2016 IL App (3d) 160483-U
(Consolidated with 160484, 160485, 160486, 160487)

Order filed December 22, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

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| *In re* J.H., Ja.H., S.F., C.F., and L.E., | ) | Appeal from the Circuit Court |
| | ) | of the 10th Judicial Circuit, |
| Minors | ) | Peoria County, Illinois. |
| | ) | |
| (The People of the State of Illinois, | ) | Appeal Nos. 3-16-0483, 3-16-0484 |
| | ) | 3-16-0485, 3-16-0486 |
| Petitioner-Appellee, | ) | 3-16-0487 |
| | ) | Circuit Nos. 12-JA-273, 12-JA-274 |
| v. | ) | 12-JA-275, 12-JA-276 |
| | ) | 12-JA-277 |
| K.E., | ) | |
| | ) | |
| Respondent-Appellant). | ) | Honorable Timothy J. Cusack, |
| | ) | Judge, Presiding. |

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JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court's finding that respondent was unfit was not against the manifest weight of the evidence.

¶ 2 Following a dispositional hearing, the trial court found respondent, K.E., unfit to care for five of her six minor children. On appeal, respondent argues the trial court's finding was against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 On November 1, 2012, the State filed petitions for adjudication of neglect on behalf of respondent's six minor children: J.H. (born December 10, 2006), Ja.H. (born December 10, 2006), S.F. (born May 12, 2012), C.F. (born August 14, 2011), L.E. (born February 14, 2008), and T.C. (born October 1, 2000). No appeal is taken with regard to any orders entered concerning T.C. The petitions specifically alleged that each minor's environment was injurious to his or her welfare in that (1) respondent had failed to seek medical attention following J.H.'s left femur fracture; (2) respondent agreed to accept services offered by the Department of Children and Family Services (DCFS) following J.H.'s injury but then refused to cooperate; (3) respondent was previously indicated by DCFS in July 2010 for allowing sexual abuse; (4) respondent has a history of paramours with criminal histories; and (5) respondent has a criminal history including two 2014 retail thefts, a 2003 battery, and a 2003 vehicular invasion.

¶ 5 On January 30, 2013, the trial court found the State had proven its petition in its entirety and adjudicated the minors neglected. Following a March 13, 2013, hearing, the trial court found respondent dispositionally unfit. The court ordered respondent to execute authorizations for release of information, cooperate with DCFS, obtain drug and alcohol assessments and follow treatment recommendations, perform two random drug drops per month, submit to a psychological evaluation, participate in and complete counseling, participate in and complete a parenting course, obtain and maintain stable housing, and to visit with her children as designated by DCFS.

¶ 6 The trial court conducted the initial permanency review hearing on August 14, 2013. At that time, the court found that respondent was not making reasonable efforts and set the permanency goal at "return home pending status." At each of the next three permanency review

hearings, the court found that respondent was not making reasonable efforts and maintained a permanency goal of "return home pending status."

¶ 7 At the August 20, 2014, permanency review hearing, the trial court noted that respondent had completed a parenting class and a psychological evaluation. She had attended 16 out of 20 counseling sessions with Children's Home and reported a significant decrease in her stress levels. However, her drug drops were testing positive for cannabis and she was not showing the honesty that was required for counseling and drug treatment. As a result of her mixed efforts, the court changed respondent's permanency goal to "substitute care pending court decision."

¶ 8 At the February 15, 2015, permanency review hearing, the trial court found that respondent was continuing to make mixed efforts. Although her cooperation had increased, she was still having issues with marijuana usage and her housing status was unknown. Respondent's caseworker indicated respondent's primary goals should be to focus on finding stable housing and making better choices in terms of substance abuse. Respondent's counsel inquired as to whether respondent could obtain counseling from the Human Service Center, which was the same facility she was using to address her substance abuse issues. The caseworker at that time indicated that he saw no reason why she could not.

¶ 9 At the June 24, 2015, permanency review hearing, the trial court found respondent had not made reasonable efforts toward reunification. Respondent continued to report that she was having trouble completing her drug drops due to problems with her work schedule, but claimed that she had not used marijuana since February 2015. With regard to counseling, the court noted that it was not appropriate for respondent to be receiving mental health counseling from the same facility that was providing her drug treatment. The court ordered respondent to seek counseling elsewhere and maintained the permanency goal of "substitute care pending court decision."

