2016 IL App (2d) 160482-U
No. 2-16-0482
Order filed October 19, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re DOMINIC M., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 13-JA-527
	)	
(People of the State of Illinois, Petitioner-Appellee, v. Leroy M., Respondent-Appellant.)	)	Honorable
	)	Francis M. Martinez,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The order terminating the respondent-father's parental rights to the minor child was affirmed where (1) the trial court made sufficient findings to permit appellate review and (2) the finding that respondent was an unfit parent was not against the manifest weight of the evidence.

¶ 2 Respondent, Leroy M., appeals from an order of the circuit court of Winnebago County terminating his parental rights to his son Dominic M. He argues that the trial court failed to make sufficient factual findings and that the finding of unfitness was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 7, 2013, the State filed a four-count petition alleging that Dominic was a neglected and abused minor in that his mother Christina[1] struck him with a belt and did not provide adequate food. Later that day, Christina waived her right to a shelter care hearing. Leroy was living in Iowa at the time and did not attend those court proceedings. The court entered an order finding probable cause to believe that Dominic was a neglected or abused minor. The court granted temporary guardianship and custody of Dominic to the Department of Children and Family Services (DCFS), with discretion to place him with a responsible relative or in traditional foster care.

¶ 5 Leroy subsequently moved to Rockford. On April 17, 2014, he stipulated to an adjudication of abuse on count I of the petition, which pertained to Christina striking Dominic with a belt. Following the dispositional hearing on May 28, 2014, the court continued DCFS as Dominic's legal guardian and custodian.

¶ 6 The first permanency review hearing took place on October 7, 2014. According to a report to the court filed by the Youth Service Bureau of Illinois Valley (YSB), Leroy had been assessed by Clarity Counseling and Mediation, Inc., and it was recommended that he complete the Partner Abuse Intervention Program (PAIP). The referral was approved, and Leroy was scheduled to begin the class. It was also reported that Leroy began attending parenting classes in June 2014 and that he completed them in August. Furthermore, Leroy was consistent in attending his weekly three hour visits with his son, and the visits had been moved to his home in September. Cathy Costanza, a YSB caseworker, recommended that the court find that Leroy had

[1] Christina ultimately consented to Dominic's adoption, and she is not involved with this appeal. Christina had other children who were taken into protective custody along with Dominic, but Leroy is not their biological father.

made reasonable efforts during this review period. The court found that Leroy had made reasonable efforts and set the goal of returning Dominic home within 12 months.

¶ 7 YSB submitted another report to the court in conjunction with the second permanency review hearing, which took place on March 2, 2015. According to the report, Leroy resided in his mother's apartment with his paramour, their four-month-old baby, and his paramour's two-year-old child. Leroy was unemployed. Although Leroy began attending PAIP in September 2014, he stopped attending the class in November 2014 and was discharged. The report noted that Leroy stated that he did not plan on restarting the class and that he did not get anything out of it. Additionally, Leroy missed a drug drop in January 2015, although he subsequently reported that transportation was an issue. Leroy then had a clean drug drop later that month. He was consistent in attending his weekly visitations with Dominic, and those had gone well. Specifically, Leroy and Dominic would play games, do homework, and eat dinner together. Costanza's testimony at the second permanency review hearing was consistent with YSB's report. She recommended a finding that Leroy had not made reasonable efforts. The court found that Leroy had not made reasonable efforts or progress and continued the goal as return home within 12 months.

¶ 8 On September 1, 2015, the court held the third permanency review hearing. According to YSB's report, Leroy had contacted his caseworker in late March 2015 requesting that his visits with Dominic occur in Iowa. Specifically, Leroy told the caseworker that he was visiting Iowa and that he wanted his son brought there. The agency did not take Dominic to Iowa. In April 2015, the caseworker learned from a third party that Leroy had actually moved to Iowa. However, the caseworker was not able to contact Leroy. On June 1, 2015, Leroy contacted the agency and reported that he had moved to Iowa to be with his paramour and his other child.

According to YSB's report, Leroy indicated during that conversation that he was employed. The caseworker explained to Leroy at that time that he needed to complete the domestic violence service or appeal his service plan, and he was given information regarding filing an appeal. The caseworker had not heard from Leroy since then. According to YSB's report, visitation was available to Leroy one time per week for two hours. Leroy attended 3 of 4 visits in March 2015 but did not attend visits in April through July. There was no testimony presented in court at the third permanency review hearing. The court found that Leroy had not made reasonable efforts or progress, and it changed the goal to substitute care pending court determination of termination of parental rights.

