2014 IL App (2d) 140636-U
No. 2-14-0636
Order filed October 16, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re LATEYA C., a Minor	)	Appeal from the Circuit Court
	)	of Ogle County.
	)	
	)	No. 11-JA-5
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Edward G.,	)	Kathleen O. Kauffmann,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that respondent was unfit for failing to make reasonable progress toward the return of the minor in two separate nine-month periods was not against the manifest weight of the evidence. We therefore affirmed.

¶ 2 Respondent, Edward G., is the father of Lateya C., a minor, and he appeals the trial court's finding of parental unfitness against him. The mother was also found unfit, but she is not part of this appeal. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The trial court found Lateya C. (born September 24, 2009) neglected in a May 11, 2012, order, finding she was in an injurious environment under section 2-3(1)(b) of the Juvenile Court

Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)). In a June 12, 2012, order, Lateya became a ward of the court. On September 16, 2013, the State filed a petition seeking, *inter alia*, a finding of unfitness against respondent, alleging that: (1) he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare; (2) he failed to make reasonable progress toward the return of the minor within nine months after the neglect adjudication; and/or (3) he failed to make reasonable progress toward the return of the minor during any nine-month period after the end of the initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(b), (D)(m)(ii), (D)(m)(iii) (West 2012).

¶ 5 Respondent's fitness hearing began on January 28, 2014. Four witnesses testified at the hearing: Megan Little, Sarah Holsinger, Lindsey Maness, and Jillian Condon. We summarize the testimony concerning respondent herein.[1]

¶ 6 Megan Little testified as follows. Little was an employee of Lutheran Social Services of Illinois (LSSI), in a position as an intact child welfare specialist. She was assigned to Lateya's case. Problems began with respondent shortly after the start of his September 2012 service plan. On September 4, 2012, respondent testified positive for cocaine. When she confronted him about the positive drop for cocaine, respondent denied using cocaine. He claimed that somebody spiked the food or punch at his daughter's quinceañera.

¶ 7 Respondent informed Little that he was arrested on October 14, 2012, for failure to appear in court on September 21, 2012, the purpose of which was to appear for a charge of possession of cannabis stemming from June 2011. He was released on bond. Respondent also pled guilty to theft on July 12, 2013, in a 2012 criminal case (2012-CF-208). He was sentenced to 24 months' conditional discharge, public service, and a jail term of 180 days.

[1] Much of the testimony concerned Lateya's mother's fitness.

¶ 8 Respondent had been receiving unsupervised visitation with Lateya, but after his positive test for cocaine, his visitation was reduced to supervised visitation, two hours a week, in October 2012. He missed a few visits, made some up, and by the end of October was not maintaining contact with Little, causing her to remove him from the visitation schedule.

¶ 9 Respondent completed eight weeks of parenting education classes that were recommended to him. Respondent was also recommended to seek individual counseling, which he started but then stopped attending. Respondent told her that he could not meet with the counselor. Counseling sessions were $20 per session.

¶ 10 Elizabeth Holsinger testified next, but she provided only testimony concerning Lateya's mother, not respondent.

¶ 11 Next, Lindsey Maness testified as follows. Maness was employed by LSSI as a case worker. She took over Lateya's case from Little. Respondent did not appear for his drug drops on December 4 or 14, 2012. He told her he had gone for the tests, but she called the facility, and they said that he had not come in. Accordingly, those were considered positive drug drops.

¶ 12 Regarding respondent's supervised visitation schedule, he stated various reasons for missing appointments: work, illness, and doctor appointments. After missing visitation appointments, she would actively confirm visits with him, but he would confirm and then skip, or he would not confirm and the visit would be canceled. His only confirmed visit in her January 2013 report to the court was on December 14, 2012. He had called to confirm visits on November 30, December 14, and December 28, but only attended the visit on the 14th. In summary:

> "[Respondent] has not been engaged in services at all. He has been arrested and charged with burglary from his former employer. He doesn't have a job, is being asked to move

from his current home,[2] and has not participated in visitation or kept in contact with the agency, and he also failed to complete drug drops."

