2016 IL App (2d) 160127-U
No. 2-16-0127
Order filed September 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re CODY S., LILLYANN H., LACY H., JASON H., Jr., & JAYDEN H.,	)	Appeal from the Circuit Court of Winnebago County.
Minors.	)	Nos. 13-JA-74 through 13-JA-77, and 15-JA-17,
(The People of the State of Illinois, Petitioner-Appellee, v. Laura S.-H. & Jason H., Sr., Respondents-Joint Appellants).	)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found respondent-mother unfit and terminated the parental rights of respondent-mother and respondent-father.

¶ 2 The trial court found respondents, Laura S.-H. and Jason H., Sr., unfit and terminated their parental rights. Laura and Jason Sr. have jointly appealed. Laura is the mother of five children. Laura's eldest is Cody S., who was born in 2005. (Cody's parentage was never determined; his presumed father is not a party to this appeal.) In 2008, Laura gave birth to Lillyann H.; in 2010, Laura gave birth to Lacy H.; and in 2012, Laura gave birth to Jason H., Jr.

¶ 3 Laura and Jason Sr. were married shortly after Jason Jr. was born. In April 2012, two months after Jason Jr. was born, the Department of Children and Family Services (DCFS), received a report that Jason Jr. had been hospitalized for a third time due to malnutrition. In addition, a separate report to DCFS indicated that Jason Sr. was physically abusing his six-year-old step son, Cody. An intact family case was opened, and eventually closed less than four months later.

¶ 4 On March 6, 2013, the family's case was reopened when employees at the children's elementary school noticed bruises on Cody's face and discovered extensive bruising and welts on Cody's back and thighs. When asked, Cody reported that his step-father, Jason Sr., had repeatedly struck him with a belt and belt-buckle. According to Cody, Laura was aware of the abuse, but told Cody to say Jason Sr. does not hit him so he "doesn't get taken away." Cody was also forced to walk to school that day alone, in over eight inches of snow. A child-protection investigator visited the children's home to conduct an inspection, and found that it was in "a dismal state." Strewn about the house were piles of garbage, used diapers, clothes, and rotting food. The children's beds had no sheets, and had "a strong odor of urine." In addition, Jason Sr. had been previously convicted of domestic battery to Laura.

¶ 5 DCFS took protective custody of the children that same day, and Jason Sr. was arrested for aggravated battery (great bodily harm). See 720 ILCS 5/12-3.05 (West 2012). Two days later, the State filed a petition alleging that Cody was an abused minor, and further alleging that Lillyann, Lacy, and Jason Jr., were neglected minors in an environment injurious to the welfare due to Jason Sr.'s physical abuse of Cody. See 705 ILCS 405/2-3(1)(b) (West 2012). On the State's motion, the trial court judge, the Hon. Mary Linn Green, heard evidence that the children had been abused and neglected, and authorized DCFS to place the children in foster care.

Thereafter, Cody and Jason Jr. were placed together in a foster home in Aurora, and Lillyann and Lacy were placed together in a foster home in Rockford.

¶ 6 DCFS issued service plans to Laura and Jason Sr., which consisted of tasks that each parent was required to perform before the children could be returned to their custody, which included remaining free of drugs and alcohol, and establishing a suitable residence for the children. In connection with his criminal case, Jason Sr. was ordered to have no contact with Cody. In addition, because DCFS classified Jason Sr. as a security risk to all of the children, any visitation between Jason Sr. and his (then) three children had to be conducted under supervision outside of the home (for a time, they were held at the county jail) and separate of Laura's supervised visitation with the children. Either because of or despite these restrictions, Laura repeatedly told DCFS caseworkers that she and Jason Sr. were separated and that she would be filing for divorce. As a result, DCFS caseworkers drafted service plans with tasks and goals appropriate for Laura and Jason Sr. to establish and maintain separate households.

¶ 7 In April 2013, Laura informed caseworkers that she was pregnant. In August 2013, Laura stipulated that Cody was an abused minor, and that Lillyann, Lacy, and Jason Jr. were neglected minors. Then, both Laura and Jason Sr. stipulated that they were dispositionally unfit, and the children were made wards of the court. The trial court set the children's permanency goal at "return home" within 12 months.

