agency had rated Amy's progress as unsatisfactory during all of the periods. Amy had satisfactory ratings in parenting and cooperation with the agency during the past year. Michelle Garnhart, Isaiah's caseworker as of November 2018, testified at the hearing. Her testimony was consistent with the case report.

¶ 15 At a second hearing date in April 2019, Amy testified. She stated that she had completed three drug assessments and four mental health assessments. The reason she had to keep doing the assessments over was because she did not finish her recommended services. She voluntarily attended mental health services at the Ware center and for PTSD, and attended eight weeks of one group until she broke her foot. She also followed up with treatment based on recommendations after her third mental health assessment. Her most recent evaluation was completed on the day of the March hearing and she was still willing to engage in services. As

for substance abuse concerns, she conceded that she had had some dirty drops. As for domestic violence concerns, she had started counseling for this and had completed about six and a half weeks. She was currently attending those sessions. Although she had attended 26 weeks of a domestic violence program, she had not graduated from the class. She had not yet been referred for parenting classes. As of April 2019, she had not completed any of the recommended classes.

¶ 16 Amy testified that she had obtained stable housing with a relative and was on a waitlist for housing of her own. She described how she interacted with her son during her visits. She had not had unsupervised visits with him since the case was opened. She sometimes had trouble reaching her caseworkers to discuss her case. After Amy finished testifying, the trial court took the matter under advisement.

¶ 17 On May 22, 2019, the trial court announced its decision, which found Amy unfit on all of the grounds alleged by the State. It then proceeded to the best interests hearing. The caseworker testified that Isaiah had been living with his foster mother, Toni Lowery, for about two years. Lowery took good care of his needs and he was well-bonded with her, calling her his mother. Lowery ensured that he was able to visit overnight once a month with his older siblings. He had friends in the community and a stable structure of daily life. The caseworker agreed that Amy was generally appropriate during her visits with Isaiah, although he acted out after the visits.

¶ 18 Lowery described her care of Isaiah and testified that she was ready to adopt him. She had sent the trial court a letter with photos of her with Isaiah, and she testified about the foundation for those items.

¶ 19 Amy then testified. She described her interactions with Isaiah during visits and her bond with him. After closing arguments, the trial court found that it was in Isaiah's best interests for Amy's parental rights to be terminated.

¶ 20

II. ANALYSIS

¶ 21 Termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. First, the trial court must find, by clear and convincing evidence, that the parent is unfit. *Id.* ¶ 63. Second, the court must determine, by a preponderance of the evidence, whether termination of parental rights is in the minors' best interests. *Id.* Amy argues that it was against the manifest weight of the evidence for the trial court to find that she was unfit on the four grounds alleged and that it was in Isaiah's best interests for her parental rights to be terminated.

¶ 22

A. Fitness

¶ 23 Because the termination of parental rights constitutes a complete severance of the legal relationship between the parent and child, proof of parental unfitness must be clear and convincing. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 88. The trial court is in the best position to assess the credibility of witnesses, and a reviewing court may reverse a trial court's finding of unfitness only where it is against the manifest weight of the evidence. *Id.* ¶ 89. A decision regarding parental unfitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). Each case concerning parental unfitness is *sui generis*, meaning that factual comparisons to other cases by reviewing courts are of little value. *Id.*

¶ 24 In this case, the trial court found respondent unfit on four grounds. Although section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) sets forth several grounds under which a parent may be deemed unfit, any one ground, properly proven, is sufficient to sustain a finding of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. Thus, we must affirm even if only one of the four grounds of unfitness was adequately proved.

¶ 25 We initially consider whether the trial court’s finding that Amy failed to make reasonable progress toward the return of Isaiah to her care was against the manifest weight of the evidence. Reasonable progress is “an objective judgment based upon progress measured from the conditions existing when the parent was deprived of custody” (*In re S.J.*, 233 Ill. App. 3d 88, 117 (1992)) or progress toward correcting “a parental shortcoming that would inhibit the return of the child to the parent” (*In re A.J.*, 296 Ill. App. 3d 903, 914 (1998)).

