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2014 IL App (4th) 140278-U
NO. 4-14-0278

FILED
August 21, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: L.C. and F.C., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Schuyler County
v.)	No. 12JA1
WILLIAM CHESTNUTT,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err in terminating respondent-father's parental rights.

¶ 2 In March 2014, the trial court terminated respondent-father William Chestnutt's parental rights to his children, L.C. and F.C. Respondent appeals, arguing the court erred in finding him unfit. Respondent also argues he received ineffective assistance of counsel. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 17, 2012, the State filed a petition for adjudication of wardship regarding L.C. (born February 13, 2008) and F.C. (born December 6, 2010). The petition alleged the minors were under age 18 and neglected because they lived in an environment injurious to their welfare pursuant to section 2-3(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(b) (West 2010)). Respondent had previously been indicated for creating a

substantial risk of physical injury/environmental injuries to the health and welfare of L.C. because of a July 4, 2008, incident, where he battered a pregnant relative of L.C. and F.C.'s mother, Alyisa Chestnutt, who was holding L.C. at the time. Respondent was convicted of aggravated battery.

¶ 5 On June 3, 2009, respondent was sentenced to three years in the Illinois Department of Corrections (IDOC) after his probation was revoked for having unsupervised contact with L.C. in violation of an order of protection. L.C. was adjudicated neglected in Brown County case No. 09-JA-1 and placed in foster care. In August 2010, three months after respondent was released from IDOC, the trial court in Brown County returned L.C. to Alyisa and respondent. In October 2010, Brown County case No. 09-JA-1 was closed. Department of Children and Family Services (DCFS) and court involvement were terminated due to Alyisa's and respondent's cooperation with services. F.C. was born in December 2010.

¶ 6 On December 16, 2011, Alyisa petitioned for and received an emergency order of protection against respondent in Adams County case No. 11-OP-440 because respondent allegedly spit in her face during a fight over Alyisa wanting to leave the residence with L.C. and F.C. Alyisa also alleged respondent shoved her onto the bed and put his hand over her mouth, preventing her from yelling for help, in November 2011. This occurred in the children's presence. Within a week of the issuance of the emergency order, respondent violated the order and entered a guilty plea for the violation.

¶ 7 Alyisa also met with DCFS on December 16, 2011. However, after that meeting, Alyisa failed to keep DCFS apprised of her whereabouts. On January 5, 2012, the order of

protection proceedings were dismissed in Adams County after Alyisa failed to appear for a hearing.

¶ 8 In April 2012, Alyisa, the children, and respondent were living with respondent's sister. A DCFS safety plan had been in effect, providing respondent not to live with or have unsupervised contact with L.C. and F.C. As a result, the State filed its petition on April 17, 2012.

¶ 9 The trial court held an adjudicatory hearing on July 5, 2012. Alyisa testified she and the children moved away from respondent in April 2012. She obtained another order of protection against respondent. After the hearing, the court entered a written order adjudicating L.C. and F.C. neglected. With regard to respondent, the court stated the court files alone proved all the allegations in the petition. According to the court:

"There is no question that time and time again [respondent] has both been involved in domestic violence against his wife, his children have been involved, and that he has refused DCFS orders, the Court's orders when it comes to not having contact, and he'll continue to do that unless we make the barrier high, wide, and tall."

At the time of the adjudicatory hearing, Alyisa had custody of the children and was living in Quincy under supervision through a Young Women's Christian Association program. She had been in that location for four weeks. Although the court stated it thought the children would be safer in foster care based on the history in this case, the court told Alyisa it was going to allow her to keep custody.

¶ 10 On August 15, 2012, the trial court convened a scheduled dispositional hearing. Alyisa did not appear. A Catholic Charities worker present at the hearing stated Alyisa left a letter saying she was leaving with the children out of fear of losing them. During the hearing, the court noted one of the reports filed in the case stated respondent, pretending to be someone else, had called either Catholic Charities or the place Alyisa was living to cause trouble. The court entered a dispositional order granting guardianship of the children to DCFS.