¶ 9 On November 13, 2015, the State filed a petition to terminate Leroy's parental rights. Count I alleged that Leroy failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) (West 2014). Count II alleged that Leroy failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child during three specified ninth-month periods after the adjudication: (1) April 17, 2014, to January 17, 2015; (2) January 17, 2015, to October 17, 2015; and (3) February 17, 2015, to November 17, 2015. 750 ILCS 50/1(D)(m)(i) (West 2014). Count III alleged that Leroy failed to make reasonable progress toward the return of the child during the same three nine-month periods. 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 10 The unfitness portion of the termination proceedings spanned three dates between December 16, 2015, and April 13, 2016. Costanza was the only witness for the State. Her description of Leroy's participation in services and visitation was consistent with what YSB had described in its previous reports. Specifically, she explained that Leroy completed parenting classes in August 2014 and that he regularly attended weekly supervised visitation with Dominic

during 2014. He dropped out of the domestic violence course in November 2014 and indicated that he was not going back. According to Costanza, she then advised him that he needed to contact DCFS to have the domestic violence service removed from his service plan. Additionally, because Leroy started missing drug drops, he was never granted unsupervised visitation with Dominic. Leroy's visits with Dominic continued until March 2015, when Costanza found out that Leroy had moved to Iowa. However, Leroy did not actually contact her until June 1, 2015, at which point he told her that he had a job and an apartment in Iowa. Costanza testified that she again told Leroy that he needed to complete his services or appeal his service plan. She did not hear from him after that until September 1, 2015, when the court changed the goal to substitute care pending court determination of termination of parental rights. Leroy had not visited with his son since March 2015.

¶ 11 On cross-examination, Leroy's counsel asked Costanza a number of questions about why Leroy was referred for a domestic violence service if he had not had a domestic violence incident since 2009. (Documents admitted into evidence showed that Leroy pleaded guilty in September 2009 to a charge of domestic violence against Christina, and he was sentenced to probation.) Costanza explained that the service was recommended based on Leroy's answers to questions during the integrated assessment. Specifically, she said, Leroy's answers "revealed power control issues." Costanza acknowledged that Leroy probably would have had "a very good chance" of getting the domestic violence service removed from his service plan had he taken the appropriate measures.

¶ 12 Furthermore, Costanza testified on cross-examination that Leroy told her in June 2015 that he had moved to Iowa because he was unable to obtain employment in Rockford and he wanted to be with his girlfriend, who had moved back to Iowa. Costanza agreed that it would

have been hard for Leroy to provide for his son without an income, but she did not know whether Leroy could or could not find employment in Rockford. Costanza testified that Leroy sometimes brought one of his other children with him when he visited Dominic. She never observed Leroy being inappropriate with the children.

¶ 13 After the State rested, Leroy presented six witnesses. He first called Costanza. She testified that Dominic came into the care of DCFS because of Christina's actions, not because of anything Leroy did. Costanza never had any concerns about Leroy using drugs, although drug drops are required of everyone.

¶ 14 Leroy testified on his own behalf. He was currently unemployed, because he had lost his job when he got arrested on a civil warrant while attending court in Illinois. Prior to that, he had been employed at a Wal-Mart in Iowa for six or seven months. Leroy explained that he stopped attending the PAIP class because the teachers gave a "preposterous" solution to a hypothetical scenario he posed. He acknowledged that he did not file a service appeal with respect to the PAIP class. He testified that he never used illegal drugs while this case was pending. According to Leroy, he moved to Iowa because he could not find employment in Rockford. He did not have a job lined up when he moved to Iowa, but he found employment at Wal-Mart in about a month.

¶ 15 Laroyel Reaves, one of Leroy's sisters, also testified on his behalf. She had a chance to observe Leroy with Dominic from the time Dominic was born until he was three years old. She testified that Leroy took Dominic to parks, played with him, cooked for him, provided clothes for him, and was a father to him. She had no concerns about Leroy's care for Dominic.

¶ 16 Keavina Johnson, another of Leroy's sisters, provided similar testimony. She had the opportunity to observe Leroy with Dominic up until 2014, and she testified that Leroy was "[r]eal great" with his son. She observed Leroy cook, play games, go to the park, and watch

television with Dominic. Leroy made sure that Dominic had food and toys, and there was a bond between them. She testified that Leroy was never inappropriate in his interactions with Dominic.