¶ 8 At some point, Laura moved in with Jason Sr.'s parents, who reside in Lake in the Hills, in McHenry County. On December 2, 2013, Jason pled guilty to aggravated battery and was sentenced to probation. He was then released from the Winnebago county jail and took up residence at his parent's home as well. On December 8, 2013, Laura gave birth to Jayden H., who was born premature and was hospitalized for two weeks. At the end of Jayden's

hospitalization, DCFS took protective custody of Jayden. The McHenry County State's Attorney's Office filed a petition alleging that Jayden was neglected due to an injurious environment, and the McHenry County circuit court granted DCFS temporary shelter care of Jayden. Thereafter, Jayden was placed in the same foster home as Lillyann and Lacy. In February 2014, Laura left Jason Sr.'s parents' home, and moved into a homeless shelter in Crystal Lake.

¶ 9 On April 15, 2014, the trial court (in Winnebago County, Judge Green) held a permanency hearing concerning the preceding nine-month period. A transcript from the hearing has not been included in the record, however. After the hearing, the court entered an order stating that it found Laura had made reasonable efforts during that timeframe while Jason Sr. had not. (Because Jayden was born in December 2013 and had not yet been adjudicated neglected, his permanency was not at issue.) The trial court then entered an order transferring the case to the circuit court of McHenry County.

¶ 10 On April 24, 2014, upon Laura's prior stipulation (a transcript of which is not included in the record), the McHenry County circuit court (Hon. Maureen P. McIntyre) adjudicated Jayden neglected and, after a dispositional hearing, Jayden too was made a ward of the court. On July 17, 2014, Judge McIntyre held an additional permanency hearing concerning all five children. We do not have a transcript for this permanency hearing either. After the hearing Judge McIntyre entered an order stating that Laura had made reasonable efforts, that Jason Sr. had not, and that the children's permanency goal remain set at return home.

¶ 11 In November 2014, Laura left the homeless shelter and moved into an apartment in Rockford. In January 2015, with the parties' agreement, Judge McIntrye transferred the children's case back to Winnebago County. On February 28, 2015, the trial court (Judge Green)

held a permanency hearing, after which the court determined that neither Laura nor Jason Sr. had made reasonable progress towards reunification with the children. The court set the children's permanency goal as substitute care pending a determination of Laura's and Jason Sr.'s parental rights.

¶ 12 Parenthetically, we note the termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The first step requires the State to plead and to prove,by clear and convincing evidence, that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re J.L.*, 236 Ill. 2d at 337. If the trial court determines that the parent is unfit, the court will then consider whether a preponderance of the evidence demonstrates that it is in the child's best interest that parental rights be terminated. *Id.*; *In re E.B.*, 231 Ill. 2d 459, 472 (2008); *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 13 In March 2015, the State filed petitions to have Laura and Jason Sr. declared unfit parents. The State sought to terminate Jason Sr.'s parental rights over Lillyann (then 5 years old), Lacy (then 4), Jason Jr. (then 3), and Jayden (then 18 months). The State also sought to terminate Laura's parental rights over Cody (then age 10), and over Lillyann, Lacy, Jason Jr., and Jayden. Ultimately, after hearing evidence over several court dates, the trial court found Laura and Jason Sr. unfit and terminated their parental rights.

¶ 14 On appeal, Laura challenges the trial court's finding of her unfitness and the termination of her parental rights. Jason Sr., on the other hand, does not argue against the court's finding that he was unfit, but instead "suggests" that if we find Laura's parental rights should not have been terminated, then we should also find that his parental rights should not have been terminated

either. After reviewing the record, we affirm the trial court's judgment that both Laura and Jason Sr. are unfit parents, and further that it was in the children's best interests to terminate Laura's and Jason Sr.'s parental rights.

