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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF ELIAS Y., a Minor,)	Appeal from the
)	Court Circuit of
Respondent-Appellee,)	Cook County.
)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	12 JA 1284
)	
Petitioner-Appellee,)	
)	
v.)	The Honorable
)	Rena Van Tine,
SEAN Y.,)	Judge Presiding.
)	
Respondent-Appellant).)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence that the father of a neglected minor consistently lied to his therapists about continuing substance abuse and continuing domestic violence with the minor's mother, over a nine month period, supported the trial court's finding that the father failed to make reasonable progress toward reunification with the minor. The evidence of the minor's strong bond with his foster mother and her ability to provide a safe and stable home for the minor supported the finding that termination of the father's parental rights would serve the child's best interests.

¶ 2 Sean Y. appeals from the trial court's termination of his parental rights over his son, Elias Y. The trial court found that, for a nine-month period, Sean failed to make reasonable

progress towards returning Elias to his care. We hold that the finding is not against the manifest weight of the evidence. The evidence also supports the trial court's finding that termination of Sean's parental rights would serve Elias's interests. Accordingly, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

Laura G. gave birth to Elias on November 16, 2012. Laura already had three children, all in foster care. Sean had two adult daughters. Elias was their first child together. By the end of 2015, they had two more.

¶ 5

The Department of Children and Family Services (DCFS) took temporary custody of Elias on December 19, 2012, and placed him in the care of Sean's eldest daughter, Stephanie Y. DCFS offered services to both Sean and Laura, with a goal of returning Elias to their care. The caseworker recommended that Sean receive parenting education, substance abuse treatment, individual therapy and treatment to address the problem of domestic violence "in regard to his role as a perpetrator of abuse in at least two of his romantic relationships." A psychiatrist noted that in May 2012 Laura said that Sean hit her. The caseworker reported that Sean engaged in the services offered and made substantial progress by June 2013. Sean completed the parenting class in May 2013. Piper Caldwell began working as Elias's caseworker in September 2013.

¶ 6

In February 2014, the Gateway Foundation evaluated Sean's progress with treatment for substance abuse. The counselor found that Sean's "perspective inhibits [his] ability to make behavioral changes without repeated, structured, clinically directed interventions," and that Sean was "experiencing an intensification of symptoms of the substance related disorder, and

his[] level of functioning [was] deteriorating despite modification of the treatment plan."
The counselor added that Sean "demonstrated a lack of capacity to resolve his[] problem(s)."

¶ 7 Laura gave birth to Zenea Y. on May 1, 2014. Stephanie agreed to act as Zenea's foster mother.

¶ 8 In June 2014, Caldwell reported that Sean had made unsatisfactory progress towards reunification with Elias. Caldwell acknowledged that Sean completed a two-week anger management program. But a domestic violence program terminated Sean's participation because he failed to appear for too many sessions. Sean also appeared inconsistently for individual therapy and for substance abuse treatment. He submitted only three urine drops of the 11 assigned, and those drops tested positive for the presence of marijuana derivatives. Gateway reported that Sean lied about his drug use.

¶ 9 The trial court entered an order dated July 10, 2014, finding that Sean had not made substantial progress towards the goal of returning Elias to Sean's care. But the court did not change the permanency goal or the foster placement of Elias.

¶ 10 In December 2014, Caldwell reported that Sean had begun working with a new therapist on domestic violence issues, but Sean's "attendance [was] inconsistent and he ha[d] not been truthful with his therapist regarding his relationship with [Laura]." Although Sean had told both Caldwell and his therapist that he had only telephone contact with Laura, he later "admitted *** that [Laura] was living with him until the end of November, 2014." Sean submitted urine for analysis for only one of 12 scheduled drops, and that sample showed "a high level of marijuana."

¶ 11 The trial court, in an order dated January 8, 2015, found both Laura and Sean "unable *** to care for, protect, train, or discipline" Elias, and therefore the court gave Debra Dyer-Webster of DCFS authority to place Elias. Elias remained in Stephanie's care.