¶ 17 Carolyn Williams, Leroy's mother, also testified. She explained that Leroy did some babysitting work for Keavina's children in 2006 and 2007, and he was paid by the State for doing so. Williams testified that Leroy was a good babysitter and that he disciplined the children appropriately. She had also observed Leroy with Dominic, and Leroy was a good father. He cooked, disciplined Dominic appropriately, and provided clothing and shelter.

¶ 18 Finally, Leroy presented testimony from Felicia Taylor, his fiancé. She testified that she and Leroy had been together for three years but that she knew him for three or four years before they started dating. Leroy was one of the best fathers she had met. He cooked for Dominic and provided clothing, shelter, and age-appropriate discipline. Leroy never did anything with Dominic that gave her concern. Taylor testified that Leroy babysat Keavina's children through DCFS off and on from 2006 through 2012. Leroy also did babysitting work through the YWCA in 2014 and 2015. Furthermore, Taylor testified that she had a young daughter with Leroy who was a "daddy's girl." Leroy engaged in age-appropriate activities with their daughter, cooked for her, read to her, bathed her, got her dressed, and played outside with her. Taylor said that Leroy was never violent with either her or their daughter, and she never knew him to use illegal drugs.

¶ 19 The trial court found that the State met its burden on all three counts of the petition. The court's oral rulings were as follows:

> "Now, the Court recognizes this burden or the burden of the State as clear and convincing. During the relevant period – the Court finds that during the relevant period [Leroy] did not adhere to the service plan prescribed to achieve reunification. The most glaring deviation from that plan was his move to Iowa to find employment, and he

absented himself from the court for a substantial period of time without contact to the caseworker.

Purportedly that move back to Iowa was to find employment. However, frankly [Leroy's] testimony strains credibility. He moved to Iowa, took essentially a low skill or fairly low skill employment at Wal-Mart which the Court would assume was fairly available in this community. Claiming he could find no employment in this community he moved to a small town. And frankly his reasons, again as I stated, strained credibility. He moved without notification to the caseworker. Did not – did not stay in communication with the caseworker. And finally in June – he had moved in February, in June contacted the caseworker to see if placement could be made closer to Iowa.

He never finished his domestic violence counseling. And again, giving the reason about getting some advice in counseling that he simply didn't agree with again strains the Court's credibility – or strains his credibility with the Court but it is consistent with the following. That [Leroy] demonstrated a pattern of deciding for himself what was best for himself, and his criteria in making these decisions was what was convenient for himself.

I do find that the State has made or has met its burden of clear and convincing evidence and has shown by clear and convincing evidence that he failed to maintain a reasonable degree of interest, concern or responsibility in Count 1. Failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child in Count 2. And failed to make reasonable progress toward the return of the child to him in that 9-month period."

¶ 20 Following a best interests hearing, the trial court entered an order terminating Leroy's parental rights. This court allowed him to file a late notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 Although Leroy does not clearly identify his separate arguments, it appears that he contends that the trial court failed to make sufficient findings of fact to permit appellate review. He also argues that the court's finding that he was an unfit parent was against the manifest weight of the evidence.

¶ 23 Involuntary termination of parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2014)) is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). 705 ILCS 405/2-29(2) (West 2014); *C.W.*, 199 Ill. 2d at 210. If the parent is unfit, the matter proceeds to a second hearing, at which the State must prove by a preponderance of the evidence that it is in the best interests of the minor to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 352, 366 (2004). The trial court is in the best position to make credibility assessments, and we will not disturb a finding of unfitness unless it is against the manifest weight of the evidence. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 24 Leroy cites *In re B'Yata I.*, 2013 IL App (2d) 130558, in support of his argument that the trial court failed to make sufficient factual findings. In that case, the trial court made no factual findings and simply indicated that the State met its burden of proof by clear and convincing evidence. *B'yata I.*, 2013 IL App (2d) 130558, ¶ 34. We held that the trial court's failure to set forth a factual basis for its decision prevented us from conducting a meaningful review of the unfitness finding. *B'yata I.*, 2013 IL App (2d) 130558, ¶ 34. In contrast, the trial court in the

present case explained that its findings of unfitness were based on Leroy's failure to adhere to the service plan, his abrupt move to Iowa, and his failure to contact the caseworker for a substantial period of time. The court also made credibility determinations and articulated its bases for doing so. Unlike in *B'yata I.*, the trial court's factual findings are sufficient to permit appellate review.

