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2012 IL App (4th) 120267-U

Filed 7/27/12

NO. 4-12-0267

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Ho. K., Ky. K., Te. K., Ci. K., and Ke. K., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	Nos. 10JA47
HOWARD KIRKWOOD,	)	10JA48
Respondent-Appellant.	)	10JA49
	)	10JA50
	)	10JA51
)	
	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's unfitness and best-interest determinations were not against the manifest weight of the evidence.

¶ 2 Respondent father, Howard Kirkwood, was found to be unfit and his parental rights to his minor children, Ho. K. (born June 23, 2003), Ky. K., (born November 5, 2006), twins Te. K. and Ci. K. (born March 17, 2009), and Ke. K. (born January 16, 2010) were terminated. Respondent appeals, arguing the trial court erred both in finding him unfit and in terminating his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We include the following facts for the purpose of providing a context for the issues

raised on appeal.

¶ 5 On July 19, 2010, the State filed petitions for adjudication of wardship as to respondent's children. The petitions alleged the minors were neglected in that their environment was injurious to their health and well being because (1) Ke. K. was born with cocaine present in her meconium, her mother, Barbara Chaney, admitted using cocaine during her pregnancy, and Chaney was "indicated for Substance Use by Neglect to [a] minor;" (2) Chaney was previously indicted for inadequate supervision of H.K. after admitting she left the then six-year-old minor home alone; (3) despite an open Department of Children and Family Services (DCFS) case, Chaney (a) failed to comply with substance abuse treatment and mental health services, (b) admitted to consuming alcohol on a regular basis, and (c) failed to take advantage of numerous opportunities to obtain services, and (4) respondent refused to comply with DCFS services and did not made contact with his caseworker after his April 2010 release from jail. We note the minors' mother is not a party to this appeal.

¶ 6 On August 20, 2010, the State took the minors into protective custody because Chaney was found extremely intoxicated and unable to care for them.

¶ 7 On August 24, 2010, the State filed a motion for shelter care, alleging, *inter alia*, the following:

"2. That on August 19, 2010, DCFS received a report of environmental neglect. [Respondent's] order of probation through cause number 09[-]CF[-]759 states that he is not to have contact with [Chaney] or [the] minors without DCFS approval. Minor [T.K.] stated that he and the other minors see [respondent] when they are

outside playing with friends. Another minor[, K.K.,] stated [respondent] stays in the home. [Chaney] admitted [respondent] was at her home four (4) days previously and that she is aware of the no contact order. [Respondent] also admitted to having contact with the children despite the no[-]contact order."

The State's petition also alleged on August 20, 2010, Valerie Maxie, a friend of Chaney's, reported Chaney had been out at bars drinking the previous night. Maxie did not know who was watching the minors while Chaney was out. Maxie also reported seeing respondent around the minors "as recently as two (2) days ago."

¶ 8 During the August 31, 2010, shelter care hearing, the State offered the following factual basis: (1) one of the minors tested positive for cocaine at birth; (2) Chaney had a previous indicated report for inadequate supervision; (3) a DCFS case was previously opened; (4) Chaney admitted she still consumed alcohol on a regular basis; (5) Chaney drank heavily; (6) Chaney had not completed services through DCFS; (7) the conditions in the home were "deplorable;" (8) respondent had "not complied at all" with services or contacted his caseworker since his release from jail in April 2010; and (9) both parents admitted respondent has had unsupervised contact with the minors "in violation of his probation order under cause number 09-CF-759, for which he is on felony probation, due to an aggravated battery." The court found the factual basis was sufficient to support a probable cause finding and ordered the minors be placed in shelter care.

¶ 9 On September 7, 2010, DCFS filed a visitation plan. According to that plan, visitations would take place each Tuesday at DCFS offices for two hours. All visitations

between respondent and the minors were to be supervised.

¶ 10 On October 4, 2010, the trial court adjudicated the minors neglected and placed their temporary custody with DCFS.

¶ 11 Because an open DCFS case already existed, the caseworker created a new service plan on October 18, 2010, by adding tasks to the existing service plan. According to that plan, respondent was to, *inter alia*, (1) engage in domestic violence counseling, (2) complete a substance abuse assessment, (3) cooperate with DCFS, and (4) meet with his caseworker at least once a month. (We note respondent was rated unsatisfactory as of October 18, 2010, for failing to engage in any of the previously recommended services.)