¶ 11 The trial court ordered DCFS not to place custody of the children with either respondent or the children's mother or any family member after the children were located. Further, DCFS was to allow neither parent visitation with the children until the court ruled otherwise. After noting respondent's attempt to get Alyisa in trouble by making false accusations about her, the court told respondent:

"You still don't get it. And as long as this is your whole, you know, and you have to take some responsibility 'cause, frankly, probably part of the reason why Alyisa is gone today with the children is based on your actions. And as long as that's more important to you, getting her in trouble, than it is getting yourself right with the world and learning how to be a good dad, you provide nothing for these kids. There's no benefit from them having any communication with you. And if that doesn't change, you risk having your parental rights terminated to where you'll never have any contact with them. And I want to be really clear on that because you're quickly approaching the point when it won't

matter whether you then decide, okay, it's time for me to change my attitudes and my behaviors and do something. So if you're going to do it, the time is now for that. And it's not lip service. It's not just showing up to some meetings or whatever. It's making a real genuine effort to understand. You've been to prison for this same situation. You've been in jail repeated times for this same situation. And it doesn't matter. You're more interested in showing everybody you're right and the rest of the world's wrong than you are in correcting your own behavior so you can have contact with your kids again. And I just want to be absolutely clear on it. If it doesn't change quickly, you'll never have any contact with your kids again. So now is the time to get with your service provider and start taking a good hard look at what your behavior's been the last several years that's led us to this point. And, if you do that, you might have a chance at some relationship with your kids again. If you don't, I guarantee you you won't have any chance."

The court issued a warrant for the mother and children.

¶ 12 On August 22, 2012, F.C. and L.C. were located at a motel in Macomb and placed in protective custody and then in foster care. On August 24, 2012, Alyisa appeared before the trial court. The court informed her she had been taken into custody pursuant to the court's order because she had failed to appear for the dispositional hearing. The court noted respondent

assisted Alyisa in absconding with the children at a time when a no-contact order was in effect against him. Respondent was still in jail for violating the order of protection. On October 1, respondent was sentenced for violating the order of protection and was transferred to an IDOC facility in Hillsboro.

¶ 13 On January 16, 2013, respondent's attorney filed a motion to withdraw, based on respondent's failure to cooperate with counsel. At a March 8, 2013, hearing, the trial court granted the motion to withdraw. On March 28, 2013, the court appointed attorney T.J. Wessel to represent respondent.

¶ 14 Wessel failed to appear at the August 26, 2013, permanency hearing. Respondent was in IDOC at the time of the hearing and was not present. The court entered a permanency order, which noted respondent had not made reasonable and substantial progress toward returning the children home and had not completed the client-service plan.

¶ 15 On November 20, 2013, the State filed a petition to terminate respondent's parental rights. The petition alleged respondent was unfit for the following reasons: failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the children (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) make reasonable progress toward the return of the children within any nine-month period of time after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)). The petition also alleged respondent was unfit based on his depravity as a result of his five felony convictions (750 ILCS 50/1(i) (West 2012)).

¶ 16 On November 27, 2013, Wessel filed a motion to withdraw as respondent's attorney because his position as an assistant State's Attorney in Mason County created a conflict of interest. At a hearing on December 2, 2013, the trial court granted Wessel's motion to withdraw based on the *per se* conflict created by his appointment as an assistant State's Attorney on November 19, 2013. Respondent was present at the hearing and stated he had been released from IDOC.

¶ 17 At the termination hearing on January 24, 2014, the State noted Alyisa surrendered her parental rights to L.C. and F.C. Sonya Mallory, a placement worker for DCFS, testified she had been involved in this case since August 22, 2012. At that time, respondent and Alyisa were in the Schuyler County jail. Respondent was in jail for violating the Adams County order of protection, which prohibited respondent from having contact with L.C. and F.C. Respondent was later incarcerated in IDOC as a result. He was released from IDOC on November 22, 2013.

