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2014 IL App (4th) 140537-U
NO. 4-14-0537
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
October 23, 2014
Carla Bender
4th District Appellate
Court, IL

In re: C.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
v.)	No. 11JA59
YSHISHA JOHNSON,)	
Respondent-Appellant.)	Honorable
)	Claudia S. Anderson,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

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

¶ 2 In January 2014, the State filed a petition to terminate the parental rights of respondent, Yshisha Johnson, as to her son, C.M. (born March 9, 2001). In April 2014, the trial court found respondent unfit pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). Following a June 2014 best-interest hearing, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court erred in finding her unfit and determining it was in C.M.'s best interests to terminate her parental rights. For the following reasons, we affirm.

¶ 4

I. BACKGROUND

¶ 5 On April 12, 2011, the State filed a petition for adjudication of wardship, alleging respondent (1) neglected C.M. pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2010)), in that she subjected C.M. to an environment injurious to his welfare; and (2) abused C.M. pursuant to section 2-3(2)(ii) of the Juvenile Act, in that she "created a substantial risk of physical injury to [C.M.] by other than accidental means which would be likely to cause death or impairment of emotional health." That same day, the trial court held a shelter-care hearing, after which the court ordered the minor placed in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 6

A. Adjudicatory and Dispositional Hearings

¶ 7 During the June 2011 adjudicatory hearing, respondent admitted both counts of the petition. In the factual basis for the admission, the State asserted, in April 2011, police received a dispatch regarding respondent battering C.M. C.M. told police respondent had been drinking heavily when she became angry and kicked him several times in the face and head. She then grabbed him by the hair. C.M. indicated respondent "drinks a lot," and would often become angry and hit him. Based on the admission and the factual basis, the trial court found C.M. abused and neglected. Following the July 2011 dispositional hearing, in which the parties and court agreed with DCFS's dispositional report, the court ordered DCFS to retain custody and guardianship over C.M. with a goal of returning C.M. home in 12 months.

¶ 8

B. Termination Proceedings

¶ 9 In January 2014, the State filed a petition to terminate respondent's parental rights, alleging she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to C.M.'s welfare pursuant to section 1(D)(b) of the Adoption Act (750 ILCS

50/1(D)(b) (West 2012)); (2) make reasonable efforts from June 2, 2011, to March 2, 2012, to correct the conditions that were the basis of the removal of C.M. under section 1(D)(m)(i) of the Adoption Act; (3) make reasonable progress from June 2, 2011, to March 2, 2012, toward the return home of C.M. pursuant to section 1(D)(m)(ii) of the Adoption Act; (4) make reasonable progress from March 2, 2012, to December 2, 2012, toward the return home of C.M. under section 1(D)(m)(iii) of the Adoption Act; and (5) make reasonable progress from December 2, 2012, to September 2, 2013, toward the return home of C.M. pursuant to section 1(D)(m)(iii) of the Adoption Act.

¶ 10

1. Fitness Hearing

¶ 11 In April 2014, the fitness hearing commenced. Respondent failed to appear at the hearing and her attorney requested a continuance to procure her appearance. Respondent's attorney told the court respondent was unable to attend court because she just received notice of the court date upon returning home from a hospital stay. According to her attorney, respondent expressed an interest in participating in the termination proceedings. The trial court denied the motion to continue.

¶ 12 As part of its evidence, the State presented respondent's service plans as exhibits. Respondent's attorney agreed to the foundation for the exhibits but objected to the extent the plans presented hearsay evidence. The court admitted the service plans over respondent's objection.

¶ 13 Heather Gomez testified she was employed at A Safe Haven in Chicago, Illinois, which served as transitional housing and a recovery home specifically designed for individuals with an open DCFS case. In June 2013, respondent entered treatment at A Safe Haven. During her stay, respondent engaged in intensive, outpatient substance-abuse treatment and was actively

involved in the program. Respondent also attended a life-skills group and recovery-education groups. In October 2013, prior to completing treatment, respondent left the facility on a day pass and did not return. Gomez testified respondent had been proceeding through treatment satisfactorily until that point. In fact, DCFS and A Safe Haven were making arrangements for C.M. to move in with respondent at the time she left the facility.

¶ 14 Two days after her October 2013 discharge, respondent contacted Gomez and explained she was pregnant. Respondent did not tell anyone of her pregnancy prior to leaving the facility. According to Gomez, although A Safe Haven lacked certification to provide treatment to pregnant women, a pregnant client would remain in the facility until a bed at another facility became available. Respondent told Gomez she left due to her pregnancy, stating, "I can't come back. I'm pregnant, and I have things to do out here."

