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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> GIANNA R., ASHTON P., ALY'JAH P., EVALINA R.,	)	Appeal from the Circuit Court of Winnebago County.
	)	
Minors	)	Nos. 10-JA-317
	)	10-JA-318
	)	10-JA-319
	)	11-JA-375
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Jessica P., Respondent-Appellant).	)	Honorable Mary Linn Green, Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* The trial court did not err in determining that the mother was unfit and that it was in the best interests of the children to terminate her parental rights.

¶ 2 This case involves the termination of the parental rights of the respondent, Jessica P., to her children, Aly'jah P., Ashton P., Gianna R., and Evalina R. Jessica appeals the trial court's decision to terminate her parental rights, arguing that none of the bases for the trial court's finding of unfitness was adequately supported by the record, and that the termination of her rights was not in the best interests of the children. We affirm.

¶ 3 BACKGROUND

¶ 4 The following facts are drawn from the exhibits and testimony presented at trial. We note that, in making its findings, the trial court generally found that Jessica was not credible where her account contradicted that of caseworkers or the police.

¶ 5 Aly'jah was born on July 8, 2006, and his father is Justin F. Ashton was born on May 3, 2008. His father is George P. The girls, Gianna and Evalina, were born on July 21, 2009, and November 11, 2011, respectively. Their father is Michael R.

¶ 6 The children's mother, Jessica, is epileptic, and takes Depakote for her seizures. Aly'jah and Ashton have serious developmental delays due to Jessica taking Depakote while she was pregnant. Jessica did not learn that Depakote had this effect until after Ashton's birth.

¶ 7 On November 14, 2008, Jessica was in a vehicle with Aly'jah and Ashton when police detained her and found drugs and a gun in a bag in the vehicle. Jessica later testified that she had taken the bag to a friend's house at the request of her boyfriend, Michael R., and that she knew the gun was in the bag, although she denied knowing that Michael R. was involved in anything illegal. She gave conflicting statements as to whether she knew the drugs were in the bag. Jessica gave a statement to the police and was not charged as a result of this incident. Michael R. was arrested and convicted. He was released from prison shortly before Gianna was born in July 2009. Beginning in the fall of 2009, Aly'jah and Ashton lived with Jessica's mother so that Jessica could "get stable and on her feet." In June 2010, the boys came to live with Jessica and Michael R.

¶ 8 On about July 13, 2010, Jessica took Ashton to the emergency room at Swedish American Hospital because he was experiencing seizures, headaches, and vomiting, and seemed ill. CT scans were taken. Jessica was told that it was likely a viral infection and Ashton was sent home. Jessica then took Ashton to Rockford Memorial Hospital because he was still throwing

up. He was given fluids and Zofran, and again sent home. By about July 15, Ashton seemed to be recovering and was eating well. On July 16, he seemed well and went swimming.

¶ 9 On July 17, 2010, Jessica and Michael R. called 911 to report that Ashton had suffered a seizure and was non-responsive. Ashton was taken to Swedish American Hospital. There, the medical staff took a CT scan and found a subdural hematoma (internal bleeding in his head) that had not been present on the CT scans taken earlier. The Department of Children and Family Services (DCFS) was notified and Ashton was transferred to Rockford Memorial Hospital with suspected nonaccidental head trauma. The trauma doctor there did not initially confirm the presence of a subdural hematoma in comparing the CT scans. However, further review of the scans the following day revealed the presence of a small subdural hematoma; this resolved rapidly, disappearing by the next day. An ophthalmologist found evidence of retinal hemorrhages in both eyes, a finding consistent with injury due to forcible shaking.

¶ 10 DCFS took protective custody of Aly'jah, Ashton, and Gianna on August 25, 2010. It was granted temporary custody by the trial court two days later. Aly'jah was placed with his paternal grandmother, Tracey Lane. Ashton and Gianna were initially placed with Jessica's mother, Lisa Ash, but were later moved to non-relative foster care. Due to delays in serving and contacting the children's fathers, adjudication of these three children as neglected did not occur until nearly a year later, on July 27, 2011.

¶ 11 Evalina was born on November 11, 2011. Although Jessica had been seeing Michael R. during much of the previous year, in February 2011 she began a more intense relationship with another man, whom she married in March 2011. Jessica and this man began divorce proceedings four days after their wedding. Paternity testing eventually established that Michael R. was Evalina's father. During the first five days of her life, Evalina lived with Jessica and Michael R. DCFS then took custody of her, and she was placed in the same home as Aly'jah. Evalina was

adjudicated neglected on February 22, 2012. In April 2012, Michael R. was convicted of violating the Controlled Substance Act (720 ILCS 570/401(a)(2)(A) (West 2010)), a class X felony, and he went to prison.

