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2017 IL App (3d) 170444-U
Consolidated with Nos. 3-17-0445 & 3-17-0446

Order filed November 27, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> N.C., M.E., and Z.C.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,	)	Appeal Nos. 3-17-0444, 3-17-0445, and
	)	3-17-0446
v.	)	Circuit Nos. 13-JA-76, 13-JA-77, and
	)	14-JA-76
Marshanna E.,)	
)	
Respondent-Appellant).)	
	)	The Honorable
	)	Katherine Gorman Hubler,
	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding of parental unfitness and subsequent termination of respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 The State filed a petition for termination of parental rights against respondent, alleging (1) respondent was a depraved person pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2016)), and (2) respondent failed to make reasonable progress toward the return of the minors pursuant to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2016)). The trial court found respondent unfit and, subsequently, terminated her parental rights. We affirm.

¶ 3 **FACTS**

¶ 4 In March 2013, the State filed a juvenile petition against respondent alleging N.C., born November 16, 2012; M.E., born January 10, 2007; and Z.C., born March 20, 2014, were neglected due to an injurious environment based on respondent's involvement in domestic violence, her criminal history, and her substance abuse. Thereafter, the children were adjudicated neglected and made wards of the court.

¶ 5 Respondent received a service plan to correct the conditions that led to the adjudication of the minors. The plan listed the following tasks: (1) execute all authorizations for release of information requested by the Department of Children and Family Services (DCFS) or its designees; (2) cooperate fully and completely with DCFS or its designees; (3) obtain a drug and alcohol assessment arranged by DCFS or its designees and follow, cooperate with, and successfully complete any course of treatment recommended; (4) perform random drug drops and breathalyzer tests two times per month; (5) participate and successfully complete counseling; (6) participate and successfully complete a domestic violence course or classes specified by DCFS or its designee; (7) obtain and maintain stable housing conducive to the safe and healthy rearing of the minors; (8) provide to the assigned caseworker any change in address and/or phone number and any change in the members of the household within three days of the change; and

(9) provide to the assigned caseworker the name, date of birth, social security number, and relationship of any individual requested by DCFS or its designees with whom DCFS has reason to believe that relationship had developed and will affect the children. On November 23, 2015, the trial court ordered respondent to complete more counseling, perform drug drops two times per month, find a legal source of income, and find housing.

¶ 6 In March 2017, the State filed a petition to terminate respondent's parental rights. In the petition, the State alleged that respondent was an unfit parent because she was a depraved person pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2016)). Also, the State asserted that respondent was unfit because she failed to make reasonable progress toward the return of the minors during the nine-month period of February 14, 2016, to November 14, 2016, pursuant to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (750 ILCS 50/1(D)(m) (West 2016)).

¶ 7 At the adjudicatory hearing, respondent testified on her own behalf. She stated that she did a drug and alcohol assessment before the end of the relevant nine-month period. She was participating in treatment at the Tazwood Institute in East Peoria but did not complete it because she moved to Princeton, Illinois. While in Princeton, she started another treatment program entitled Al-Anon once per week. She participated in three domestic violence classes before November 2016. She consistently went to visits with her children during the relevant nine-month period. She completed a parenting class in April 2016 and participated in some faith-based parenting training programs. She participated in one life skills training. Respondent served time in jail for obstruction of identification in 2016 and complied with her conditions of community service and staying out of trouble.

¶ 8 The court took judicial notice of the August 5, 2013, dispositional order; the November 23, 2015, permanency review order; and the November 14, 2016, permanency review order. The State submitted Exhibits A through L into evidence. Exhibits A through J revealed respondent's criminal convictions. Exhibit K contained respondent's medical records and showed that, as of March 2016, respondent was pregnant and that her pregnancy was complicated by alcohol use. In October 2016, respondent testified positive for THC before she gave birth to her fourth child. When respondent was discharged after giving birth, her final diagnoses revealed that drug use complicated childbirth and that she had abused cannabis.

¶ 9 Exhibit L contained respondent's counseling reports. The April 14, 2016, counseling report showed respondent had discussed completing tasks that would benefit her and her children in the long term. The counselor believed respondent seemed focused and motivated. The April 29 report stated that respondent had participated in a make-up parenting class and received her completion certificate. The May 5 report stated that respondent had been having trouble understanding how her life decisions impacted her DCFS case because she had not acknowledged the consequences of her pregnancy. The May 13 report stated that respondent had been making some progress because she had been completing services and looking for employment. The May 19 report stated that respondent had made little progress as she appeared defensive and had "a difficult time connecting choices and consequences together." The May 26 report stated that respondent still had appeared defensive about her life decisions but that she had been making progress because she had gotten a job and had been looking for housing.