¶ 26 Here, the primary conditions that led to Isaiah’s removal, and that prevented his return to Amy’s care, were (1) her mental illness; (2) her regular drug use, which worsened her mental illness; and (3) domestic violence, including her own violence toward others as well as her frequent involvement with physically abusive partners. To have Isaiah returned to her care, Amy would have had to make reasonable progress in all of these areas during a nine-month period after he was adjudicated a neglected child. However, the record provides clear and convincing evidence that Amy was unable to make such progress. Amy’s regular use of marijuana was documented from the few drug tests that she did take and was supported by her assertions to caseworkers that she did not see anything wrong with using marijuana. She continued that use throughout the case, despite being told that it was worsening her mental illness and was preventing her from being referred for needed services. Similarly, in the area of domestic violence, Amy attended only a few sessions of counseling and was arrested for committing domestic violence herself. In fact, her criminal case was still pending at the time of the fitness and best interests hearings. Although she appeared to have voluntarily restarted domestic violence services after her arrest, she acknowledged that she still was not close to completing those services. Finally, Amy’s efforts to address her mental health needs were sporadic at best—after being diagnosed and receiving medications in the spring of 2017, she was then discharged

for nonattendance. She began treatment once again after her arrest in November 2018 but then stopped less than two months later. Indeed, Amy admitted that she had not completed *any* of the services recommended for her. In light of this evidence, we find no error in the trial court's finding that Amy was unfit because she had failed to make reasonable progress toward Isaiah's return to her care.

¶ 27 Amy points out that she always demonstrated appropriate parenting skills during her visits with Isaiah, and she cooperated in many respects, appearing for her agency appointments and being willing to undergo assessments and re-start services after she was discharged for nonattendance. However, her parenting skills and her cooperativeness were not the conditions that led to Isaiah being removed and that prevented him from being returned to her: her mental illness, drug use, and domestic violence were. In those critical areas, her efforts were either absent or sporadic and ineffectual. In short, Amy did not make progress toward correcting “parental shortcoming[s] that would inhibit the return of the child to the parent.” *A.J.*, 296 Ill. App. 3d at 914.

¶ 28 As we have sustained this ground of unfitness, we need not address the others. We turn to the question of whether it was in Isaiah's best interests that her parental rights be terminated so that he could find a permanent caregiver.

¶ 29 **B. Best Interests**

¶ 30 Under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2018)), the best interests of the minors is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). In other words, a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re*

Austin W., 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child involved. *Id.* at 50.

¶ 31 The Juvenile Court Act sets forth the factors to be considered whenever a best-interests determination is required, all of which are to be considered in the context of a child's age and developmental needs: the physical safety and welfare of the child; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the "risks attendant to entering and being in substitute care"; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05). Other relevant factors in best-interests determinations include the nature and length of the minors' relationships with their present caretaker and the effect that a change in placement would have upon their emotion and psychological well-being. *In re William H.*, 407 Ill. App. 3d at 871.

¶ 32 A reviewing court will not disturb the trial court's decision regarding the termination of parental rights unless it is against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. The reason for this deferential standard is that the trial court is in a superior position to assess the witnesses' credibility and weigh the evidence than we are. *Id.*

¶ 66. A trial court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re William H.*, 407 Ill. App. 3d 858, 866 (2011).

¶ 33 Although Amy makes a brief argument that terminating her parental rights was not in Isaiah's best interests, she does not identify any of the above factors that would favor the preservation of her parental rights instead of permanency with his foster mother. She briefly argues that she had frequent loving and appropriate visits with Isaiah and that she had a bond with him, and suggests that perhaps Isaiah's tantrums after some of her visits were due to grief at being separated from her. We note, however, that Amy herself missed many of her scheduled visits with Isaiah. In fact, her attendance was so uneven and her progress toward his return was so deficient that her visitation time with him was decreased, and she was never able to have unsupervised visits with him. In contrast, Isaiah's home with his foster mother was stable and loving, and included connections with his older siblings and with his community. The trial court's best-interests determination was not against the manifest weight of the evidence.

¶ 34

III. CONCLUSION

¶ 35 For the reasons stated, the judgment of the circuit court of Winnebago County terminating the parental rights of Amy N. is affirmed.

¶ 36 Affirmed.