¶ 15 With respect to Laura, the State's petitions alleged that she was unfit on several grounds; however, we can confine our discussion to the allegation of unfitness common to each of the petitions as a finding on any one ground under section 1(D) of the Adoption Act is sufficient to enter a finding of parental unfitness. See *In re C.W.*, 199 Ill. 2d 198, 210 (2002). Under section 1(D)(m)(ii) of the Adoption Act, a parent has a duty to "make reasonable progress toward the return of the child to the parent" within a specific nine-month period after the child has been made a ward of the court. See 750 ILCS 50/1(D)(ii) (West 2014). "Reasonable progress" is an objective assessment of a parent's steps toward reunification, as measured by a parent's compliance with service plans and with court directives in a given nine-month period. *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7 (citing *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001)). A parent will be found to have made reasonable progress if and only if his or her actions during that period indicate that the court will be able to order that the child be returned home in the near future. *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7.

¶ 16 We will reverse a finding of parental unfitness only if it was against the manifest weight of the evidence—by which we mean if and only if the opposite result was clearly warranted. *Id.*, ¶ 6. In this case, however, the evidence amply supported the trial court's finding of Laura's unfitness.

¶ 17 We note that, in passing, Laura makes the vague claim that the reports of DCFS caseworkers should not have been admitted in this case on hearsay grounds. Laura's claim fails to consider that the reports were admitted under the Juvenile Court Act's limited business-

records exception (see 705 ILCS 405/2-18(4)(a) (West 2012)), and as such, there was no error in their admission.

¶ 18 As alleged in the State's petitions in this case, the nine-month period in question was from May 30, 2014, to February 28, 2015 (or from just after the permanency hearing held in McHenry County right up to the permanency hearing that resulted in the goal change, before Judge Green). During this nine-month period, Laura largely resided in a women's shelter in McHenry County, and the children were brought to the shelter for supervised visits every three weeks. As numerous reports indicate, the children's visits with Laura are best described, in the trial court's words, as "chaotic." Laura had significant difficulty managing and parenting the children during visits throughout the pendency of this case, and the nine-month period in question was no different. Laura was often unprepared for visits (*e.g.*, forgetting to bring diapers, wipes, fresh milk, etc.), and during visits at the shelter, Laura was unable to enforce "the rules." As a result, she was unable to prevent the children from eating things they were not supposed to eat (*e.g.*, junk food, spicy food, candy, portions of food too big for a baby to chew), or to keep the children from injuring themselves and each other. Although Laura had successfully completed several parenting classes, at the shelter, Laura insisted that it was the "job" of caseworkers and parenting coaches to manage the children. As a result, caseworkers often had to physically intervene to keep the children from harm, such as preventing them from playing with scissors or from drinking spoiled milk. In November 2014, Laura left the shelter, and moved into a three-bedroom apartment in Rockford. Caseworkers provided "help at home" when the children visited Laura in Rockford; however, Laura's difficulties in parenting the children persisted as Laura would often leave the children unsupervised or unattended.

¶ 19 As noted, Laura was aware of the restriction that she and Jason Sr. were not allowed to have joint visitation with the children, that Jason Sr. was to have no contact with the children during Laura's visits, and that Jason Sr. was prohibited from having any contact with Cody at all. At visits in both June 2014 and July 2014, Laura had called Jason Sr. on her cell phone and attempted to pass the phone around to the children, except Cody. This despite repeated admonishment from caseworkers that Jason Sr. was to have no contact with the children during Laura's visits. (Indeed, throughout the case, there were multiple instances of Laura facilitating contact between the children and Jason Sr., despite the restrictions.) In addition, Laura failed to complete three separate urine screens in December 2014, all of which were considered positive indications of alcohol or drug use.

¶ 20 During this nine-month period, Laura's inability to effectively monitor and parent the children, coupled with her inability to abide by restrictions concerning the children's contact with Jason Sr., prevented caseworkers from transitioning Laura to unsupervised visitation with the children—let alone from enabling the children to live with her. We note, too, that this case began due to Jason Sr.'s physical abuse of Cody, and that Laura's demonstrated inability to abide by the security restrictions concerning Jason Sr.'s visitation cut against any objective progress that Laura made during the children's wardship. See *In re C.N.*, 196 Ill. 2d at 210 (reasonable progress encompasses not merely those conditions which led to the initial removal of the minor but also those conditions which could give rise to a finding of abuse or neglect in the future); see also *In re C.C.*, 299 Ill. App. 3d 827 (1998) (finding of failure to make reasonable progress upheld despite fact mother had divorced father, found employment, and moved in with someone who attended parenting and sexual abuse counseling classes). On the record before us, the trial

court's conclusion that Laura is an unfit parent was not contrary to the manifest weight of evidence.