¶ 12 Laura gave birth to Aiden Y. on April 6, 2015. Because Stephanie could not take on another child, DCFS placed Aiden with another foster family. In June 2015, Sean completed a class concerning domestic violence. Sean's drops continued to test positive for marijuana until September 2015. Sean moved to Indiana and found a steady job. He continued to come to Illinois for his weekly visits with his children. Caldwell reported that Sean arrived on time for his visits and interacted appropriately with the children, although he regularly asked the caseworker to help him handle the children during his visits.

¶ 13 The State filed a motion for termination of parental rights and appointment of a guardian with the right to consent to the adoption of Elias. In an order dated October 5, 2015, the trial court found that Laura and Sean had not made substantial progress toward reunification with Elias, and the court changed the permanency goal to substitute care pending termination of parental rights.

¶ 14 The trial court held the hearing on the motion for termination of parental rights on February 1, 2016. Laura voluntarily consented to the adoption of Elias, on condition that Stephanie adopt Elias. Stephanie's father, Sean, did not consent to the proposed adoption. The State alleged two statutory grounds for terminating Sean's parental rights over Elias: (1) Sean failed to make reasonable progress toward reunification with Elias during the nine month period from August 1, 2013, to May 1, 2014 (see 750 ILCS 50/1 D(m)(iii) (West

2012)), and (2) Sean failed to maintain a reasonable degree of responsibility for Elias's welfare (see 750 ILCS 50/1 D(b) (West 2012)).

¶ 15 At the hearing, Caldwell testified that at a meeting in January 2014, Caldwell told Sean that Sean's therapist said Sean had missed individual therapy sessions for two weeks. Sean said he had gone to the sessions and he accused his therapist of lying. Sean also said he did not need services related to domestic violence because he no longer lived with Laura. In a meeting in March 2014, Caldwell told Sean that the counselor for Sean's group therapy sessions reported that Sean attended only 4 of 18 sessions. Sean said that the counselor lied about his attendance. In a June 2014 phone conversation, Caldwell confronted Sean about his urine drops. Sean said he had not used marijuana since February 2014, and that the test results were wrong. Sean attended substance abuse treatment and individual therapy sessions inconsistently through the nine month period ending May 2014. Caldwell testified that she discovered that Sean and Laura continued to live together until November 2014, and Sean lied to his therapists about his living arrangements.

¶ 16 Sean testified that he missed some scheduled therapy appointments and some of the urine drops, and that he had "a problem with honesty at least in the beginning" of DCFS's involvement with Elias. Sean said, "I was in denial due to the fact that I was embarrassed about my own past because I was a victim of domestic violence myself." He explained that his experience with domestic violence led him to deny his relationship with Laura, and he added, "I was in denial of just those particular things, but anything else I was basically honest with." He said that when he told Caldwell and his therapists that he was not using marijuana, he was not using marijuana, and the urine drops continued to test positive because "it takes a

while for your system to clean." The urinalysis started showing no significant level of marijuana in Sean's system as of September 2015. Sean then testified that he had not used marijuana since February 2015, or "maybe a little bit more before then." Sean also admitted that he told personnel at Gateway that he had not used marijuana at all during 2014. He acknowledged that domestic violence continued in his relationship with Laura until they separated at the end of 2014.

¶ 17 Elias's guardian *ad litem* argued that Sean's dishonesty with his therapists and his failure to fully engage in services showed both a lack of progress and a lack of responsibility for Elias's welfare. The trial court noted that Sean's consistent visits with his children, and his appropriate conduct in those visits, showed his concern for Elias. The court said, "A reasonable father would have come in and engaged in services immediately and taken on the responsibility of admitting that he had this Marijuana issue, the domestic violence issue, *** and fully engage in the services right from the get go." The court found that the State met its burden of proving Sean unfit both because he had not demonstrated responsibility for Elias's welfare and because he failed to make substantial progress towards reunification with Elias in the nine month period from August 1, 2013, to May 1, 2014.

