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2015 IL App (4th) 141017-U

NO. 4-14-1017

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 20, 2015

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

In re: T.H., M.H., and A.H., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12JA45
ADAM HOLMAN,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Pope and Justice Turner 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 March 2014, the State filed a petition to terminate the parental rights of respondent father, Adam Holman, as to his children, T.H. (born March 29, 2004), M.H. (born March 22, 2007), and A.H. (born June 18, 2009). Following an August 2014 hearing, the trial court found Holman unfit. In October 2014, the court determined it was in the best interest of the children to terminate Holman's parental rights.

¶ 3 Holman appeals, asserting the trial court erred in finding him unfit and determining it was in the children's best interest to terminate his parental rights. For the following reasons, we affirm.

¶ 4

## I. BACKGROUND

¶ 5

### A. Initial Proceedings

¶ 6

In August 2012, following a series of domestic-violence complaints alleging Holman battered Emerena Holman, his wife and the children's mother, the Department of Children and Family Services (DCFS) recommended intact-family services and assigned the case to the Center for Youth and Family Solutions (CYFS). In October 2012, the State filed a petition for adjudication of neglect against Holman and Emerena, alleging the children were neglected due to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2012)), in that the Holmans subjected the children to (1) domestic violence, (2) substance abuse, and (3) exposure to physical harm.

¶ 7

In February 2013, the trial court entered an adjudicatory order finding the minors neglected due to their injurious environment. On March 8, 2013, the court entered a dispositional order finding (1) it was in the children's best interest to adjudge the children neglected and make them wards of the court; (2) respondent parents were unfit and unable, for reasons other than financial circumstances alone, to care for the children; and (3) it was in the best interest of the children to place custody and guardianship with DCFS. At that time, the children were removed from the Holmans' care and placed in relative foster care.

¶ 8

In June 2013, the trial court suspended all visits between Holman and the children due to his failure to engage in services, and visitation remained suspended for the remainder of the case. Starting in December 2013, Emerena received unsupervised extended overnight visitation with the children. By February 2014, the children had transitioned back to Emerena's custody, where they remained through the conclusion of this case.

¶ 9

## B. Termination Proceedings

¶ 10

In March 2014, the State filed a petition to terminate Holman's parental rights.

The petition alleged Holman was unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for DCFS taking the children into custody (750 ILCS 50/1(D)(m)(i) (West 2012)) (count I); (2) make reasonable progress toward the return home of the children during the initial nine-month period following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count II); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the children (750 ILCS 50/1(D)(b) (West 2012)) (count III).

¶ 11

### 1. *Fitness Hearing*

¶ 12

In August 2014, a fitness hearing commenced as to Holman. Kelly Beisser, a counselor for CYFS, testified she was Holman's caseworker from August 2012 until June 2013. Prior to the dispositional hearing, in December 2012 and February 2013, Beisser discovered Holman visiting with the children in violation of the supervision requirement within the safety plan. Holman also missed "several" scheduled visits due to work. According to Beisser, Holman was always affectionate, appropriate, and caring toward his children during visits. To address Holman's substance-abuse issues, Beisser referred him to the Gateway Foundation (Gateway) for residential treatment. After Holman completed his residential treatment at Gateway in January 2013, Beisser referred him to outpatient services for substance abuse at the Prairie Center and anger management at Cognition Works. Though he participated in the initial substance-abuse assessment at the Prairie Center, Holman did not complete the more in-depth assessment or enter into the outpatient program. Holman began attending a batterer's program at Cognition Works; however, in April 2013, he was terminated after completing 5 of the 26 weekly sessions due to excessive absences.

¶ 13 Amber Beaulieu, a foster care worker for CYFS, testified she had been Holman's caseworker since August 2013. Beaulieu had no contact with Holman until the State filed the termination petition in April 2014, despite her attempts to call and send letters to his last known addresses. She subsequently referred him to domestic-violence counseling in Belleville, Illinois, but the facility was located 100 miles from Marion, where Holman resided, and he had no available means of transportation. In April 2014, Holman sent her an e-mail indicating he was attending substance-abuse counseling and anger-management classes in Marion. This was the first time Beaulieu learned Holman was participating in any services. During her conversations with Holman, he never requested visitation with the children; however, his children expressed a desire to visit their father.