¶ 13 She did not hear from respondent between December 14, 2012, and February 19, 2013, despite her attempts to contact him. On February 19, 2013, respondent contacted her, stating that he had been dishonest with the agency and needed to get into treatment. She met with him the next day at his girlfriend's home, and he admitted to using drugs during the period he was not in contact with the agency. He declined to take a drug drop then, admitting he had used over the weekend and that the test would come back positive. He scheduled an appointment with the Haymarket Treatment Center in Chicago (Haymarket) for February 27, but he arrived late and was turned away. He said he was rescheduling for the next day, but he had to wait for a bed to open in order to enter the program. He did get admitted to Haymarket in March 2013.

¶ 14 In her March 13, 2013, report to the court, Maness rated respondent's overall progress as unsatisfactory. Respondent was rated as unsatisfactory on the following interventions: that he provide daycare provider information about how and where he can be contacted during the time Lateya was at daycare; that he provide Lateya with appropriate supervision and child care; that he keep the Department of Children and Family Services (DCFS) and LSSI informed of changes; that he keep all appointments with the case worker; that he send Lateya to daycare clean, fed, rested, and appropriately clothed; and that he ensure Lateya receives appropriate medical care.

¶ 15 Jillian Condon next testified as follows. She was a child welfare specialist with LSSI. She took over Lateya's case from Maness in May 2013 and remained the case worker until January 1, 2014. During this time period, she never physically saw respondent and only spoke with him on the phone once, in October 2013. She received documentation from Haymarket that

[2] He was living at his girlfriend's home at the time.

respondent went there for drug treatment from March 11 to March 16, 2013. After leaving, he was instructed to participate in follow-up services, but she never received documentation that he did. On October 9, 2013, respondent told her over a phone conversation that he did not feel he needed follow-up services and therefore did not re-engage with Haymarket. He was working with pastoral services but was not participating in any substance abuse treatment despite being ordered by DCFS and LSSI to do so.

¶ 16 For her August 13, 2013, report to the court, she tried to contact respondent on August 6, but she received a message stating the phone number was no longer in service. Respondent had not had any visitation with Lateya and had not made contact with the agency since she became the case worker. Respondent was again found to make unsatisfactory progress in relation to various prescribed interventions. The goal in the August 13 report was changed from return home to termination of respondent's parental rights.

¶ 17 Respondent did not testify or present evidence at the hearing. His counsel told the court that respondent had intended to be there, but he had not spoken to him in more than three weeks. When counsel tried to contact him, the numbers on file for contact went unanswered or were disconnected.

¶ 18 The trial court adjudicated respondent unfit in a May 7, 2014, interlocutory order. It found by clear and convincing evidence that the State proved respondent was unfit in that he failed to make reasonable efforts and reasonable progress toward the return of the minor child in the relevant nine-month time frames (the date of the neglect adjudication, May 11, 2012, through February 11, 2013, and February 11, 2013, through November 11, 2013). On June 25, 2014, the trial court found termination of respondent's parental rights to be in Lateya's best interest, thereafter terminating respondent's parental rights. The court noted respondent's lack of

visitation with Lateya, his substance abuse, his lack of employment, and his lack of cooperation with services.

¶ 19 Respondent timely appealed.

¶ 20 II. ANALYSIS

¶ 21 Respondent raises a single issue on appeal: whether the finding of unfitness, and hence the need for a best interest hearing, was supported by the manifest weight of the evidence. The standard of review for a finding of parental unfitness is whether the trial court's finding was against the manifest weight of the evidence. *In re Cornica J.*, 351 Ill. App. 3d 557, 566 (2004). "A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonable, arbitrary, and not based on the evidence presented." *Id.* In deciding whether the trial court's unfitness finding is against the manifest weight of the evidence, we must be "mindful that every matter concerning parental fitness is *sui generis*." *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 22 Respondent argues as follows. The testimony of the witnesses at the fitness hearing was largely based on speculation because the case workers did not have contact with respondent. No testimony was given that respondent harmed Lateya. Up until a positive test for cocaine, he had unsupervised visitation with Lateya, and cocaine use was not conduct that involved Lateya. Little testified that respondent was doing nothing improper relative to Lateya.[3] Holsinger did not

[3] The transcript from Little's testimony, to which respondent refers, reads:

"Q. And he was receiving the unsupervised visitation until he tested positive for cocaine, is that correct?