¶ 12 Jessica's case plan included supervised visitation with her children (one four-hour visit weekly), drug tests, parenting classes, and counseling. Jessica satisfactorily completed the parenting classes. She took monthly random drug tests throughout the pendency of the case, and the results were always negative for any illegal drugs. Caseworkers said that some of Jessica's statements during visits suggested that she occasionally consumed alcohol and that Jessica minimized the seriousness of this when confronted about it. There were no reports that Jessica was ever observed to be intoxicated during visits (or on any other occasions).

¶ 13 Jessica exercised her visitation faithfully. However, beginning early on, the caseworkers who were present during the visitation became concerned that Jessica seemed unable to actively and properly supervise all three (and then four) of her children, two of whom required high levels of attention because of their developmental deficits. Jessica seemed unaware when she created dangerous situations, such as by laying the baby on the couch in such a way that she rolled into a position where she could have suffocated, or allowing Aly'jah to place a small rubber ball into his mouth. Interacting with all of her children appeared to tire her out, so that she appeared exhausted by the end of the visits. Early visits were often staffed with extra caseworkers to ensure appropriate supervision. In October 2011, Jessica's mother came to a home where Jessica was babysitting a friend's child, and the two got into a physical confrontation during which Jessica (who was holding the friend's child) was shoved into a wall. Caseworkers were concerned about the fact that Jessica had been babysitting as well as about the domestic battery. Later, although the number of caseworkers present at visits decreased, they remained concerned about Jessica's parenting, often observing that she was too "forceful" in

reprimanding Gianna. Jessica was never cleared for unsupervised visits, and eventually the caseworkers began decreasing the frequency of her visits. At the time of trial, she had monthly rather than weekly visits.

¶ 14 As for counseling, there was evidence that Jessica repeatedly made efforts to attend, but the caseworkers never deemed her to have satisfactorily completed the counseling requirement. Jessica was initially referred for individual counseling. She attended several sessions, but the counselor reported that she would not confront some of the difficult issues in her life. For her part, Jessica did not trust the counselor, whom she felt was trying to get her to confess that Michael R. had harmed Ashton. Jessica stopped attending counseling. In September 2011, Jessica underwent psychological testing. The testing revealed that Jessica had a high level of self-centrism that made it difficult for her to understand others' point of view, and the psychologist diagnosed her with borderline personality disorder and recommended that she undergo a particular type of therapy. She was then referred for this specialized therapy, but two therapists at the Rosecrance Ware center told her that she did not have borderline personality disorder and therefore she would not be provided such therapy. (The caseworkers' reports reflect that they interpreted this to mean that Jessica had lied or withheld information from the Rosecrance therapists.) Thereafter, Jessica told her caseworkers that she did not feel she needed counseling. Nevertheless, after a lengthy delay, Jessica was referred to another individual counselor, whose sessions she attended for several months. Jessica eventually stopped attending this counseling as well.

¶ 15 At some point, Jessica requested additional parenting instruction geared toward parenting children with special needs. She was never referred to any such instruction. However, the caseworkers pointed out that a parenting coach had been present at several of Jessica's visits, and that both the coach and the caseworkers attempted to provide her with additional parenting

instruction but Jessica was resistant to the assistance she received and did not appear to benefit from it. In the view of the caseworkers, Jessica's deficits in effective parenting were linked to her psychological state, and she was unlikely to benefit from further parenting instruction until she was fully engaged in counseling.

¶ 16 Jessica had a series of jobs during the course of the case, working as a bartender at various places and at a call center, each time for a few months. In between, she had periods of unemployment. She was dependent on others for housing, living off and on with Michael R. (before his arrest), with her mother, and with a cousin. Caseworkers did not consider any of these living arrangements to be appropriate potential homes for the children, due to Michael R.'s criminal activities and record, past occurrences of domestic battery between Jessica and her mother during arguments, and the fact that Jessica's cousin's household included the cousin's son, who was a sexual offender.

¶ 17 Two of the children were placed in DeKalb, which made it more difficult for Jessica to attend their medical, therapeutic and school appointments during the periods when she did not have her own transportation. (There was some dispute as to whether bus passes that would have enabled her to travel to DeKalb were available from the service provider.) However, even as to the children who were placed in Rockford, Jessica frequently did not attend scheduled appointments. Of particular concern to caseworkers, Jessica did not come to the hospital to spend time with her sons when they were hospitalized for surgeries. Aly'jah had two surgeries, but Jessica came to the hospital for only one of them. When Ashton had eye surgery in November 2012, Jessica arrived five minutes before the surgery and spent only 15 minutes with Ashton afterward, during most of which she was observed to be using her phone. Although Jessica attended almost all of her court dates, she rarely attended the annual case reviews or child and family team meetings with the service provider.

