

NOTICE
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2016 IL App (5th) 160085-U

NO. 5-16-0085

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> A.B., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	St. Clair County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 12-JA-71
)	
Amber R. and William B.,)	Honorable
)	Walter C. Brandon, Jr.,
Respondents-Appellants).)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the trial court's order which found respondents unfit as parents and terminated their parental rights to A.B.
- ¶ 2 Respondents, Amber R. (Amber) and William B. (William), the biological parents of A.B., appeal from an order of the circuit court of St. Clair County finding them unfit as parents and terminating their parental rights to their son, A.B. Respondents limit their appeal to the trial court's findings of unfitness. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 A.B. was born on November 12, 2011. On July 2, 2012, the State filed a petition alleging A.B. was abused in that A.B. suffered a spiral fracture of his right femur and respondents did not have an adequate explanation as to how the fracture occurred. Respondents said the injury occurred when A.B. fell from a bed in a camper in which they were sleeping. A physician at Cardinal Glennon Hospital where A.B. was treated reported the injury could not have occurred from a fall out of a bed. A shelter care hearing was conducted after which A.B. was placed in the temporary custody of the Illinois Department of Children and Family Services (Department). On April 22, 2013, respondents stipulated to the petition. A.B. was made a ward of the court, and the Department was granted guardianship.

¶ 5 On April 17, 2014, the State filed a petition to terminate respondents' parental rights and sought appointment of a guardian with power to consent to adoption. A hearing was conducted on October 20, 2014, after which the trial court found in favor of respondents and dismissed the petition. On July 17, 2015, the State filed a new petition to terminate respondents' parental rights, alleging respondents were unfit for the following reasons as outlined in the Illinois Adoption Act (Act) (750 ILCS 50/1(D) (West 2012)): (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor; (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor during any nine-month period following the adjudication of abuse; and (3) failed to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of abuse.

¶ 6 The State's allegations of unfitness against both respondents focused on the period of January 1, 2015, to October 1, 2015. During that time, the service plan in place required Amber to: (1) participate in substance abuse treatment to address heroin and cannabis use and refrain from the use of illegal substances; (2) participate in Treatment Alternatives for Safer Communities (TASC) services; (3) participate in individual counseling to address anger and stress management; (4) participate in a bonding assessment with A.B.; (5) participate in visits with her son and follow visitation guidelines; and (6) maintain housing and a legal source of income to support A.B. upon his return home. The service plan required William to: (1) complete substance abuse treatment successfully and refrain from using illegal substances; (2) complete a bonding assessment with A.B.; (3) maintain a safe house and a legal source of income in order to meet A.B.'s needs; (4) participate in visitation with A.B. and follow visitation guidelines; and (5) participate in TASC services.

¶ 7 Jenna Richards, advanced child welfare specialist with the Department, testified she has been the caseworker on this particular case since it was opened in 2012 after A.B. suffered a spiral fracture of his right femur and respondents stipulated to neglect. Richards explained that after the trial court refused to terminate in October 2014, a new service plan was put into place. Richards testified regarding three service plan evaluations she conducted on each of the respondents. Each evaluation covers a six-month period.

¶ 8 In January 2015, Richards rated Amber as unsatisfactory as to substance abuse treatment because Amber "disengaged from her methadone clinic that she had been in."

Amber has a known history of heroin use. While Amber initially participated in the methadone clinic, she had not gone back since the termination hearing in October 2014. Richards also rated Amber as unsatisfactory on TASC "due to positive drops" and unsatisfactory for individual counseling because the counselors to which Amber was referred "wanted her to be making some sort of satisfactory progress in their substance abuse services" which she failed to do. Amber later said she wanted to find her own counselor, but failed to do so.

¶ 9 In January 2015, Richards rated Amber as satisfactory on the goal of visitation because even though she may miss some visitation, Amber "consistently comes to her visits" and engages with A.B. during those visits. She also rated her as satisfactory on the goal of housing and income because at that time Amber was renting a house and was cleaning houses to earn income. Richards testified that even though Amber did not give her proof of employment, Richards assumed she was working because she was paying her rent. Amber completed a bonding assessment on February 24, 2015.

