2017 IL App (2d) 160809-U
No. 2-16-0809
Order filed February 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re AMIYAH S., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 14-JA-392
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Emily A.,	)	Francis M. Martinez,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that respondent was unfit and that severing her parental ties was in the minor's best interests were not against the manifest weight of the evidence. Affirmed.

¶ 2 The trial court found respondent, Emily A., to be an unfit parent and determined that it was in the best interests of her minor child, Amiyah S., to terminate her parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Amiyah S. [Amiyah] was born on January 29, 2014. On December 1, 2014, the State filed a neglect petition alleging that Amiyah was a neglected minor and her environment was

injurious to her welfare in that her parents had a history of engaging in domestic violence. Temporary custody was given to DCFS on December 2, 2014. On February 25, 2015, pursuant to the parents' factual stipulation to the State's allegations, the court entered an order adjudging Amiyah neglected. At the dispositional hearing on March 23, 2015, the DCFS court report stated, *inter alia*, that two charges of prostitution were pending against respondent. Respondent agreed to be found unfit, unwilling or unable to protect, train or discipline Amiyah, and the court made the same finding with respect to the father. The court determined that it was in Amiyah's best interest to make her a ward of the court and appoint DCFS as her guardian with the right to place her in traditional foster care or with a responsible relative.

¶ 5 Permanency review hearings were held on September 17, 2015, and February 25, 2016. After both hearings, the court determined that neither parent had made reasonable efforts or progress toward reunification. After the second hearing, the court changed the permanency goal for Amiyah to substitute care pending court determination regarding parental rights. The State then filed a petition asking the court to terminate parental rights and to appoint DCFS as Amiyah's guardian with the right to consent to her adoption. On July 29, 2016, Amiyah's father signed specific consents to allow Amiyah's foster mother to adopt her. On the same day a hearing was held regarding whether respondent is an unfit parent for Amiyah.

¶ 6 On September 9, 2016, the court determined that the State had proven by clear and convincing evidence respondent's unfitness to be Amiyah's parent. At the conclusion of a best interests hearing on the same day, the court determined by a preponderance of the evidence that it was in Amiyah's best interests to terminate respondent's parental rights and to appoint DCFS as her guardian with the right to consent to her adoption. Respondent filed her notice of appeal on September 26, 2016.

¶ 7 II. ANALYSIS

¶ 8 To support a judgment of termination of a mother's or father's parental rights, there must first be a showing of parental unfitness based upon clear and convincing evidence, and a subsequent showing that the best interests of the child are served by severing parental rights based upon a preponderance of the evidence. *In re C. W.*, 199 Ill. 2d 198, 210 (2002); *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45.

¶ 9 A. Unfitness

¶ 10 Although section 1(D) of the Adoption Act sets forth numerous, discrete grounds under which a parent may be deemed "unfit," "any one ground, properly proven, is sufficient to enter a finding of unfitness and support a subsequent termination of parental rights." (Internal quotation marks omitted.) *In re C.W.*, 199 Ill. 2d 198, 210, 217 (2002); see 750 ILCS 50/1(D) (West 1998) (providing that the "grounds of unfitness are *any one or more* of the following" enumerated grounds (emphasis added)). "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings and we will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. For this reason, the trial court's finding of unfitness is entitled to great deference, and we will not disturb its finding unless it is against the manifest weight of the evidence. *In re D.F.*, 332 Ill. App. 3d 112, 124 (2002). The trial court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001).

¶ 11 Here, the trial court determined the State had proven respondent's unfitness by clear and convincing evidence on multiple statutory grounds. Count I of the State's termination petition

alleged that respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to Amiyah's welfare. See 750 ILCS 50/1(D)(b) (West 2016). We agree.