¶ 12 The November 9, 2010, dispositional report prepared by DCFS stated respondent admitted to having alcohol and substance abuse issues. The report observed respondent was on probation resulting from a January 2010 domestic battery incident between respondent and Chaney. The report observed substance abuse issues and domestic violence issues interfered with the ability to keep the minors safe and properly cared for. According to the report, respondent failed to begin group counseling or attend substance abuse classes. The report opined the outlook appeared poor due to both parents' failure to participate in services. The report recommended a permanency goal of return home in 12 months.

¶ 13 Following the November 9, 2010, dispositional hearing, the minors were made wards of the court and their custody and guardianship were placed with DCFS. The court set a "return home within 12 months" permanency goal. The court also ordered any visits between the minors and the parents be supervised.

¶ 14 On January 29, 2011, respondent's service plan progress was rated unsatisfactory

because, with the exception of visiting the minors, he did not participate in any of the recommended services. While respondent participated in visits with the minors, his last visitation was November 16, 2010. During the reporting period, a warrant issued for respondent's arrest for his failure to appear on a marijuana charge. Respondent was a fugitive for approximately two months. During that period, respondent had no contact with his caseworker.

¶ 15 The February 7, 2011, permanency report, prepared by DCFS indicated respondent showed no significant progress regarding substance abuse assessment services and domestic violence services. The report observed respondent had been visiting his children regularly until November 16, 2010, when a warrant issued for his arrest. Respondent did not turn himself in until January 17, 2011. Respondent did not visit the minors during the time he was a fugitive. Respondent remained in jail until February 1, 2011. The report noted respondent had "voiced a willingness to participate in Domestic Violence Services (The Men's Group), and in substance abuse assessment and services."

¶ 16 The trial court's February 7, 2011, permanency hearing order continued the permanency goal of return home within 12 months. However, the order also suspended visitations until further court order.

¶ 17 On August 18, 2011, respondent's service plan progress was rated unsatisfactory for the following reasons: (1) he did not consistently attend or finish domestic violence counseling (the Men's Group); (2) while he participated in a substance abuse screening, he did not consistently attend the recommended outpatient treatment; and (3) while he provided a contact address and phone number to DCFS, respondent failed to return the caseworker's calls. In fact, the caseworker reported having no contact with respondent for several months. While

respondent did complete an inpatient treatment program during the period, the caseworker believed he attended that program as a result of court action in a separate case.

¶ 18 The August 22, 2011, permanency hearing report, prepared by DCFS, indicated respondent participated in a substance abuse screening and completed a residential in-patient treatment program at Recovery Resources. However, the report also stated the caseworker had little contact with respondent during this reporting period and no "face to face" contact after February 8, 2011. According to the August 22, 2011, permanency hearing order, the trial court suspended the visits between respondent and the minors due to a lack of progress. No motion was ever made to reinstate visitations.

¶ 19 The November 21, 2011, permanency hearing report indicated while respondent had completed an inpatient program at Recovery Resources, his participation in follow-up services was inconsistent. While respondent attended the individual sessions, he did not attend the recommended groups. According to respondent's brief, he was incarcerated on June 9, 2011, as a result of a petition to revoke his probation related to his assault of a pregnant woman. On October 16, 2011, respondent was resentenced to two years in prison as a result of the probation revocation. Despite several attempts, the caseworker was unsuccessful in contacting respondent during the two weeks preceding his sentencing. The caseworker reported having no contact with respondent since his incarceration. The trial court's November 21, 2011, permanency hearing order changed the permanency goal to substitute care pending termination of parental rights.

¶ 20 On December 8, 2011, the State filed a petition seeking the termination of respondent's parental rights. The petition alleged respondent was unfit on the following grounds:

"a) He has failed to maintain a reasonable degree of interest,

concern[,] or responsibility as to the children's welfare;

b) Abandonment of the child;

c) Desertion of the children for more than three [] months next

preceding the commencement of the Adoption proceeding."

¶ 21 At the beginning of the February 17, 2012, fitness hearing on the State's petition to terminate, the trial court took judicial notice of the petition for adjudication, the order of findings and adjudication, and the dispositional order entered in the case. The court also took notice of the February 17, 2011, permanency hearing order, which suspended respondent's visitations with the minors because of a lack of progress. Finally, the court took notice of respondent's felony conviction for aggravated battery of a pregnant person. Respondent did not object to this procedure.