¶ 18 Mallory testified a client-service plan was in place for respondent at the time of his incarceration. Respondent was to work on his parenting and domestic-violence issues. Respondent completed no goals from his client-service plan. According to respondent, classes were not offered at IDOC's Pittsfield facility, where respondent was housed for part of his time in prison.

¶ 19 Respondent had no contact with the children after August 2012. His visits had been suspended pursuant to court order. After his release from prison, respondent started parenting and domestic-violence classes. According to Mallory, respondent contacted her

approximately every other month while he was in prison, keeping her apprised of where he was housed and his release date and asking about the children.

¶ 20 Respondent testified parenting classes were not available when he was at the Pittsfield facility. When he was transferred to the IDOC facility in Jacksonville in March or April 2013, he requested both parenting and domestic-violence classes. He was receiving treatment for lymphoma while at Jacksonville and was on the wait list for classes but did not have the opportunity to take any. After his release from prison, he signed up for domestic-violence and parenting-education classes. He also took part in a mental-health evaluation.

¶ 21 Respondent testified he violated the order of protection in August 2012, which resulted in his incarceration, because he received a call, presumably from Alyisa, saying DCFS was going to take his children and Alyisa was going to run away with them. He continued, "There was a letter out there she was going to take off to Nevada, and I knew she was heading for Colorado, and if I didn't try and help her then I would never see my kids again. So I made the wrong choice on that."

¶ 22 On cross-examination, defendant admitted he knew where Alyisa and the children were—with a friend of his in Havana—when he was in court for the scheduled dispositional hearing on August 15, but he did not tell the court, his attorney, the police, or DCFS their location.

¶ 23 The trial court noted respondent had been incarcerated from August 2012 until November 2013. The court found respondent made some attempts to engage in classes or counseling while in prison and stayed in written contact with DCFS caseworkers. However, the court found the State proved by clear and convincing evidence respondent was unfit because he

failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children, failed to make reasonable progress toward the return of the children within any nine-month period following the date of adjudication and disposition, and was deprived.

¶ 24 At the best-interests hearing in March 2014, the trial court noted the children had been with the same foster parents continuously for the preceding 19 months. The foster parents met all of the children's needs and had signed adoption-agreement papers. Further, the children were bonded with the foster parents. The court noted respondent had no relationship with the children. The court found the children's best interests would be served by terminating respondent's parental rights.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Respondent argues the trial court's findings he was unfit are against the manifest weight of the evidence. Further, respondent argues he received ineffective assistance of trial counsel. We affirm.

¶ 28 A parent will be deemed unfit if the State proves, by clear and convincing evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). We note the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). In this case, the trial court found respondent unfit for multiple reasons.

¶ 29 This court grants trial court decisions great deference in termination proceedings because the trial court is in a better position to see the witnesses and judge their credibility. *In re*

K.B., 314 Ill. App. 3d 739, 748, 732 N.E.2d 1198, 1206 (2000). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005). The trial court's finding respondent failed to make reasonable progress during the nine-month period following adjudication is not against the manifest weight of the evidence.

¶ 30 This court judges reasonable progress according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 31 While acknowledging the objective nature of determining whether reasonable progress has been made, respondent cites *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), for the proposition that determining what is reasonable for a person requires an examination of his circumstances. According to respondent, he was failed by the system because he was not able to take part in parenting and domestic-violence classes while in prison.

¶ 32 We first note serving time in prison does not exempt a parent from making reasonable progress toward the return of a child. See *In re J.L.*, 236 Ill. 2d 329, 340, 924 N.E.2d 961, 967-68 (2010). In *J.L.*, the supreme court stated:

"We conclude the language of section 1(D)(m)(iii) is clear and unambiguous with regard to the question at issue[: whether time in prison tolls the nine-month period during which reasonable progress must be made]. There is no exception for time spent in prison. Indeed, no mention is made of incarceration. The statute simply provides that a ground for a finding of unfitness is the '[f]ailure by a parent *** to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor *** or dependent minor.' " *J.L.*, 236 Ill. 2d at 340, 924 N.E.2d at 967-68.