A. Correct.

Q. Other than that, was there anything that he was doing improper with his child that was

provide negative testimony against respondent, and Maness's testimony, although "not glowing," was "at best equivocal." Condon testified based only on a lack of contact, not as to any fact establishing harm to Lateya. Taken together, the testimonies provided at the fitness hearing did not meet the State's burden of clear and convincing evidence but rather demonstrated it was "highly probable" that respondent was a fit parent. Moreover, his incarceration and drug abuse should be viewed as facts in mitigation of non-compliance with his service plans, "especially where the record reflects that this fit father demonstrated love, care and interest for his child notwithstanding his flaws."

¶ 23 We reject respondent's argument. First, we note that while Holsinger did not give negative testimony against respondent that was because she gave no testimony about him at all. She testified only concerning Lateya's mother.

¶ 24 The finding of unfitness was not against the manifest weight of the evidence. The trial court found him unfit for failing to make reasonable progress toward the return of the minor both in the nine-month period after the neglect adjudication (May 11, 2012, through February 11, 2013) and in the nine-month period immediately thereafter (February 11, 2013, through November 11, 2013). Either finding would be sufficient to support a finding of unfitness. 750 ILCS 50/1(D)(m)(ii), (iii) (West 2012).

¶ 25 According to the testimony, respondent's visitation did not increase over these time periods but decreased from unsupervised to non-existent: he has not had visitation with Lateya since December 2012. Both Maness and Condon testified that respondent made unsatisfactory progress toward the return of Lateya. Little testified that problems with respondent began

---

noted in this report?

A. Not with this child, no."

shortly after the initial September 2012 service plan, including a positive test for cocaine on September 4, after which respondent denied any drug use. Respondent lost unsupervised visitation after this positive drug test, failed to attend various supervised visits in October 2012, and had his last visit in December 2012. He did not return Little's phone calls after the end of October 2012. Maness had a two-month period without contact with respondent, and Condon only spoke with respondent once between May 2013 and January 2014, and she never saw him in person. Various calls by all three case workers went unanswered and unreturned.

¶ 26 Reasonable progress requires more than the absence of direct harm. Rather, "at a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). The benchmark for measuring progress under section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2012)) "encompasses the parent's compliance with the service plans and the court's directive, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress is an objective standard that looks at whether, "in the *near future*, [the court] will be able to order the child returned to parental custody." (Emphasis in original.) *In re Interest of L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 27 Respondent was also arrested in October 2012 for failure to appear in court on a cannabis possession charge, as well as arrested for a burglary that month (he later pled guilty to theft). There was testimony that he did not have employment and that he missed various drug tests. He was in danger of losing a place to live by the end of 2012. He started counseling but discontinued it against the case worker's wishes, telling Little he could not attend anymore,

although Little noted that each session cost only $20. He had not gone to counseling since August 2012.

¶ 28 Respondent did volunteer to go to drug rehabilitation. He completed about one week at Haymarket, but he did not follow up with substance abuse treatment after release, claiming he did not need it. He also completed an eight-week parenting education program that was recommended by LSSI.

¶ 29 In sum, respondent: has unresolved substance abuse issues; has failed to maintain contact with the agency; has failed to demonstrate he currently possesses adequate housing and employment; pled guilty to theft and was arrested for other criminal related violations; and has not had visitation with Lateya since December 2012. Respondent urges that we view some of these factors in mitigation and in light of evidence that he loved Lateya. However, he does not direct us to evidence of his relationship with Lateya, loving or not. What the record does reflect is that he has not visited Lateya since December 2012. We decline to view drug abuse and the commission of criminal offenses as impediments to respondent's love of his daughter, but rather view them here as impediments to being a fit father.

¶ 30 Here, if anything, respondent has taken steps away from, not toward, reunification with Lateya. Visitation has decreased from unsupervised to supervised to none. His trouble with the law has increased. Housing and employment prospects remain poor and unsure. Contact with the agency has diminished over time. Counseling went from some sessions to none. Substance abuse became an issue, and although he eventually admitted it was an issue and initially addressed it, he has declined the recommended follow-up treatments. Taken together, these facts support the trial court's findings that respondent did not make reasonable progress toward the return of Lateya in the nine months after the neglect adjudication and in the nine months

immediately following that period. We therefore hold that the trial court's order was not against the manifest weight of the evidence.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Ogle County is affirmed.

¶ 33 Affirmed.