¶ 14 Holman testified he resided with Emerena and the children until the court entered its March 2013 dispositional order that removed the children to foster care. Prior to March 2013, Holman often served as the primary caretaker for the children while Emerena worked. In March 2013, Holman left the home he shared with Emerena and moved to Rantoul, Illinois. He initially lived in his car until he obtained work, at which time he began living at a motel. During this time, he had weekly visitation with the children, though he occasionally missed his visits due to his work schedule. In May 2013, Holman moved to Marion, Illinois, to live with his grandmother.

¶ 15 In September 2013, Holman was arrested for driving under the influence of alcohol (DUI). As a result of his plea agreement, in early 2014, he obtained a substance-abuse evaluation. Around the same time, he received a copy of his service plan from Beaulieu. Because he was unable to engage in domestic-violence counseling at the Belleville facility as

recommended by Beaulieu, in April or May of 2014, Holman engaged in domestic-violence classes in Marion. The same facility also provided him with substance-abuse counseling.

¶ 16 Holman testified he was dedicated to maintaining a sober lifestyle. He had not used heroin in nearly two years. He last consumed alcohol in late 2013 or early 2014, which, he acknowledged, was after his DUI arrest. Holman explained he had previously attended Alcoholics Anonymous meetings, but he found dwelling on his past detrimental to his sober lifestyle. According to Holman, he maintained several jobs, subcontracting for building maintenance and running an online store that sold collectibles. He acknowledged he had not provided financially for his children but explained he was not making any extra money to send to them.

¶ 17 Following the presentation of evidence, the trial court found the State proved Holman unfit as to counts I and II. The court also found the State proved count III in part, determining the State demonstrated Holman failed to maintain a reasonable degree of concern and responsibility toward his children; however, the State did not demonstrate Holman failed to maintain a reasonable degree of interest.

¶ 18 *2. Best-Interest Hearing*

¶ 19 In October 2014, the trial court proceeded to the best-interest stage of the termination proceedings.

¶ 20 The trial court considered the best-interest report and a report filed by the court-appointed special advocate. Both reports indicated the children were happy to be home with their mother, performing well in school, and exhibited no serious behavioral issues. The children expressed that they missed their father and wanted to see him. Emerena maintained stable housing and employment and remained cooperative with CYFS. She exhibited appropriate

parenting skills and found appropriate support as needed. Holman had not maintained contact with CYFS or the caseworker.

¶ 21 During the hearing, Emerena testified the children missed their father. She requested the children receive supervised visitation with Holman as long as his drug tests were negative. She emphasized Holman had never battered the children, only her.

¶ 22 Emma Smith, Holman's aunt, echoed Emerena's sentiments. She testified she had daily contact with the family. She knew Emerena and Holman had a volatile relationship but, if she saw either of them drinking or arguing, Smith would keep the children with her. Smith stated she observed the children looking at photographs of Holman, and she overheard one of the girls asking to see him. Smith said she had no concerns about the children's safety around Holman.

¶ 23 Holman testified similarly to that of his testimony at the fitness hearing. He had not had contact with the children since his visits were suspended in June 2013. He was participating in anger-management and substance-abuse counseling in Marion, and he had not consumed drugs or alcohol since he obtained his drug and alcohol evaluation in early 2014. He managed to avoid relapsing by keeping himself busy with selling collectibles and maintenance work.

¶ 24 Holman described his relationship with the children as a good, healthy relationship. His altercations with his wife were usually verbal, though they had become physical "a few" times. However, Holman stated the children only witnessed "a couple" of verbal altercations and no physical altercations. He indicated he would not have any altercations with his wife if allowed visitation with the children. If asked to do so, Holman said he would

engage in individual counseling and commute to Champaign in an effort to reestablish a relationship with his children.

¶ 25 Following the presentation of evidence, the trial court found it was in the children's best interest to terminate Holman's parental rights. Though the court took consideration of the children's desire to maintain a relationship with Holman, the children's wishes were not enough to overcome the remainder of the evidence. The court noted the children were in a safe and permanent home with their mother, who was a fit, willing, and able parent.