¶ 10 Richards next evaluated Amber in June of 2015. At that time, she rated Amber as unsatisfactory with regard to substance abuse treatment because she tested positive for opiates on April 17, 2015, and then failed to engage in treatment. Richards explained that substance abuse treatment was a necessary goal "due to [Amber's] history of using heroin and how that would affect the safety of [A.B.] if he was returned home." Richards also rated Amber as unsatisfactory with regard to participation in TASC services and individual counseling. While Richards again rated her as satisfactory with regard to visitation, Richards now rated her unsatisfactory with regard to maintaining housing and

legal employment. Respondents were evicted from their home after not paying their rent and Amber failed to give her any sort of proof of employment. Amber was no longer living with William, but was living in a motel room by herself. Richards asked Amber if she could come and assess the motel room, but Amber would not allow her to do so.

¶ 11 Richards reevaluated Amber in December 2015, finding Amber unsatisfactory with regard to substance abuse treatment, TASC, individual counseling, and maintaining housing and employment. She once again rated her satisfactory in regard to visitation. While Amber engaged in some substance abuse treatment with Gateway, she was removed from that program because Gateway believed she needed a higher level of care than they could give her in an outpatient setting. At some point while treating with Gateway, Amber started Suboxone, but in order to treat with that drug, a patient needs to have a certain level of withdrawal, and Amber was having trouble getting to that level. She went to detox in order to be able to start Suboxone, but Gateway reported that shortly thereafter, Amber started missing sessions and they took her off Suboxone.

¶ 12 With regard to the period of January 2015 to October 2015, Richards testified Amber was not compliant with her service plan, specifically stating:

"She was not compliant. Like I said, she was referred many times for treatment and did not engage in the beginning and then she did engage in ARTS to do an assessment but didn't engage in actual treatment. And then in regards to Gateway, which was recently, she disengaged from it. So my job is just to make sure that

she's referred and track how she's doing in those services and, you know, wasn't able to do that because she wasn't in them."

Richards then testified regarding William's lack of compliance with his service plan.

¶ 13 In January 2015, Richards rated William as unsatisfactory with regard to substance abuse treatment and TASC services because William was not engaged in treatment and continued to have positive drop tests. William was in need of treatment due to a history of heroin use. His drop tests were still testing positive for heroin. Richards rated William as satisfactory with regard to visitation and maintaining housing and legal employment, even though William was not working and it was Amber who was providing income for their housing.

¶ 14 In June 2015, Richards again rated William's goal of substance abuse treatment as unsatisfactory because he left treatment against the recommendation of the facility in which he was getting treatment. Because he was in treatment due to a requirement of probation on a criminal charge, his probation was revoked. Richards did not hear from William from April 19, 2015, until August of 2015. Richards also rated him as unsatisfactory with regard to TASC and maintaining housing and legal employment because she "did not know his whereabouts or his employment information as [she] was having no contact with him." She also rated him unsatisfactory with regard to visitation "[d]ue to the fact that he was not engaging with DCFS [she] did not know when he was coming for his visits." He did not attend any visits from April 16, 2015, through April 30, 2015, and thereafter, he attended 5 visits out of 18 offered.

¶ 15 William was arrested in August of 2015 due to the warrant that had been issued by probation, so Richards met with him at St. Clair County Jail. On September 22, 2015, William entered Gateway inpatient treatment through probation, but he was terminated unsuccessfully on November 5, 2015, for testing positive for Suboxone. During the December 2015 evaluation, Richards rated William as unsatisfactory based in large part upon his unknown whereabouts and his incarceration during which he was unable to participate in visitation or treatment and was unable to have stable housing and employment. William never completed a bonding assessment despite Richards' referrals and three appointments she scheduled for him.

¶ 16 On cross-examination, Richards admitted that the main issue with both respondents is substance abuse due to their use of heroin. Richards explained that the service plan instituted after the trial court denied the State's initial petition to terminate respondents' parental rights in October 2014 was similar to the one previously in place, except the new one required a bonding assessment. A bonding assessment was necessary due to the length of time A.B. had been out of respondents' care and in foster care.

¶ 17 Linda Boyle, a TASC case manager, testified that results of drug drop testing performed on Amber during the period running January 1, 2015, until October 1, 2015, required her to refer Amber for both outpatient and residential drug treatment. Amber was not willing to go to residential treatment, but she did engage in outpatient treatment "on a couple of different occasions," but she never successfully completed any treatment program. Boyle testified Amber refused a drug drop test on February 23, 2015. Boyle further testified that in April 2015, Amber told her she needed to get into detox because

she was using heroin. On July 1, 2015, Boyle met with Amber who again reported recent use of heroin and declined a urinalysis.

¶ 18 As for William, he refused a drug drop on February 23, 2015. Boyle noted a gap in drops from February 2015 until November 2015. Boyle explained that she received a call from William in March 2015 during which he explained he was incarcerated. Boyle testified he was incarcerated until March 26, 2015, and then he went into a residential treatment program, which he left on April 18, 2015. Boyle did not have contact with William from April until August, when he was again incarcerated.

