

2017 IL App (2d) 161077-U  
No. 2-16-1077  
Order filed May 19, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> KASHIYAH H.-W. and MESSIAH H.-C., Minors,	)	Appeal from the Circuit Court of Winnebago County.
	)	
	)	Nos. 2013-JA-385
	)	2015-JA-104
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Ashley H., Respondent-Appellant).	)	Honorable Mary Linn Green, Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defense counsel’s motion to withdraw is granted and the trial court’s order terminating parental rights is affirmed.
- ¶ 2 Respondent, Ashley H., appeals from the trial court’s order terminating her parental rights to her two minor children, Kashiyah H.-W. and Messiah H.-C. As to each child, the trial court found four grounds of parental unfitness, including for failing to make reasonable progress toward the return of the children to her within multiple relevant nine-month periods. 750 ILCS 50/1(D)(m)(ii) (West 2014). Respondent appeals, and appellate counsel filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). After examining the record and

appellate counsel's motion to withdraw as counsel on appeal, we grant the motion and affirm the termination of parental rights. The evidence shows a pattern of respondent pursuing romantic relationships that place the children at risk. Respondent repeatedly has gone against the recommendations of her caseworker regarding these relationships that turned violent, and therefore, she is no closer to being reunited with her children than when they were taken into protective custody.

¶ 3

### I. BACKGROUND

¶ 4 Kashiyah was born on January 7, 2010, and Messiah was born on November 7, 2014. The State filed petitions for adjudications of neglect for Kashiyah and Messiah on August 27, 2013, and March 24, 2015, respectively. Each petition alleged two counts of the children being placed in an environment injurious to their welfare from domestic violence that took place in the children's presence. See 705 ILCS 405/2-3(1)(b) (West 2014). Pursuant to respondent's stipulation, the trial court entered adjudications of neglect for Kashiyah on October 23, 2013, and Messiah on June 11, 2015. Following dispositional hearings, the court made the minors wards of the court and transferred guardianship and custody to the Department of Children and Family Services (DCFS).

¶ 5 On October 24, 2016, DCFS submitted a report explaining how the agency became involved with the family and the children's current situation. DCFS received a report of an incident on March 10, 2013, in which respondent's then-paramour, Kenneth, who is not Kashiyah's father, was arrested for throwing a frying pan with hot oil at respondent, who suffered minor burns to her arms. Kenneth also used the pan to break lights in the house. Kashiyah was present but uninjured.

¶ 6 DCFS received another report of an incident on February 15, 2015, in which respondent's then-paramour, Philip, was spending the night at respondent's apartment. During the proceedings, Philip and another paramour, Julius, were identified as putative fathers of Messiah. On the night of the incident, respondent and Philip had an argument that turned violent. Philip struck respondent's forehead with his knee, and she ran from her home. Respondent did not report the incident. Respondent, who had two black eyes and a splinted leg, told DCFS that her injuries were the result of a car collision and that she was treated at a hospital. The caseworker found no accident report or medical records at the hospital.

¶ 7 The trial court conducted seven permanency hearings covering a period from December 2013 through June 2016 to assess whether respondent was making reasonable efforts and reasonable progress. On June 27, 2016, the State filed two petitions to terminate respondent's parental rights to Kashiyah and Messiah based on her failure to (1) maintain a reasonable degree of interest, concern, or responsibility as the children's welfare (see 750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis of removal (see 750 ILCS 50/1(D)(m)(i) (West 2014)); (3) make reasonable progress toward the return of the children within certain nine month periods after the adjudications of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2014)); and (4) protect the children from injurious conditions within the environment (see 750 ILCS 50/1(D)(g) (West 2014)). DCFS reported that, since being removed from respondent's care, the children were thriving and currently in the home of their foster parents, who were committed to providing them permanency through adoption.

¶ 8 On December 6, 2016, the trial court entered an order terminating respondent's parental rights. The court incorporated findings from two hearings that respondent was unfit based on all

four factors as to both children and that termination was in the children's best interests. This timely appeal followed.

¶ 9

## II. ANALYSIS

¶ 10 Respondent appeals from the termination of her parental rights. Under the procedure set forth in *Anders*, appellate counsel has filed a motion for leave to withdraw on the ground that no meritorious argument can be made in support of the appeal. In the motion, counsel represents that he has read the full record of this case and has not discovered any issue that would warrant relief in this court. In support of the motion, he has filed a memorandum of law that summarizes the proceedings in the trial court; states two possible justiciable issues; and concludes that these potential issues would be wholly frivolous and without merit. The potential issues raised are (1) whether the trial court erred in finding respondent unfit and (2) whether the court erred in determining that the termination of parental rights is in the children's best interests.