The State clearly established respondent made no progress toward the return of his children during any nine-month period following adjudication.

¶ 33 Respondent did not offer any evidence to contradict the State's clear and convincing evidence regarding his lack of any progress during the initial nine-month period. Respondent does not attempt to argue he made reasonable progress. Instead, he simply relies on his lack of access to parenting and domestic-violence classes. Respondent presented absolutely no evidence he made any progress toward getting his children back during any period. Respondent seems to take the position reasonable progress was impossible because he was in prison and could not get into specific classes. Had respondent testified he engaged in other activities to make progress with regard to his parenting and domestic-violence issues—for example, studying proper parenting and anger management through books, seeking counseling

through other means, *etc.*—the trial court may have ruled differently. Respondent offered no such evidence.

¶ 34 The evidence showed respondent had no contact with the children after his arrest in August 2012, he was incarcerated for 15 months, and he did not take parenting or domestic-violence classes. As a result, we cannot say the trial court's finding respondent did not make reasonable progress following adjudication was against the manifest weight of the evidence presented. We need not address the court's other findings of unfitness.

¶ 35 Respondent also argues he received ineffective assistance of counsel. In *Strickland v. Washington*, 466 U.S. 668, 687 (1984), the Supreme Court stated a defendant must show his counsel's actions were unreasonable and resulted in prejudice to establish he received ineffective assistance of counsel. This court judges the effectiveness of counsel in termination cases pursuant to *Strickland*. *In re C.C.*, 368 Ill. App. 3d 744, 748, 859 N.E.2d 170, 173 (2006).

¶ 36 According to respondent's brief, while he was in prison, his attorneys did not request a writ to have him transported to court for all the hearings despite his request. Respondent also specifically argues Wessel, who the trial court appointed to represent him on April 1, 2013, and who was allowed to withdraw due to a *per se* conflict on December 2, 2013, provided him ineffective assistance of counsel. According to respondent, Wessel failed to appear at an August 26, 2013, hearing, which was held in the absence of both respondent and respondent's counsel, even though Wessel had five months' notice of the hearing. Respondent further alleges Wessel did not open several envelopes containing letters from respondent to Wessel requesting information and a writ allowing him to appear in court. As for the unopened letters, respondent's brief provides no indication these purportedly unopened letters were brought

to the attention of the trial court or made part of this appellate record. As a result, we will not consider that allegation of ineffectiveness on appeal.

¶ 37 Further, we need not determine whether his attorney's representation was deficient because respondent has failed to establish how the alleged unreasonable conduct prejudiced him. According to our supreme court, "If it is easier to dispose of an ineffective assistance claim on the ground that it lacks sufficient prejudice, then a court may proceed directly to the second prong and need not determine whether counsel's performance was deficient." *People v. Givens*, 237 Ill. 2d 311, 331, 934 N.E.2d 470, 482 (2010).

¶ 38 Respondent was present and was represented by counsel at both the January 2014 fitness hearing and the March 2014 best-interests hearing. Respondent has failed to show how respondent's absence from any hearing caused him any prejudice. Respondent has also failed to show how Wessel's performance or his absence from any hearings prejudiced him. After all, Wessel was not appointed to represent respondent until April 2013. This was at the end of the initial nine-month period where respondent failed to make reasonable progress. As a result, Wessel's performance could not have impacted respondent's lack of progress during this period. Wessel withdrew from the case prior to the fitness and best-interests hearings and respondent was represented by his appellate counsel at those hearings.

¶ 39 Respondent makes no argument regarding the trial court's best-interests finding. As a result, we need not address the court's finding.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the trial court's termination of respondent's parental rights.

¶ 42

Affirmed.