¶ 21 We turn then to the trial court's best-interests findings. After a parent has been found unfit, during the best-interest portion of the proceedings, the focus shifts to the child, and "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. As with a finding of unfitness, we will not disturb a trial court's determination that it is in the child's best interest to terminate parental rights unless the ruling is against the manifest weight of the evidence. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 54.

¶ 22 In determining a child's best interest, the trial court must consider several factors including the child's physical safety and welfare; the development of the child's identity; the child's sense of attachment, including love, sense of security, sense of familiarity, continuity of affection of the child; the child's community ties, including church, school, and friends; and, the child's need for permanence. 705 ILCS 405/1-3(4.05) (West 2014). In this case, the evidence concerning those factors demonstrated that it was in the children's best interests to terminate Laura and Jason Sr.'s parental rights.

¶ 23 Cody and Jason Jr. have resided in the same foster home in Aurora since March 2015. They are bonded to their foster parents and to their three-year-old foster sister. Although Cody has significant psychological issues (stemming from his abuse), and Jason Jr. has significant educational needs, both Cody and Jason Jr. have thrived under their foster parents' care, and their foster parents are committed to their adoption (and also to the adoption of their foster sister). As the trial court indicated, the evidence showed that both boys are in a loving, stable, and supportive foster home. The same is true of Lillyann and Lacy, who have resided in the same

foster home in Rockford since March 2015. As noted, Jayden came to live with Lillyann and Lacy in January 2016. Lillyann, Lacy, and Jayden are now (for the most part) all developmentally on track and thriving in their foster home, and their foster parents are committed to their adoption.

¶ 24 In contrast, we note that Laura's testimony at the best-interests hearing revealed she had little understanding of the issues that lead to the court's finding of her unfitness. At one point, Laura testified that she would like to continue to "supervise" visitation between Jason Sr. and his four children (which, as the trial court noted, was completely inappropriate). In the respondents' joint-appellate brief, Laura asserts that the court's best-interests findings should be reversed because her "parental rights were terminated *before* the *fitness* hearing ***." (Emphasis added.) We find this statement simply inexplicable. The record shows that the trial court carefully proceeded through both steps in the two-step process concerning the termination of Laura's parental rights. Equally inexplicable, Jason Sr. asserts in the joint-appellate brief that he "did not have an opportunity to present evidence" at the best-interests hearing. The record reveals that Jason Sr. was unavailable on the final court date due to a bout of appendicitis. Jason Sr.'s attorney then "waive[d]" his client's appearance, and did not ask for a continuance. Later, after the State rested its best-interests case, Jason Sr.'s attorney indicated that Jason Sr. had no witnesses to call and no evidence to present. Thus, Jason Sr. certainly had "an opportunity to present evidence" despite the fact that he (apparently) chose not to. See *In re M.R.*, 316 Ill. App. 3d 399 (2000) (the trial court may proceed with a termination hearing where parent is represented by an attorney).

¶ 25 In sum, the trial court's best-interests determinations were not against the manifest weight of the evidence. The evidence showed that it was in the children's best interests to

terminate Laura's parental rights over Cody, Lillyann, Lacy, Jason Jr., and Jayden. The evidence also showed that it was in the children's best interests to terminate Jason Sr.'s parental rights over Lillyann, Lacy, Jason Jr., and Jayden.

¶ 26 Before closing, we note that, pursuant to Supreme Court Rule 311(a), our disposition in this case was due 150 days from the filing of the notice of appeal absent "good cause" for delay. Laura filed her notice of appeal on February 12, 2016, and Jason Sr. filed his notice to join Laura's appeal on March 11, 2016. Thereafter, there were multiple delays in the preparation of the record in this case, and in the presentation of the parties' briefs (almost exclusively caused by the appellants). The case was not submitted for our disposition until August 10, 2016. While we lament the toll that these delays have taken on this case, we must subordinate that concern to our obligation to fully and fairly consider the record as well as the parties' arguments. Under the circumstances, we believe good cause has been shown.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 28 Affirmed.