¶ 10 On August 17, 2015, the State filed a petition to terminate respondent's parental rights. The State's petition specifically alleged that respondent had failed to make reasonable progress toward the return of her minor children during the nine-month period of September 27, 2014, to June 27, 2015.

¶ 11 The trial court conducted a hearing on the State's petition to terminate respondent's parental rights on June 1, 2016. Respondent's caseworker, Brandi Perez-Sandi, testified that respondent had previously informed her she was living on Arago Street with her paramour. Perez-Sandi had asked to see respondent's residence multiple times, but respondent never let her inspect the residence. At the February 15, 2015, permanency review hearing, respondent stated she was going to let Perez-Sandi into her house the following day. However, respondent cancelled that meeting and never rescheduled it. On March 1, 2015, respondent called Perez-Sandi to notify her that she was moving out of the Arago Street house because it needed repairs. Respondent did not provide a new address; Perez-Sandi never saw respondent's new residence.

¶ 12 Perez-Sandi acknowledged that during the relevant period, respondent attended all of her monthly visits with her children except one, which she missed due to work. The quality of respondent's visits with her children was good, and Perez-Sandi opined that respondent was steadily making progress with them. Respondent was loving and nurturing toward her children, and effectively and appropriately handled their behavioral issues.

¶ 13 The State submitted respondent's certified counseling records from Children's Home into evidence to show that, after the goal change in February 2015, respondent still needed counseling on processing stress, achieving and maintaining sobriety, and exploring the health of her romantic relationship. The February 2015 goal change meant DCFS would no longer pay for respondent's counseling. However, Children's Home offered respondent additional counseling

until she could initiate outside services. Respondent did not avail herself of the additional counseling.

¶ 14 The State also submitted certified records of defendant's drug test results during the relevant nine-month period. Although DCFS continued to pay for the testing, respondent only completed 5 of 22 scheduled drops, with the last one being April 24, 2015. Respondent tested positive for cannabis in October and November of 2014, positive dilute in February 2015, and negative in March and April of 2015.

¶ 15 Steven Holcomb, a supervisor at Children's Home, testified that he met with respondent on January 28, 2015. Respondent told Holcomb it was very difficult for her to stop using marijuana. She also told him her residence was under repair at that time. Respondent had contacted FamilyCore about counseling, but FamilyCore would not accept her medical card. Holcomb gave respondent a list of agencies that provided free counseling and/or accepted the medical card. Respondent never notified Holcomb that she continued to have difficulties finding counseling. As a result of her children being in foster care, respondent was expected to meet with Children's Home monthly. Respondent did not attend any meetings with Children's Home during the relevant nine-month period.

¶ 16 Respondent testified she started receiving mental health counseling at the Human Service Center in February 2015. However, in June 2015, the trial court informed her she would need to find a new provider. Respondent also testified it was difficult for her to quit using marijuana because of stress. She felt that marijuana was more natural than being on medicine. Going to classes at the Human Service Center helped, so she had been clean since February 2015, and had passed her drug drops in March 2015 and April 2015.

¶ 17 At the conclusion of the hearing, the trial court found respondent unfit for failure to make reasonable progress toward reunification. The court conducted a best interest hearing on July 14, 2016, at which point it terminated respondent's parental rights.

¶ 18 Respondent appeals.

¶ 19 ANALYSIS

¶ 20 The sole issue on appeal is whether the trial court's finding that respondent failed to make reasonable progress toward reunification with her children was against the manifest weight of the evidence.

¶ 21 Section 2-29 of the Juvenile Court Act of 1987 (Juvenile Court Act) delineates a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). First, the trial court must find, by clear and convincing evidence, that the parent is unfit. 705 ILCS 405/2-29(2), (4) (West 2014); 750 ILCS 50/1(D) (West 2014); *In re E.B.*, 231 Ill. 2d 459, 472 (2008). Next, the court must consider whether termination of respondent's parental rights is in the "best interest" of the children. 705 ILCS 405/2-29(2) (West 2014); *In re J.L.*, 236 Ill. 2d at 337.