¶ 11 Appellate counsel represents that he has mailed a copy of the motion to respondent and has informed her that she will be given time to respond to the motion and that the motion is necessary because there is no meritorious issue that counsel could raise on appeal. The clerk of this court has also notified respondent of the motion and informed her that she would be afforded an opportunity to present, within 30 days, any additional matters to this court. There is no response from respondent, and the time to respond has expired.

¶ 12 Counsel asserts that any challenge to the unfitness finding and best interests determination would lack merit. Specifically, counsel cites overwhelming evidence that respondent failed to make reasonable progress toward the return of the children for at least nine months from October 7, 2014, to June 6, 2016. See 750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 13 A parent’s right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of that right is a drastic measure. *In re Haley D.*, 2011 IL 110886, ¶ 90. Accordingly, the Juvenile Court Act of 1987 (Juvenile Court Act) provides a two-stage process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014). Initially, the petitioner must prove 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 Adoption of Syck*, 138 Ill. 2d 255, 277 (1990); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). We will reverse the trial court’s finding of unfitness only if it was against the manifest weight of the evidence. A determination of unfitness is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 14 If the court finds the parent unfit, the petitioner must then show that termination of parental rights would serve the child’s best interests. 705 ILCS 405/2-29(2) (West 2014); *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. As our supreme court has noted, at the best-interests phase, “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Section 1-3(4.05) of the Adoption Act (705 ILCS 405/1-3(4.05) (West 2014)) sets forth various factors for the trial court to consider in assessing a child’s best interests. The petitioner bears the burden of proving by a preponderance of the evidence that termination is in the best interests of the minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). A trial court’s best-interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 15

A. Unfitness

¶ 16 Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, but any one of the grounds, if properly proven, is sufficient to enter a finding of unfitness. *In re Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. Proof of parental unfitness must be clear and convincing, and a trial court's finding of unfitness will not be disturbed unless it is against the manifest weight of the evidence, *i.e.*, unless the opposite conclusion is clearly evident. *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. The trial court is generally in the best position to assess the credibility of the witnesses and, therefore, we will not reweigh or reassess credibility on appeal. As cases concerning parental unfitness are *sui generis*, unique unto themselves, courts generally do not make factual comparisons to other cases. *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44.

¶ 17 In this case, the trial court found respondent unfit on several grounds, but we need address only respondent's lack of progress toward the return of the children during at least one nine-month period after the adjudications of neglect because it supports the finding of unfitness. See 750 ILCS 50/1(D)(m)(ii) (West 2014); *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. Under an objective standard, reasonable progress requires, at a minimum, the parent make measurable steps toward the goal of reunification through compliance with court directives, service plans or both. *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). The trial court must consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m) in determining whether a parent has made reasonable progress toward the return of the children. *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 18 Here, the trial court heard evidence that, for more than nine months, from at least June 11, 2015, the date that Messiah was adjudicated neglected, to June 6, 2016, respondent went against the service plans, including maintaining contact with Messiah's father, Philip, which

resulted in violence. At the March 24, 2015, permanency review, the State presented evidence that respondent recently had been injured during a violent altercation with Philip but falsely claimed to be in an automobile accident. At the September 14, 2015, permanency review, the State showed that respondent had missed several drug tests and had not begun domestic violence counseling as directed.

¶ 19 At the December 8, 2015, permanency review, the State presented evidence that respondent tested positive for marijuana on September 14, 2015, and missed another drug test on October 26, 2015. Respondent had been discharged from domestic violence counseling for failing to attend. Respondent also had contacted Philip by telephone in violation of a no-contact provision of the service plan. Respondent reported to her caseworker that, on November 28, 2015, respondent saw Philip on the street, and he became violent with her. The caseworker confirmed respondent's account with a police report that stated that Philip agreed to hold money for respondent but later used it to purchase alcohol. The disagreement resulted in Philip punching respondent in the back of the head.

¶ 20 At the March 14, 2016, permanency review, respondent testified that she had two negative drug tests and had remained involved with counseling. However, a DCFS report indicated that respondent was facing eviction from her apartment due to damage caused by paramours and that she had been caught with Philip attempting to steal a snowblower in December 2015. DCFS reported that respondent's relationship with Philip was ongoing, and she had problems staying involved in her services. Visitation with the children was problematic due to missed visits.

¶ 21 By June 6, 2016, respondent had attended only four domestic violence counseling sessions. Respondent was engaged and an active participant in those sessions but was

discharged for missing too many. Respondent's drug tests were negative for illegal substances, and she was discharged successfully from intensive outpatient services.

¶ 22 At the unfitness hearing, the State provided summaries of this evidence that respondent did not comply with the service plans during the relevant permanency review periods. The caseworker testified that respondent was referred to substance abuse, domestic violence, and parenting services. She testified that, since taking over the case in February 2014, she could not recommend placing the children with respondent. Respondent started and dropped out of domestic violence counseling five times. Respondent needed domestic violence counseling as both a victim and a perpetrator.