¶ 26 Conversely, the trial court found Holman was a destructive factor with ongoing domestic-violence issues whose presence placed the children in an unsafe environment. Moreover, the court determined that any supervised visitation would be impractical, as it would likely require supervision by law enforcement due to Holman's volatile nature.

¶ 27 This appeal followed.

## ¶ 28 II. ANALYSIS

¶ 29 On appeal, Holman argues the trial court erred in finding him unfit and determining it was in the children's best interest to terminate his parental rights. We address these arguments in turn.

### ¶ 30 A. Fitness Finding

¶ 31 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 court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.*

¶ 32 The trial court found Holman unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for DCFS taking the children into custody (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return home of the children during the initial nine-month period following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of concern or responsibility as to the welfare of the children (750 ILCS 50/1(D)(b) (West 2012)). We begin by addressing the evidence related to the second ground of unfitness—failure to make reasonable progress in the first nine months following adjudication—because it is dispositive of the remaining issues.

¶ 33 "Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17, 14 N.E.3d 26. To establish reasonable progress, the trial court must find some "measurable or demonstrable movement toward the goal of return of the child." (Internal quotation marks omitted.) *Id.* In measuring the parent's progress, the court should consider "the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." (Internal quotation marks omitted.) *Id.* A parent demonstrates reasonable progress when the court finds it would be able to return the child to the parent's custody in the near future. *Id.* When the petition alleges a parent failed to make reasonable progress in the initial nine months following adjudication, the calculation of that period begins from the date the court enters the dispositional order finding the children neglected. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

¶ 34 In this case, the initial nine-month period spanned from March 8, 2013, until December 8, 2013. In March 2013, rather than engaging in services previously recommended by Beisser—*i.e.*, engaging in outpatient substance-abuse and anger-management counseling—Holman moved to Rantoul to find work. By May or June 2013, Holman had moved to Marion to live with his grandmother. During this period of time, Holman failed to engage in any services, which demonstrates a lack of reasonable progress. In fact, in June 2013, the trial court rescinded Holman's visitation due to his lack of compliance with the service plan.

¶ 35 In September 2013, Holman was arrested for DUI, indicating he was not addressing his substance-abuse issues. Moreover, he admitted he continued drinking until he obtained his alcohol evaluation in late December 2013 or early January 2014. Throughout the initial nine-month period, from March to December 2013, the record reflects Holman failed to engage in services. He also failed to maintain contact with his caseworkers. This does not demonstrate *any* progress toward the return home of the children, let alone reasonable progress. Accordingly, we conclude the trial court's finding that Holman was unfit for failing to make reasonable progress during the initial nine-month period following adjudication was not against the manifest weight of the evidence.

¶ 36 Because we have upheld the trial court's finding as to one ground of unfitness, we need not review the remaining grounds. See *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001) ("When multiple grounds of unfitness have been alleged, a finding that any one allegation has been proved is sufficient to sustain a parental unfitness finding."). We now turn to the court's best-interest finding.

¶ 37

## B. Best-Interest Finding

¶ 38 Holman next asserts the trial court erred in terminating his parental rights. We disagree.

¶ 39 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest 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 interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 40 The focus of the best-interest hearing is on determining the best interest 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).

¶ 41 By the October 2014 best-interest hearing, the children had been returned to Emerena. The children were performing well in school and strengthening their bonds with their mother. Emerena demonstrated appropriate parenting skills and provided the children with safety and stability.

¶ 42 Conversely, Holman had not seen the children since June 2013 due to his failure to participate in services. He had not engaged in services until 2014, and nothing in the record demonstrates he would finish services or be in a position to reunite with the children in the near future. Moreover, he failed to cooperate with his caseworkers by maintaining contact or complying with CYFS referrals.

¶ 43 As the trial court noted, the children's desire to have a relationship with their father is an important consideration. Emerena also expressed her desire to see the children maintain a relationship with their father. However, in balancing the children's wishes with the need for safety and permanence, the court determined it was not in the children's best interest to maintain Holman's parental rights. Given Holman's pattern of domestic violence and substance abuse and his lack of cooperation with CYFS, we agree.