¶ 19 William testified that he has been fighting addiction and was in treatment from March 26, 2015, through April 18, 2015. He mainly participated in group therapy at that time, with only three or four individual sessions. William admitted he "took off" from residential treatment, thereby violating his probation. He also tried Gateway treatment, but was discharged unsuccessfully due to use of Suboxone. He testified that through counseling at Gateway he learned that he might be depressed, which he thinks might be the cause of his addiction problem and relapse. He wants the opportunity to engage in a dual approach to treatment, including both substance abuse and mental health counseling. He said he has never really had mental health counseling and would like to have that opportunity. William testified that he did not believe it was in the best interest of his son to terminate his parental rights at this time.

¶ 20 At the close of the State's case, Amber's counsel filed a motion for a directed verdict. The trial court agreed that the State had not met its burden of proof with regard to the allegation that Amber failed to maintain a reasonable degree of interest, concern, or

responsibility as to the welfare of A.B., but allowed the remaining two allegations to go forth. Ultimately, the trial court found clear and convincing evidence of unfitness in regard to the two remaining allegations against Amber and all three allegations against William. Following a best interest hearing, the trial court found it was in A.B.'s best interest that respondents' parental rights be terminated. Respondents now appeal from the trial court's finding of unfitness only.

¶ 21

ANALYSIS

¶ 22 On appeal, respondents contend the trial court erred in finding them unfit. We initially point out that we may affirm the decision of the trial court on any basis found in the record. *In re Marriage of T.H.*, 255 Ill. App. 3d 247, 259, 626 N.E.2d 403, 411-12 (1993). "A parent's rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence." *In re D.C.*, 209 Ill. 2d 287, 296, 807 N.E.2d 472, 476 (2004). Because a trial court is in a better position to assess the credibility of the witnesses, we may reverse the trial court's finding of unfitness only when the finding is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005); *In re C.N.*, 196 Ill. 2d 181, 208, 752 N.E.2d 1030, 1045 (2001). For a finding to be against the manifest weight of the evidence, the opposite result must be clearly evident. *In re J.P.*, 261 Ill. App. 3d 165, 174, 633 N.E.2d 27, 34 (1994). Such is not the case here.

¶ 23 Although section 1(D) of the Act sets forth numerous grounds under which a parent may be found unfit, any one of the grounds, if proven, is sufficient to enter a finding of unfitness. *In re C.E.*, 406 Ill. App. 3d 97, 107, 940 N.E.2d 125, 135 (2010). In

the present case, the trial court found Amber unfit on two separate statutory grounds pursuant to subsection 1(D)(m)(i) and (ii) of the Act (750 ILCS 50/1(D)(m)(i), (ii) (West 2012)). The trial court found William unfit on three separate statutory grounds pursuant to subsection 1(D)(b), (m)(i) and (ii) (750 ILCS 50/1(D)(b), (m)(i), (ii) (West 2012)).

¶ 24

I. Subsections 1(D)(m)(i) and (ii)

¶ 25 The trial court found both Amber and William unfit for failure to make reasonable efforts to correct the conditions that were the basis for the removal of A.B. during any nine-month period following the adjudication of abuse and for failure to make reasonable progress toward the return of A.B. during any nine-month period following the adjudication of abuse. While Amber did participate in a bonding assessment and visit with A.B. regularly, she did little else that would show reasonable efforts or reasonable progress toward the return of A.B. Amber asserts the State rushed into a termination proceeding after its first motion to terminate was rejected by filing a second motion to terminate before the designated time frame upon which the basis of the removal was relied upon, January 1, 2015, until October 1, 2015, expired. However, because Jenna Richards specifically testified about three particular services plans which covered the nine-month time period in question and the hearing did not take place until February 2016, we are unconvinced by Amber's argument.

¶ 26 Here, the evidence shows that both respondents have heroin addictions and that neither is willing to put their son above their need for drugs. On July 2, 2012, the State filed a petition alleging A.B. was abused. Respondents stipulated to the abuse in 2013.

Over four years after A.B. was removed from respondents' care, it is clear from the record before us that little has changed to correct the conditions that led to A.B.'s removal.

¶ 27 Both respondents were given the rare opportunity to have more time to show reasonable efforts and to make reasonable progress toward reunification with A.B. after the trial court entered a verdict in their favor on the first petition. Despite this additional time, neither respondent has made any real effort to overcome their addictions. Linda Boyle, a TASC case manager, testified Amber was unwilling to go to residential treatment and she never successfully completed any outpatient program. In fact, Amber admitted to Boyle that she used heroin during the nine-month period in question.