¶ 18 The parties immediately proceeded to the best interest hearing. Caldwell testified that she visited Stephanie's home several times during Elias's life, including once less than 30 days before the hearing. Caldwell found the home safe and appropriate, and Elias had bonded well with Stephanie and the other members of Stephanie's family who lived in her home. Stephanie lived with her sister and Stephanie's own child, as well as Elias and Zenea. Caldwell believed that adoption by Stephanie would serve Elias's best interests. According

to Caldwell, Stephanie had a "complicated" relationship with Sean, and Sean had "worked hard over the course of the last year to improve the relationship between himself and Stephanie, and it's progressing." If Stephanie adopted Elias, "visits with [Sean] will decrease," while Sean would continue his weekly visits with Zenea and Aiden. Caldwell said that Elias had a strong bond with Sean, but a stronger bond with Stephanie, whom he called "Mommy." Stephanie told Caldwell that she would permit Sean to continue to visit Elias, "as long as [Sean was] safe and appropriate."

¶ 19 Stephanie testified that she wanted to adopt Elias "to see him stay with the family." She preferred to adopt Elias, rather than maintaining the foster family relationship, because she wanted to provide Elias better stability. She planned to permit Elias to visit with Sean after adoption, as long as responsible family members supervised the visits. Stephanie said that she and Sean "have actually had conversations." She added, "At the start of the case we didn't [have] a relationship at all. So I think we have made some progress, but there are still some things that need to be done."

¶ 20 Sean testified:

"[Stephanie and I] don't have a relationship. I don't understand why she said that we do. I reached out to her numerous [] times; she has never responded. *** I don't have a phone number for her or her sister. For them to come up here and say that we're trying to work on a relationship, *** that's false.

* * *

And I really appreciate what my daughter has done. I mean I'm the one who actually put [Elias] in her care when I could have did it other ways. But I put him

in [her] care and all of a sudden now they want to take my son away, and that's not right.

*** Do mind this, I am her father as well. *** [I]t's the father [who] says what it goes. ***

[Elias] has a lot of temperament problems *** when he goes to school ***. I heard he's been spanked because he has not been potty trained. He's not learning anything from home.

* * *

*** It's not fair to him because she had something in the past towards me.

I've been trying to reconcile with my daughter; she's grown now. So whatever I did in the past, she needs to go on and move on with that. *** [D]on't lash at me to hurt me to take my son away from me because of certain pain that you have been in."

The guardian *ad litem* asked Sean why he had no relationship with Stephanie. Sean answered, "[S]omehow or another she felt maybe I hurt her in the past. I can't say significantly why." The following testimony concluded the evidence:

'Q. You do not recall that you would show up at her home unannounced and you refused to leave when she asked you to?

A. Okay. Let me address this for the record; that's not her home; that's actually my grandmother's home.

Q. Was she living there?

A. Yeah, she was staying.

Q. Okay. It was not your home, correct?

A. No, it was not my home.

Q. And when she asked you to leave, you refused; isn't that right?

A. No. She never asked me to leave.

Q. She did not ask you to leave so she can go to work?

A. No, that never came up about.' "

¶ 21 The parties did not ask Stephanie for her account of the incident or incidents to which the guardian *ad litem* alluded.

¶ 22 The court discussed all of the statutory factors concerning Elias's best interests, and concluded that termination of Sean's parental rights would serve Elias's best interests. Sean filed a timely notice of appeal.

¶ 23 ANALYSIS

¶ 24 Sean challenges the finding that the State proved Sean unfit and that terminating Sean's parental rights would serve Elias's best interests. We will not disturb the trial court's findings of fact unless the findings are contrary to the manifest weight of the evidence. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006); *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004).