¶ 22 During the hearing, DCFS child welfare specialist, Scott Cameron, testified regarding respondent's unsatisfactory progress regarding the various service plans. Those plans (exhibits No. 1 through 5) were admitted into evidence without objection. While respondent had been ordered to enroll in the Men's Group as a condition of his probation, respondent attended only 3 or 4 of 26 required meetings. While respondent completed a substance abuse evaluation in February 2011 and successfully completed inpatient treatment, he did not attend the aftercare group sessions. Cameron noted respondent never provided DCFS with any proof of completion of services that he might have engaged in while incarcerated. Cameron testified respondent attended the "vast majority" of visitations when the plan started in August 2010. However, beginning in November 2010, respondent "spent 8 to 12 weeks hiding from authorities after a warrant had been issued for his arrest, so he was not coming to visits." Respondent also did not

attend any visitations prior to the court's suspension of the visits in February 2011. The last visitation respondent had with the minors was on November 16, 2010. Cameron testified respondent stated at their last in-person contact in February 2011 he was interested in reengaging in services and seeing his children. However, Cameron had no in-person contact with respondent since February 2011. Cameron testified he recalled receiving one phone message from respondent wanting to see his children. However, Cameron testified respondent never asked how the children were doing. Cameron also testified respondent had not sent any cards, letters, or gifts to the children.

¶ 23 Respondent did not present any evidence on the issue of his fitness.

¶ 24 At the conclusion of the hearing, the trial court found respondent and Chaney unfit.

Specifically, the court stated the following:

"The Court is required to decide the issue of unfitness based upon the evidence presented on that issue. Today that evidence has been in the form of one witness called by the People and also five exhibits introduced into evidence by the People without objection. There has been testimony given on the issue of unfitness relating to certain service plans which were prepared during the course of this case and also what evaluations were made of each of those plans. That evidence is admissible in these proceedings. However, the over[all] focus on the issue of unfitness remains that of the relation of the needs of the child to the fitness of the parent and is not based solely on what evaluations, good or bad, were given on a particular

service plan, so the Court is not allowed to focus solely on the compliance or lack thereof by a parent with a service plan, and that's what is happening here today. The Court is considering that evidence admissible but is relying mainly on what the fitness of the parents is in relation to the needs of the child.

The evidence has shown that since the date of the shelter care hearing in August of 2010[,] all of the visits between the minors and the minors' parents were supervised pursuant to court order. There never was a recommendation by anyone that the visits could be unsupervised. There was never a recommendation that the custody of any of the minors could be returned to any of the parents while these cases have been pending. The visits were always supervised. And the evidence has also shown that there was an order entered by the Court in February[,] 2011, suspending the visits of the parents with the minors due to lack of cooperation with [DCFS] and the services which were being requested for the parents. There's not any evidence that at any time after February [20]11 that any effort was made by either of the parents to reestablish visits with the children. The record does not show petitions filed by either of the parents seeking that, and there's not any evidence of that today.

The motion for termination that was filed by the People contains certain grounds alleged of unfitness on the part of each of

the parents. One of those grounds which is alleged as to both of the parents is that they have failed to maintain a reasonable degree of interest, concern[,] or responsibility as to the children's welfare. The evidence has been that following the adjudication in this case [] the children have been in the care of [DCFS]. There had never been any cards, letters, [or] inquiries sent from either of the parents to [DCFS] or to the children inquiring as to their welfare. No financial support has ever been provided by either of the parents.

There has been some evidence that the parents attended some visits with the minors and missed other visits. The father did complete an impatient substance abuse program at Recovery Resources, but apparently did not engage in follow-up services as recommended for him after that and following that at some point has been placed in the Department of Corrections.

Based upon all of those facts and circumstances, the Court today would find the People have shown by clear and convincing evidence that each of the parents have failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare, and for that reason the allegation of unfitness on that ground has been proven."

¶ 25 The trial court then held the best-interest hearing. During that hearing, Cameron testified the minors were residing in foster placements and doing well. The children were well

adjusted. Cameron testified each of the foster parents had signed permanency commitments and were willing to adopt the children. Respondent did not present any evidence.