¶ 25 Leroy also challenges the sufficiency of the evidence as to its findings of unfitness. He criticizes the trial court for failing to "spell out why" it found him to lack credibility. To that end, he argues that the court merely assumed that work was available in the Rockford community. Likewise, he contends that the court merely assumed that there was no basis to disagree with the advice presented in the domestic violence course. Leroy also proposes that the court ignored Leroy's responsibilities to others when it found that he made decisions based on what was most convenient for himself. According to Leroy, the court "decided the case on the 'feel' of the case instead of the more objective manifest weight of the evidence." Furthermore, Leroy emphasizes that Dominic was found to be abused solely because of Christina's actions. He insists that he did not do anything wrong apart from disagreeing as to the value of the domestic violence class and moving to Iowa to find work. In the "conclusion" section of his brief, Leroy asserts, without citing authority, that counts 2 and 3 of the termination petition, which alleged lack of reasonable efforts and progress, respectively, did not apply to him, "because he was not the cause of the finding that [Dominic] was a neglected minor."

¶ 26 The trial court found that the State sustained its burden on all three counts of the petition. We focus on count III, which alleged that Leroy failed to make reasonable progress toward Dominic's return during three specified nine-month periods. 750 ILCS 50/1(D)(m)(ii) (West 2014); see also *Daphnie E.*, 368 Ill. App. 3d at 1064 ("A finding of unfitness will stand if

supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act."). Two of the time periods at issue in count III were January 17, 2015, to October 17, 2015, and February 17, 2015, to November 17, 2015. The trial court stated that its findings pertained to "the relevant period," but the court did not specifically identify the timeframe at issue. Nevertheless, the court focused on events that occurred in the spring of 2015. Although it would have been preferable for the trial court to have specifically tied its findings to one or more of the time periods alleged in the State's petition, it is clear that the court was discussing either the period between January 17, 2015, and October 17, 2015, or the period between February 17, 2015, and November 17, 2015. As explained below, there is a sufficient basis in the record for the trial court to have concluded that Leroy failed to make reasonable progress during either of those periods.

¶ 27 Leroy suggests that the "reasonable progress" count did not apply to him, because he was not the cause of Dominic being adjudicated abused or neglected. However, he does not cite any authority in support of that assertion or develop a cogent legal argument. Accordingly, any argument along these lines is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (the appellant's arguments must be supported by citations to authority); *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12 ("Mere contentions, without argument or citation to authority, do not merit consideration on appeal."). Forfeiture aside, Leroy's assertion is incorrect. According to our supreme court, "the benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses 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." *In*

re C.N., 196 Ill. 2d 181, 216-17 (2001). Therefore, even though Leroy was not originally identified as the cause for Dominic being an abused minor, Leroy had to comply with the service plans and make reasonable progress toward addressing any conditions that subsequently became known. "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 28 One of the few tasks required of Leroy in the service plans was for him to participate in and complete the PAIP course. This referral was apparently based both on Leroy's 2009 conviction for domestic battery and his responses to questions during an integrated assessment. Leroy failed to participate in that service during the periods of January 17, 2015, to October 17, 2015, and February 17, 2015, to November 17, 2015. Additionally, the evidence showed that Leroy was notified multiple times that he needed to appeal his service plan if he did not believe that a domestic violence service was appropriate. Instead of challenging this service through the proper channels, Leroy simply refused to reengage in the course after dropping out due to what he believed was bad advice from the counselors.

¶ 29 Furthermore, when Leroy moved to Iowa around the spring of 2015, he stopped attending visitation and failed to contact his caseworker for months at a time. Although Leroy insists that it was necessary for him to move to Iowa to find work, and he faults the trial court for assuming that comparable work was available in Rockford, he provides no explanation for his failure to contact his caseworker. Moreover, the trial court was in the best position to assess Leroy's credibility, and we must defer to the court's factual findings. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90 (2004). The record amply supports a conclusion that Leroy failed to make

reasonable progress between the periods of January 17, 2015, to October 17, 2015, and February 17, 2015, to November 17, 2015.

¶ 30 For these reasons, the trial court's finding of unfitness was not against the manifest weight of the evidence. Leroy does not challenge the findings at the best interests hearing, and we therefore affirm the order terminating his parental rights to Dominic.

¶ 31 III. CONCLUSION

¶ 32 The judgment of the circuit court of Winnebago County is affirmed.

¶ 33 Affirmed.