¶ 18 In February 2013, the trial court changed the goal from “return home” to “substitute care pending adoption” at the request of the service provider. In May 2013, the State moved to terminate Jessica’s parental rights, raising five grounds on which she was alleged to be unfit: (1) failure to maintain a reasonable degree of interest, concern or responsibility as to the children’s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failure to protect the children from conditions within their environment that were injurious to their welfare (750 ILCS 50/1(D)(g) (West 2012)); (3) failure to make reasonable efforts to correct the conditions that formed the basis for the children’s removal from her care, within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2012)); (4) failure to make reasonable progress toward the return of the children to her during the first nine months after adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (5) failure to make reasonable progress toward the return of the children during any nine-month period thereafter (750 ILCS 50/1(D)(m)(iii) (West 2012)). A bench trial on parental fitness commenced on September 6, 2013, and continued for three days over the course of four months. On January 22, 2014, the trial court found that the State had proved, by clear and convincing evidence, that Jessica was unfit on all five grounds. The best interests hearing was held that same date. At the close of that hearing, the trial court found that it was in the best interests of all of the children to terminate Jessica’s parental rights. Jessica filed this appeal.

¶ 19

#### ANALYSIS

¶ 20 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.*

¶ 21 Because the termination of parental rights constitutes a complete severance of the 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.*

¶ 22 In this case, the trial court found Jessica unfit on five grounds. The State argues that all five grounds were proven by clear and convincing evidence here, while Jessica argues that none were. 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, if any of the five grounds found here is supported, the finding of unfitness must be upheld.

¶ 23 We conclude that the trial court's findings as to several of the grounds are supported by the record, but discuss here only the fifth ground, the failure to make reasonable progress toward the return of the children during any nine-month period after the initial nine months following the adjudication. 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)). Here, the conditions that led to the removal of the children (the failure to protect them from an unsafe environment) included the lack of stable and safe housing for them and an inability to parent them safely and securely due to a poor understanding of their needs. However, throughout the case Jessica was unable to maintain stable employment or find safe housing suitable for the

children's return to her. Although Jessica completed her parenting classes, during her visits with her children she failed to demonstrate the ability to keep the children safe. Her failure to be present and nurturing when her sons were hospitalized, as well as her failure to attend many of their school and doctor's appointments, demonstrate that Jessica continued to have difficulty recognizing and meeting the children's needs. Her continuation of a relationship with Michael R. despite his involvement in the drug trade was a manifestation of this failure to recognize the impact of her choices on her children. Although counseling could have been a significant resource for her as she struggled to manage the substantial demands of meeting her children's needs, she instead treated it as an imposition and made limited efforts to pursue it. As a result of the continuing nature of all of these problems, the trial court never found that Jessica had made reasonable progress during any of the permanency reviews held after the adjudication. For all of these reasons, the trial court's finding that Jessica was unfit based upon her failure to make reasonable progress was not against the manifest weight of the evidence.

¶ 24 We next review the trial court's finding that it was in the best interests of the children to terminate Jessica's parental rights. Under the Juvenile Court Act of 1987, 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.

¶ 25 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) (West 2010). 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.

¶ 26 The evidence presented at the best-interests hearing showed that the balance of these factors clearly favored the termination of Jessica's parental rights in order to provide permanency to the children in their future relationships with their foster families. According to the testimony of the caseworkers, the children were placed in secure and loving foster care and were well bonded with their foster parents; the foster parents were able to meet all of the children's medical and physical needs, including the boys' substantial developmental needs; and the children had ties to their current communities and their foster parents' extended families. In comparison, Jessica was unable to provide any of these benefits to her children. Further, the children were not particularly bonded to her (with the exception of Aly'jah, the oldest), due in part to their youth when they were removed from Jessica's care. Although the children were split between two foster families who were in different cities, the foster parents recognized the importance of maintaining sibling ties and were committed to maintaining those ties. Finally, the foster parents wished to adopt the children.

¶ 27 Jessica notes that Aly’jah broke his arm while in foster care and argues that this demonstrates that his foster care placement is not safe for him. However, it was undisputed that the injury was accidental. Further, the injury led to Aly’jah being diagnosed with brittle bones due to a vitamin D deficiency, and he was receiving appropriate treatment for that condition. The trial court’s finding that it would be in the best interests of the children to terminate Jessica’s parental rights is not against the manifest weight of the evidence.

¶ 28 **CONCLUSION**

¶ 29 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 30 Affirmed.