¶ 26 At the conclusion of the hearing, the trial court found the minors' needs were being met in their respective foster placements and the minors appeared bonded with their foster families. The court noted an absence of any evidence presented as to what relationship was present between respondent and the minors. The court concluded it was in the minor's best interest to terminate respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent argues the trial court erred in (1) finding him to be an unfit parent and (2) terminating his parental rights.

¶ 30 A. Finding of Unfitness

¶ 31 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 32 Here, the trial court found respondent unfit for failing to maintain a reasonable

degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2008)). Illinois courts have repeatedly held that because the language of subsection 1(D)(b) is stated in the disjunctive, any of the three elements alone, *i.e.*, the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare, may form the basis for an unfitness finding. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004); *In re C.E.*, 406 Ill. App. 3d 97, 108, 940 N.E.2d 125, 136 (2010). When examining allegations under subsection 1(D)(b), a trial court must focus on the reasonableness of the parent's efforts and not the success of those efforts, while considering any circumstances that may have made it difficult for him to visit, communicate with, or otherwise express interest in his children. *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125; *C.E.*, 406 Ill. App. 3d at 108, 940 N.E.2d at 136. If visitation is impractical, the parent can show reasonable concern, interest, and responsibility in a child through letters, telephone calls, and gifts, depending on the frequency and tone of those communications. *In re Adoption of Syck*, 138 Ill. 2d 255, 279, 562 N.E.2d 174, 185 (1990).

¶ 33 However, a parent will not be found fit merely because he has demonstrated some interest in or affection for his children. *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125 (citing *In re E.O.*, 311 Ill. App. 3d 720, 727, 724 N.E.2d 1053, 1058 (2000)). Instead, the parent's interest, concern, and responsibility must be reasonable. *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125 (citing *E.O.*, 311 Ill. App. 3d at 727, 724 N.E.2d at 1058). Evidence of noncompliance with an imposed service plan and infrequent or irregular visitation with the minors have been held sufficient to support a finding of unfitness under subsection 1(D)(b). See *In re Janira T.*, 368 Ill. App. 3d 883, 893, 859 N.E.2d 1046, 1055 (2006); see also *Jaron Z.*, 348

Ill. App. 3d at 259, 810 N.E.2d at 125.

¶ 34 In this case, the last visitation respondent had with the minors was on November 16, 2010. Thereafter, respondent voluntarily absented himself from visitations with the children during the two months he was a fugitive. The State presented evidence respondent had been unsuccessful completing his service plan. This lack of cooperation led to the trial court suspending visitations. Respondent had a number of months between the time he got out of jail on February 1, 2011, and his June 2011 incarceration to complete services and attempt to reestablish visitation. He did neither. After being released from jail in February 2011, respondent engaged in, but did not complete, domestic violence counseling, attending just 3 or 4 of the 26 required meetings. Further, while respondent completed a substance abuse evaluation, and inpatient treatment, he did not participate in the aftercare group sessions. Cameron testified he had no in-person contact with respondent since February 2011. While Cameron recalled receiving one phone message from respondent wanting to see the children, respondent never inquired as to how the children were doing. Further, respondent did not send his children letters, gifts, or make telephone calls to them. In fact, after November 2010, there is little evidence in the record showing respondent maintained any concern, interest, or responsibility for his children. Based the evidence in the record, we conclude the trial court's finding of unfitness based on section 1(D)(b) of the Act (750 ILCS 50/1(D)(b) (West 2010)) was not against the manifest weight of the evidence.

¶ 35 **B. Best-Interest Finding**

¶ 36 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2)

(West 2008); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best-interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs[.]" 705 ILCS 405/1-3(4.05) (West 2008). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-] disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

The trial court's best-interest determination is reviewed under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill.

App. 3d at 1072, 859 N.E.2d at 141.

¶ 37 In this case, Cameron testified all the minors had been placed in foster homes and were doing well in their respective placements. All of the minors were bonded to their foster families and thriving in their foster homes. According to Cameron, the foster parents were able to care for the minors' needs. Further, all of the foster parents were willing to provide permanency to the minors through adoption. By comparison, *no evidence* was presented during the best-interest hearing to show what relationship currently existed between the minors and respondent.

¶ 38 Based on the evidence presented, we hold the trial court's order finding termination of respondent's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 39 **III. CONCLUSION**

¶ 40 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 41 Affirmed.