¶ 15 Cherylanda Trice testified she was respondent's caseworker for the majority of the case, from April 2011 until March 2014. Trice indicated her last contact with respondent was in December 2013. Prior to that, respondent maintained regular contact. However, respondent did not regularly advise Trice where she was residing, nor did she maintain stable housing. Trice estimated respondent stayed in at least five different locations during the pendency of the case. At one point, Trice determined one of respondent's residences was one she shared with an abusive paramour.

¶ 16 As part of her service plan, DCFS required respondent to complete individual counseling; she failed to do so. According to Trice, after missing two referrals, respondent began individual counseling, but had yet to successfully complete the family-therapy aspect of treatment. DCFS also referred respondent for substance-abuse treatment, but she failed to successfully complete treatment despite numerous attempts. After leaving treatment at A Safe

Haven, respondent attempted to reengage in outpatient treatment but did not complete further treatment after termination proceedings commenced. DCFS referred respondent to Family Treatment Court, but she failed to successfully complete treatment.

¶ 17 During the case, respondent was to maintain a source of income. She received public assistance, which satisfied DCFS; however, she also obtained additional monies from an unknown source that respondent refused to divulge.

¶ 18 Trice often observed respondent's visits with C.M. Initially, Trice found respondent hostile, angry, and struggling to engage with C.M. As respondent gained sobriety, she became more engaged and interactive with C.M. Respondent's last visit with C.M. was in October 2013, just prior to respondent leaving A Safe Haven. However, according to Trice, respondent made subsequent contact with C.M. on multiple occasions by providing him with phones and other electronic-communication devices.

¶ 19 After respondent's discharge from A Safe Haven, Trice became aware that respondent had returned to her abusive paramour after she called the police to report he tried to stab her. The two had also been involved in a domestic dispute in March 2013 prior to respondent entering A Safe Haven.

¶ 20 Trice testified that C.M. entered into DCFS care because of respondent's alcoholism and her physical abuse of her son. Though Trice knew of no further domestic-violence incidents with C.M., respondent had failed to successfully complete treatment for her alcoholism.

¶ 21 On this evidence, the trial court found respondent unfit on all counts, stating, "[i]t's a cruel case. It's a case where the [mother] has cruelly chosen and selfishly chosen the alcohol over her child[.]"

¶ 22

2. Best-Interest Hearing

¶ 23 On June 11, 2014, the trial court held a best-interest hearing. Carolyn Johnson, a DCFS caseworker, testified C.M. remained in the Champaign County juvenile-detention center pending the resolution of an aggravated-assault charge. He was also on probation for a gun-related charge. According to Johnson, upon being released from the detention center, C.M. had no foster home to which he could return, as his prior foster family gave notice that they did not wish him to return. However, Johnson indicated DCFS intended to find specialized placement for C.M. C.M. reported having contact with respondent, despite the court's no-contact order. He also said he would continue having contact with respondent despite the court order. According to Johnson, C.M. admitted he used and sold marijuana at respondent's request. Johnson concluded by saying she believed it would be in C.M.'s best interests to terminate respondent's parental rights.

¶ 24 On cross-examination, Johnson testified she was unaware whether respondent had reengaged in alcohol treatment because she had never had contact with respondent. She stated respondent was close to having her son returned multiple times during the pendency of the case. Before C.M. could complete the move to live with respondent at A Safe Haven, respondent left the facility. Johnson said C.M. was very upset he could not return home to respondent. Based on this evidence, the trial court found it was in C.M.'s best interests to terminate respondent's parental rights.

¶ 25 This appeal followed.

¶ 26

II. ANALYSIS

¶ 27 On appeal, respondent argues the trial court erred in finding her unfit and determining it was in C.M's best interests to terminate her parental rights. We address these arguments in turn.

¶ 28

A. Fitness Finding

¶ 29 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The trial court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.* "[A] finding of unfitness on any one ground obviates the need to review other statutory grounds." *In re J.J.*, 307 Ill. App. 3d 71, 76, 716 N.E.2d 846, 850 (1999).

¶ 30 Respondent asserts the trial court erred by finding her unfit on numerous grounds. We will begin by addressing whether the court erred in finding respondent failed to make reasonable efforts to correct the conditions that formed the basis for removing C.M. from her custody pursuant to section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2010)).

¶ 31 Whether a parent has made reasonable efforts is a "subjective review of the parent's achievements." *In re D.F.*, 332 Ill. App. 3d 112, 125, 772 N.E.2d 939, 950 (2002), *aff'd*, 208 Ill. 2d 223, 802 N.E.2d 800 (2003). The focus is on "whether the parent has made 'earnest and conscientious strides' toward correcting the conditions which led to the removal of the children." *Id.* (quoting *In re B.S.*, 317 Ill. App. 3d 650, 658, 740 N.E.2d 404, 411 (2000)). We examine respondent's reasonable efforts during the initial nine-month period following the

adjudication of C.M. as abused and neglected. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 596, 805 N.E.2d 329, 339-40 (2004). In this case, we review respondent's efforts for the nine-month period following the June 2, 2011, adjudication. To do so, we look to the relevant service plans admitted into evidence during the fitness hearing to provide context to the testimony of the witnesses.