¶ 25 Fitness

¶ 26 The trial court found Sean unfit to serve as Elias's parent, both because he failed to maintain a reasonable degree of responsibility for Elias's welfare (750 ILCS 50/1 D(b) (West 2012)), and because he failed to make reasonable progress towards Elias's return during the nine month period from August 1, 2013, to May 1, 2014 (750 ILCS 50/1 D(m)(iii) (West

2012)). The trial court should not enter a finding of parental unfitness unless the State proves the parent unfit by clear and convincing evidence. *In re Daphnie E.*, 368 Ill. App. 3d at 1064. The State can show that a parent has not made reasonable progress by presenting evidence that the parent has not made such progress in complying with directives for return of the child that the court can, in the near future, return the child to his parent's custody. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 27 The appellate court explained the purpose of the requirement for progress in each nine-month time period:

“This provision acts to abate the harm that a perpetual lack of permanency inflicts on children, because it mandates that parents must, with some degree of consistency, make reasonable progress toward their children's return home or risk forfeiting their parental rights. By so doing, the provision balances the potential positive effect of time on a parent's ability to care for his or her child with the negative effect of time on the child's psyche. Simply put, a parent is required to make reasonable progress during a nine-month period. For this reason, respondent's early success is not determinative.” *In re K.H.*, 346 Ill. App. 3d 443, 455 (2004).

¶ 28 By August 2013, Sean had completed the parenting class DCFS recommended, he had met with his individual therapist, and he had started treatment for substance abuse and domestic violence. Caldwell found that Sean's interactions with Elias improved over the nine month period, but not to the extent that Caldwell would recommend unsupervised visits. During the nine month period at issue, Sean continued to use marijuana, and he lied to his

caseworker and substance abuse counselor about that use. He missed many of his individual therapy sessions, and he failed to attend domestic violence classes regularly. He also lied to his caseworker and therapist about his living arrangements, telling them that he saw Laura rarely, while, in fact, he continued to live with Laura throughout the nine month period, and domestic violence continued to occur.

¶ 29 Parents' "refusal to face their shortcomings [is] a sufficient basis for the trial court to conclude that they [have] not made 'reasonable progress' toward the return of the child." *In re Boolman*, 141 Ill. App. 3d 508, 512 (1986). Even when parents visit their children regularly, their failure to comply with DCFS plans may justify a finding of unfitness. *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000). Here, in the nine month period at issue, Sean failed to make reasonable progress in individual therapy, in group therapy, with substance abuse, and with domestic violence. His progress in his relationship with Elias does not, standing alone, shift the manifest weight of the evidence. See *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004).

¶ 30 The trial court's finding, that Sean failed to make reasonable progress toward reunification for nine months, is not contrary to the manifest weight of the evidence. Because we must affirm the finding of unfitness on this ground, we need not review the finding that Sean failed to maintain a reasonable degree of responsibility for Elias's welfare. See *In re Tiffany M.*, 353 Ill. App. 3d at 891.

¶ 31 Best Interests

¶ 32 To justify termination of a parent's rights over his child, after the court has found the parent unfit, the court must separately find, by a preponderance of the evidence, that

termination serves the child's best interests. *In re D.T.*, 212 Ill. 2d 347, 363-66 (2004). In assessing the child's best interests, the trial court should consider the following factors:

“(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child.” *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009).

¶ 33 At this stage of proceedings, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364. Caldwell's testimony supported the finding that Stephanie had given Elias a stable, safe and appropriate home which helped preserve Elias's sense of attachment and permitted the development of his identity in a familiar familial setting. Termination of Sean's parental interests and adoption by Stephanie provided the least disruptive placement for Elias and assured that Elias would retain the sense of continuing affection for him from the woman he called "Mommy." Especially in light of Elias's need for permanence and Sean's continuing ascription of blame to anyone but himself for his persistent dishonesty and his difficulties with domestic life, we cannot say that the trial court's finding, that termination of Sean's

parental rights would serve Elias's best interests, is contrary to the manifest weight of the evidence.

¶ 34

CONCLUSION

¶ 35

Sean's failure to make substantial progress with his individual therapy, domestic violence issues, and substance abuse, in the period from August 1, 2013, to May 1, 2014, justifies the trial court's conclusion that the State presented clear and convincing evidence showing Sean unfit to parent Elias. The evidence also supported the finding that terminating Sean's parental rights would serve Elias's best interests. Accordingly, we affirm the trial court's judgment.

¶ 36

Affirmed.