¶ 22 Here, respondent takes issue only with the trial court's finding of parental unfitness. Section 1(D) of the Adoption Act provides that the trial court may make a finding of parental unfitness where the respondent has failed "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglect[]." 750 ILCS 50/1(D)(m)(ii) (West 2014). Where a service plan has been established to correct the conditions that were the basis for the removal of the minor, " 'failure to make reasonable progress toward the return of the child to the parent' " includes the parent's failure to

substantially fulfill his or her obligations under the service plan and the parent's failure to correct the conditions that brought the child into DCFS's care. *Id.*

> " 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future,* will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphasis in original.) *In Interest of L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 23 We will not disturb a trial court's finding of parental unfitness unless it is against the manifest weight of the evidence. *In re E.C.*, 337 Ill. App. 3d 391, 398 (2003). "A decision is against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite result." *In re N.B.*, 191 Ill. 2d 338, 346 (2000).

¶ 24 Respondent asserts reasonable progress does not equate to completion of any given task within the relevant nine-month period and argues that her progress, as a whole, was reasonable. While we agree with the notion that reasonable progress does not require completion of any specific task, we disagree that respondent's progress in the instant matter was reasonable. As the court stated in *L.L.S.*, reasonable progress means the trial court will be able to return the children to respondent's custody in the near future. *L.L.S.*, 218 Ill. App. 3d at 461.

¶ 25 Here, respondent's children were adjudicated neglected on January 30, 2013. In March 2013, the trial court found respondent dispositionally unfit and ordered her to complete several tasks, including a psychological evaluation, a parenting class, drug treatment, stable housing, and regular visits with her children. Although respondent did complete the psychological evaluation and a parenting class prior to the commencement of the relevant nine-month period, as of August 17, 2015—nearly 2½ years from the date the children were removed from her custody—respondent had shown little progress in terms of completing counseling, obtaining and maintaining stable housing, or completing a drug treatment program.

¶ 26 With regard to counseling, respondent maintains that the trial court allowed her to believe she was progressing toward reunification while simultaneously ensuring that she would fail. See *In re O.S.*, 364 Ill. App. 3d 628, 638 (2006). In support of this argument, she relies on the fact that the court allowed her to obtain mental health counseling at the Human Service Center from February 2015 to June 2015, but then ordered her to seek counseling elsewhere. We disagree that the court's ruling on respondent's counseling choices had any demonstrable impact on its decision to find that she was not making reasonable efforts toward reunification. As the caseworker stated at the February 2015 permanency hearing, respondent's primary goals going forward were to obtain stable housing and make better choices in terms of substance abuse.

¶ 27 Despite the fact that respondent claims she always kept DCFS apprised of her current address, the record reflects that respondent consistently avoided any and all opportunities to prove she was maintaining stable housing. After stating on the record that she would be letting Perez-Sandi inspect her residence the day after the February 2015 permanency review hearing, respondent cancelled the inspection and never rescheduled. At several other times, she told both

Perez-Sandi and Holcomb that her residence was under repair. Simply put, at no time in over two years did respondent ever let any caseworker into her residence.

¶ 28 Perhaps more significantly, the trial court noted on the record that respondent was nowhere near completion of drug treatment. During the relevant nine-month period, respondent completed only 5 of the 22 required drug drops, two of which tested positive for cannabis. Respondent had not completed a drug drop since April 2015 and admitted at the fitness hearing that she had trouble quitting marijuana because she felt it was more natural than prescription medication.

¶ 29 Nevertheless, regardless of whether it was acceptable for respondent to have obtained counseling at the Human Service Center, respondent's argument in that regard ignores the fact that she went the first five months of the relevant nine-month period without any form of mental health counseling whatsoever. It is true that the goal change to "substitute care pending court decision" in August 2014 meant the State would no longer pay for respondent's counseling services. However, the record reflects that Children's Home had informed respondent she would be able to continue counseling at its facility until she secured outside treatment. Respondent refused Children's Home's offer knowing she was required to continue with and complete counseling if she hoped to reunite with her children.

¶ 30 This court acknowledges that respondent did make commendable efforts in visiting with her children. She attended all of the mandated visits except for one, acted lovingly toward her children, and demonstrated appropriate parenting skills in managing her children's behavioral issues. That being said, visiting with her children was only one of several court-ordered tasks respondent was required to complete. While she consistently attended visits with her children, respondent simultaneously failed to attend any of her monthly meetings with Children's Home.

Evaluating respondent's progress as a whole, we believe the State proved by clear and convincing evidence that respondent failed to make reasonable progress toward reunification during the relevant nine-month period. As a result, the court's finding of parental unfitness was not against the manifest weight of the evidence.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 33 Affirmed.