¶ 28 As for William, he was incarcerated until March 26, 2015, and then entered a residential treatment program as a condition of probation, but voluntarily left the program on April 18, 2015, resulting in revocation of his probation and additional jail time. William was out of the picture for much of the nine-month period in question due to either incarceration or whereabouts unknown. Accordingly, neither Amber nor William was compliant with their services plans from January 1, 2015, through October 1, 2015. Under these circumstances, we cannot say the trial court's finding of unfitness for either respondent under subsection 1(D)(m)(i) or (ii) was against the manifest weight of the evidence.

¶ 29 **II. Subsection 1(D)(b)**

¶ 30 William was also found unfit pursuant to subsection 1(D)(b) of the Act for failing to maintain a reasonable degree of interest, concern, or responsibility for A.B. William contends the trial court's finding of unfitness on this ground or any ground was against

the manifest weight of the evidence because he suffers from depression which is the underlying cause for his addiction and that he needs individual mental health counseling in addition to substance abuse treatment in order to overcome his addiction. We are unconvinced.

¶ 31 We are aware that in examining allegations under subsection 1(D)(b), a trial court must focus on the reasonableness of the parent's efforts and not the success of those efforts and must consider any circumstances that may have made it difficult for him to visit, communicate with, or otherwise express interest in his child. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004). However, our courts have repeatedly held that a parent will not be found fit merely because he or she has demonstrated some interest in or affection for the child. *In re Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125. Evidence of noncompliance with an imposed service plan, a continued addiction to drugs, or infrequent or irregular visitation with the minor have all been held sufficient to support a finding under subsection 1(D)(b) of the Act. See *In re Janira T.*, 368 Ill. App. 3d 883, 893, 859 N.E.2d 1046, 1055 (2006); see also *In re Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125.

¶ 32 William asserts the trial court did not make a finding that he failed to maintain a reasonable degree of concern or responsibility as to the child's welfare; however, because the language of subsection 1(D)(b) is disjunctive, any of the three elements on its own can be the basis for an unfitness finding the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare. *In re Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125. Here, the trial court specifically held in its February 1,

2016, order that "William failed to maintain a reasonable degree of interest as to the welfare of the minor."

¶ 33 William also claims a 2014 psychological evaluation recommended individual counseling; however, as the State points out, that report is not part of the record. An October 2014 DCFS report refers to a psychological evaluation, but specifically states, "The examination revealed suggestions of mild dysphoria which doesn't typically rise to the level that would indicate medication." That same report notes that with regard to counseling:

"William has indicated that he does not think he needs professional help. However, if the emphasis is changed to conjoining counseling with Amber and other sessions with his son to 'help' the boy, he may see an acceptable purpose in investing in improving his marital relationship, in working more diligently at securing employment, and housing."

That report goes on to note that the prognosis for reunification of William and A.B. "is considered mildly guarded because, at last indication, William has still not completed his program for reunification, raising some doubts about his ability to persist at a goal over the long haul."

¶ 34 Overall, the record is replete with evidence that William, unfortunately, is an unfit parent due to his drug addiction and his inability to stay focused on the task at hand. The evidence shows that he has been in and out of substance abuse treatment, including both residential and outpatient treatment, but has failed to complete any program. William rejected counseling in 2014 and only started talking about individualized counseling in

late 2015 when it was apparent that the State was heading toward another attempt to terminate his parental rights.

¶ 35 William has had more than sufficient time to correct the conditions that led to A.B.'s removal and make reasonable efforts and progress toward A.B.'s return, but has failed to do so. We note, for example, William failed to complete a required bonding assessment despite the fact that Jenna Richards scheduled an assessment for him on three separate occasions. After careful consideration, we are unconvinced by William's argument that the trial court's finding of unfitness is against the manifest weight of the evidence and that he should be given individualized mental health counseling before he can be found unfit.

¶ 36 **CONCLUSION**

¶ 37 Under the circumstances presented here, we conclude the trial court's finding that both Amber and William are unfit is not against the manifest weight of the evidence. Once a trial court finds a parent unfit under one of the grounds of section 1(D) of the Act, the next step is an involuntary termination proceeding which requires the court to consider whether it is in the best interest of the child to terminate parental rights. Because neither respondent has challenged the best interest ruling, we need not consider that question. Based upon the record before us, we cannot find any error with the trial court's finding of unfitness for either Amber or William.

¶ 38 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 39 Affirmed.