¶ 23 Respondent tested positive for marijuana in December 2015 and January 2016, but she graduated from treatment in June 2016 and had obtained employment. However, respondent's communication with the caseworker was sporadic because she moved without informing DCFS and sometimes lost telephone service. Visitation was reduced from three hours once per week to three hours once per month after the permanency goal was downgraded. Visitation was supervised at the agency, except for one visit in respondent's apartment about five months after Messiah was born. No further unsupervised visits were authorized because of the pattern of domestic violence between respondent and Philip. Respondent and Philip had engaged in two domestic violence incidents in the two months preceding the unfitness hearing.

¶ 24 Rockford police officer Mariusz Misiaszek additionally testified that he responded to the hospital on June 26, 2016, where he spoke with Philip and observed injuries to his head and mouth. Philip told the officer that respondent had attacked him with a tire iron, and the State introduced photographs of his injuries. The State also produced respondent's indictment and guilty plea resulting from the incident.

¶ 25 Rockford police officer Brandon Bradbury testified that on the evening of August 26, 2016, he responded to a domestic violence report that Philip had struck respondent with a stick. The officer encountered a damaged vehicle and respondent was in the living room on top of Philip, holding him down. After checking the perimeter of the residence, the officer re-entered the home and saw respondent holding a stick. Respondent had bite marks on her face and arm, bruising on an eye, and a scratch on her arm. Respondent was holding a stick and advised that Philip had caused her injuries and was upstairs. The State introduced an indictment and order of protection against Philip that were related to the incident.

¶ 26 The evidence shows that respondent was encouraged to refrain from engaging in relationships that are abusive and volatile and to acquire skills in domestic violence counseling to address domestic disputes. However, respondent ignored these goals by maintaining what was reported to be a violent relationship with Philip. Multiple witnesses testified to seeing respondent with injuries from domestic violence. The State documented orders of protection and three criminal prosecutions stemming from those incidents, which occurred when respondent was supposed to be working toward the return of her children.

¶ 27 Under an objective standard, respondent did not make measurable steps toward the goal of reunification through compliance with the court directives or the service plans. Respondent cannot reasonably argue that the finding of unfitness for failure to make reasonable progress toward reunification with the children for at least one nine-month period from June 11, 2015, to June 6, 2016, is against the manifest weight of the evidence. Respondent was no closer to the return home of her children at the end of the period than she was at the beginning.

¶ 28

B. Best Interests

¶ 29 Once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interests. Respondent cannot establish that the trial court's best-interests finding is against the manifest weight of the evidence. A review of the factors set forth in section 1-3(4.05) of the Adoption Act (705 ILCS 405/1-3(4.05) (West 2014)) supports the court's determination that an adoption would be the best option for providing the children stability and permanency.

¶ 30 At the time of the best-interests hearing, Kashiyah was almost seven years old, Messiah had just turned two years old, and the children had been residing in the same foster home for almost a year. The caseworker reported visiting the foster home monthly. In addition to Kashiyah and Messiah, the foster home consisted of the foster mother, her 18-year old biological daughter, and three other adopted children who were 12 or younger. The foster mother was ready and able to adopt the Kashiyah and Messiah, who showed a demonstrated bond with her. The children relied on the foster mother and were thriving under her care. The foster mother confirmed in very brief testimony that she had cared for the children for almost a year.

¶ 31 The trial court implicitly credited the testimony of the State's witnesses in finding the termination of parental rights to be in the children's best interests. The evidence shows that the foster mother cares for all the children's needs by providing a nurturing environment, stability, adequate food, medical care, and emotional support. 705 ILCS 405/1-3(4.05)(a) (West 2014). The children's close relationships and positive interactions with their foster mother support a finding that their current placement will allow them to develop their identities. 705 ILCS 405/1-3(4.05)(b) (West 2014)). The caseworker also testified that Messiah calls the foster mother "mom" and views her as a parent. 705 ILCS 405/1-3(4.05)(c) (West 2014). Although Messiah was too young to truly understand what adoption means, Kashiyah said she was excited to live in

the foster home long-term. 705 ILCS 405/1-3(4.05)(e) (West 2014). Given the foregoing evidence, we cannot say that a conclusion opposite to the one reached by the trial court is clearly apparent. Respondent cannot establish in this appeal that the court's best-interests determination is against the manifest weight of the evidence.

¶ 32

### III. CONCLUSION

¶ 33 After carefully examining the record in this case, as well as the motion to withdraw and the accompanying memorandum of law, we agree with appellate counsel that there is no meritorious issue that might warrant relief in this court. Neither the finding of unfitness nor the best-interests determination is against the manifest weight of the evidence. We therefore allow the motion of counsel to withdraw in this appeal, and we affirm the judgment terminating respondent's parental rights.

¶ 34 Affirmed.