¶ 32 *1. October 2011 Service Plan*

¶ 33 In October 2011, DCFS filed a service plan reviewing respondent's efforts following the June 2011 adjudicatory hearing. The report indicated respondent made unsatisfactory progress toward having C.M. returned home in 12 months. Respondent failed to comply with DCFS, services, and visitation since the case opened in April 2011. Further, though respondent initially engaged in substance-abuse treatment at the Prairie Center, the Prairie Center subsequently discharged her unsuccessfully due to her failure to engage in and comply with treatment. She also failed to complete parenting classes and refused to attend individual counseling. However, shortly before the filing of this service plan, respondent agreed she would participate in services as a result of plea negotiations in the criminal case related to her battery of C.M.

¶ 34 *2. April 2012 Service Plan*

¶ 35 In April 2012, DCFS filed a service plan reviewing respondent's efforts from October 2011 through March 2012. Again, the service plan indicated respondent was making unsatisfactory progress toward the return home of C.M. within 12 months. The caseworker noted respondent had done a much better job contacting and communicating with DCFS. In November 2011, DCFS again referred respondent to the Prairie Center for substance-abuse treatment. However, respondent missed several group and individual sessions and failed to

maintain her sobriety. In March 2012, respondent entered New Leaf Residential Program to address her substance abuse. The caseworker reported respondent's compliance with treatment had been inconsistent, but she had not been unsatisfactorily discharged from the program.

¶ 36 3. *Whether the Trial Court Erred in Finding Respondent Unfit*

¶ 37 During the initial nine-month period, respondent entered into substance-abuse treatment on three different occasions, with two of those occasions resulting in unsuccessful discharges due to her noncompliance. As of March 2012, respondent entered into treatment for the third time, this time at a residential facility, where her compliance remained inconsistent. She also failed to maintain her sobriety during the initial nine-month period. In fact, respondent's caseworker had difficulty convincing respondent to engage in any services, including parenting classes and individual counseling, until her participation became a condition of a plea agreement in a pending criminal case. One of the reasons the trial court initially removed C.M. from respondent was due to her substance abuse, particularly her alcohol abuse. Respondent's actions during this period support the trial court's findings that she failed to demonstrate any "earnest or conscientious strides" toward correcting or controlling her substance abuse. Therefore, the trial court's finding of unfitness due to respondent's failure to make reasonable efforts to correct the conditions which led to C.M.'s removal was not against the manifest weight of the evidence.

¶ 38 Because we have determined the trial court did not err in finding respondent unfit on this ground, we need not review the other statutory grounds.

¶ 39 B. Best-Interest Finding

¶ 40 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interests of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill.

App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interests of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 262, 810 N.E.2d at 126-27.

¶ 41 The best-interest stage is about the best interests of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments[;]

* * *

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) 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;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 42 Here, the record demonstrates respondent provided C.M. with instability and encouraged poor choices. Respondent failed to maintain stable housing or living arrangements and lied to DCFS about her involvement with her abusive paramour. She raised false hope in C.M. by promising to address her alcoholism, only to repeatedly relapse during outpatient treatment.

¶ 43 As respondent's caseworker noted, respondent engaged in self-sabotage as she approached milestones in her case, particularly as DCFS contemplated returning C.M. to her. In fact, C.M. was scheduled to move into A Safe Haven with respondent within days when she obtained a day pass to leave the facility and never returned. Respondent's unhealthy trend of building C.M.'s hope and letting him down is not in his best interests. Moreover, reports indicate respondent encouraged C.M. to both use and sell marijuana, and continued to contact C.M. despite a court order prohibiting unsupervised contact. While we cannot deny the strong bond that exists between respondent and C.M., that bond is not the only factor the court should consider.

¶ 44 The sad fact is that C.M. currently has no permanency due to his behavioral issues caused by his unstable relationship with his mother. By the time the trial court terminated respondent's parental rights, C.M. had been in DCFS custody for more than three years. Over the course of those three years, the court and DCFS patiently gave respondent chance after chance to address her alcoholism and domestic-violence issues to no avail. To give C.M. false

hope any longer would not be in his best interests. Rather, it is in C.M.'s best interests to sever the ties of dysfunction, abuse, and illegal behavior his relationship with respondent provides.

¶ 45 Thus, we conclude the court's best-interest finding was not against the manifest weight of the evidence.

¶ 46

III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm the trial court's judgment.

¶ 48 Affirmed.