¶ 12 In assessing a parent's unfitness under section 1(D)(b), a court considers a parent's efforts to visit and maintain contact with the child, as well as other indicia, such as inquiries by the parent into the child's welfare. *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 35. The parent's conduct is examined in the context of the circumstances in which that conduct occurred, including the need to resolve other life issues. *Id*. A parent is not fit merely because he or she has demonstrated some interest or affection toward the child; rather, the interest, concern, or responsibility must be objectively reasonable. *Id*. Completion of service plans may also be considered evidence of a parent's interest, concern, or responsibility. *Id.* The failure to comply with the directives of a service plan with the stated goal of returning a child home is tantamount to objectively unreasonable interest, concern, or responsibility as to the child's welfare under section 1(D)(b). *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000).

¶ 13 At respondent's fitness hearing, the State presented clear and convincing evidence of her unfitness under section 1(D)(b), particularly with respect to visitation and compliance with the DCFS family service plan. First, the court heard testimony from Children's Home and Aid personnel regarding respondent's sporadic visitation with Amiyah. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1065 (2006) (citing as evidence of unfitness under section 1(D)(b) mother's presence at less than half the visits she was entitled to despite the agency's efforts to make family visitation more convenient). A case aide who observed visitations during the first five months of the case testified that although respondent's interactions with Amiyah were appropriate when she visited and she sometimes brought toys, clothing and other accessories to the visits, she was inconsistent with her visits. The original caseworker, who was on the case for

a year, and the program director at Children's Home and Aid, who was a supervisor on the case from the beginning, testified that respondent's visitation with Amiyah was inconsistent throughout the case, including when respondent was able to pick the time and date for the visit. As a result of this inconsistency, the visitation never progressed to being unsupervised. Respondent was also inconsistent in bringing items that Amiyah would need during a visit, such as food or formula and diapers, despite having been advised that she was required to bring everything Amiyah would need for the visit.

¶ 14 The witnesses also addressed respondent's sporadic involvement with Amiyah's therapy. Amiyah is a child with special needs. She had meningitis at the time of birth and is partially paralyzed on her left side and has a diagnosis of cerebral palsy. Respondent showed an understanding of Amiyah's condition and was concerned, when she visited, that Amiyah's leg brace was on properly. Notably, however, the caseworkers were unable to ensure that respondent could provide adequate care for Amiyah's special needs due to the inconsistency of her visitation and her failure to attend Amiyah's therapy appointments.

¶ 15 With respect to completion of respondent's service plan, the court admonished her at the beginning of the case that if there is a finding of neglected minor, cooperation with DCFS, or any other agency managing the case, during the ensuing nine months was essential to avoid termination of her parental rights. See 750 ILCS 50/l(D)(m)(ii) (West 2016) (providing that a finding of unfitness may rest on the failure by a parent to make reasonable progress toward the return of the child to the parent within nine months after an adjudication of neglected minor, and stating that "reasonable progress" includes the parent's failure to substantially fulfill his or her obligations under a service plan). The caseworker and supervisor testified that respondent was discharged from counseling and parenting classes for non-attendance. She also never completed

a domestic violence program. Three service plan evaluations, completed in May and November of 2015 and April of 2016, respectively, were admitted into evidence. In rating respondent as having made unsatisfactory progress and efforts towards having Amiyah returned to her, all three reports noted, in addition to respondent's inconsistent visitation, her failure to attend parenting classes and to follow through with counseling.

¶ 16 Respondent testified that she notified her caseworker and service providers when she had conflicts that interfered with visitation and counseling, such as court dates and mandatory job training. The DCFS staff and her service providers, however, agreed that respondent often did not give notice of, or explain, absences and did not maintain continuous contact with them. See *Daphnie E.*, 368 Ill. App. 3d at 1065 (citing mother's failure to notify the caseworker when she was going to miss a visit as evidence of unfitness). They were also concerned that respondent was being dishonest with them about the reasons she did give for lack of attendance at visitation and services. Moreover, despite their efforts to accommodate respondent's schedule for visitation with Amiyah, respondent's attendance at visits remained sporadic.

¶ 17 In sum, respondent's failure to visit Amiyah consistently made it impossible to assess whether she was capable of caring for Amiyah's special needs, and her failure to comply with the directives of her service plan, which stated the goal of returning Amiyah home, was tantamount to objectively unreasonable interest, concern, or responsibility as to Amiyah's welfare. *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000). The trial court's conclusion that respondent was unfit under section 1(D)(b) was not against the manifest weight of the evidence.

¶ 18 We note that the evidence of respondent's lack of attendance at visitation and noncompliance with services also supports the trial court's finding on count IV of the State's petition, which alleged that respondent failed to make reasonable progress toward the return of

Amiyah to her during any nine-month period following the adjudication of neglected minor. See 750 ILCS 50/1(D)(m)(ii) (West 2016). "Reasonable progress" includes the parent's failure to substantially fulfill his or her obligations under a service plan, if those services were required and available, and to correct the conditions that brought the child into care during any nine-month period following the adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2016) (referencing section 8.2 of the Abused and Neglected Child Reporting Act, 325 ILCS 5/8.2 (West 2016)).

¶ 19 Here, the State alleged that respondent failed to make reasonable progress toward Amiyah's return during two 9-month periods. During those periods of time, three service plan reports were produced, and two permanency review hearings took place. In addition to detailing the lapses in visitation discussed above, the accrued evidence showed that respondent failed to timely comply with any services and never completed her required tasks, including individual counseling, parenting classes, and domestic violence counseling. The evidence also revealed that respondent denied to her counselor that the well-documented domestic violence related to the removal of Amiyah from her care had ever occurred. If unwilling to admit the problem, respondent could not fix it or prevent it from occurring again.

¶ 20 Finally, the fact that respondent was admonished that cooperation with DCFS and other agencies managing the case was essential to avoid termination of her parental rights also supports a finding of unfitness under section 1(D)(m(ii). See *C.W.*, 199 Ill. 2d at 213-14 (2002) ("reasonable progress" includes a parent's compliance with court directives). Given the manifest weight of the evidence, we conclude that the trial court did not err in determining that respondent was unfit under section 1(D)(m)(ii).

¶ 21 B. Best Interests

¶ 22 The focus shifts to the child after a finding of parental unfitness. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The issue is no longer whether parental rights can be terminated; the issue is whether, in light of the child's needs, parental rights should be terminated. *Id.* At the best interests hearing, the trial court considers:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing; (b) the development of the child's identity; (c) the child's background and ties, including familial, cultural, and religious; (d) the child's sense of attachments *** (e) the child's wishes and long-term goals; (f) the child's community ties, including church, school, and friends; (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (h) the uniqueness of every family and child; (i) the risks attendant to entering and being in substitute care; and (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2016).

We will not overturn the trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24.

¶ 23 At the best interest hearing in this case, the trial court heard testimony from a foster care supervisor at Children's Home and Aid and from respondent. A best interest report authored by the family caseworker from Children's Home and Aid, which applied the statutory best interest factors to Amiyah, was also admitted into evidence. The evidence showed that by the time of the hearing, Amiyah had lived in the home of her paternal aunt ("foster parent") longer than she had lived with respondent. Moreover, the foster parent is able to meet all of Amiyah's needs, including her special needs, and is committed to providing permanency for her. Amiyah is

bonded to the foster parent and is thriving in the placement. She gets along well with her nine-year-old cousin, who is the foster parent's child and who also lives in the home, and she is able to maintain a relationship with other extended family members while she resides with the foster parent.

¶ 24 Respondent's testimony mostly focused on disparaging the foster parent's home. The trial court found these allegations not to be credible, adding "they perhaps would have been more credible if mother would have put forth the effort in undertaking the services necessary to reunite this family, but she did not." Respondent also testified that she left her apartment and moved in with her grandmother approximately six months before the hearing but did not give DCFS the grandmother's address. Although respondent argues on appeal that she and Amiyah have a bond and that it would be in Amiyah's best interests to have their relationship remain intact, respondent's "interest in maintaining the parent-child relationship must yield to [Amiyah's] interest in a stable, loving home life." *In re D.*, 212 Ill. 2d 347, 364 (2004).

¶ 25 The court's determination that it was in Amiyah's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 28 Affirmed.