¶ 10 The June 16 report stated that respondent had admitted to testing positive for cannabis while she was in her second trimester. The counselor believed respondent blamed others for her decisions and took "very little accountability" for the status of her DCFS case. The counselor

was also concerned with respondent's complacency with smoking cannabis while pregnant. The June 20 report stated that the counselor had noticed respondent with a pack of cigarettes. When the counselor inquired about the cigarettes, respondent stated "it's either the cigarettes or the marijuana." The counselor concluded that respondent had been making some progress toward finding housing as she was seeking housing applications but had demonstrated a dismissive attitude toward any feedback about her life choices. The June 28 report stated that respondent had informed the counselor that her visitation with the minors was rescinded because she had unapproved individuals at the visitation locations. Respondent also told her son to stop answering the case aide's questions. When the counselor asked respondent if she had been following the rules for visitation, respondent answered she did not care. The counselor believed respondent was having difficulty recognizing that she had control over certain situations.

¶ 11 The July 11 report stated that respondent's father had disappointed her because he had not taken care of her home while she was in prison. Respondent stated that her home had been uninhabitable and that she had found herself starting over again. The August 8 report stated respondent had appeared to be doing well, had been working on the relationships in her life, and had maintained employment. The September 12 report stated that respondent had informed the counselor that she had been having difficulty attending services because her work schedule had been inconsistent. In the November 7 report, the counselor stated that respondent had not made progress and that she "still seems to be making poor choices and fails to consider consequences." The November 14 permanency review order stated that respondent had not achieved the permanency goal to return the minors home within 12 months.

¶ 12 On May 22, 2017, the trial court found respondent unfit. Afterward, a best interest hearing was held. At the hearing, the caseworker testified as an adverse witness. The caseworker

stated that M.E. had been in placement for less than six months and had been placed in four different foster homes. She could not make a recommendation for M.E.'s adoptive home because she had to wait six months prior to completing the permanency commitment. However, she believed M.E. looked to his current foster parent for guidance, comfort, and other aspects that a caregiver would provide for a child. The caseworker stated that respondent had completed all of her services except counseling and drug drops. She knew that respondent had been employed.

¶ 13 Respondent testified that she had been working and making enough money to get housing. Respondent stated that her relationship with M.E. had been pretty good, that he had been happy during their visits, and that he had confided in her. Respondent believed she had a good relationship with N.C., and N.C. knew that respondent had been her mother. Z.C. referred to respondent as "mom." Respondent was continuing her counseling and was making an effort to finish her services.

¶ 14 A best interest report was submitted to the court. It stated that M.E. had been in several relative foster homes and had been in his current foster home for four months. The foster parent included him in all aspects of her life and they had a strong attachment. The foster parent was excited about the opportunity to provide a permanent placement for M.E., but M.E. must be in a home for six months before the permanency commitment can be signed. The foster parent was able to provide for M.E.'s needs and had the support of her extended family and friends. M.E. looked to his foster parent for support and safety. M.E.'s basic needs of food, shelter, health, and clothing were met; his medical needs were met; and he was clean and well groomed during home visits. M.E. had good grades in school and his foster parent was making sure his educational needs were met. His foster parent was also supporting him through his behavioral struggles. M.E. recognized his foster parent as his primary caregiver and knew his foster parent's extended

family. M.E. developed a strong relationship with his foster family and appeared to be happy, comfortable, and content. M.E. had a lot of friends and enjoyed playing sports. He was attending summer camp through the park district.

¶ 15 N.C. was in her current foster home for over a year. Before her current placement, she was in two relative foster homes. N.C. was diagnosed with Prader-Willi, sleep apnea, scoliosis, and developmental delays. N.C.'s foster parents took good care of her. However, they were unable to meet N.C.'s extensive medical needs and could not provide permanency for her. There was a family that was interested in adopting N.C. The potential adoptive parents were excited to have N.C. join their family and were willing to complete any and all tasks given to them to care for N.C. They were aware of N.C.'s medical needs and were willing to meet them. N.C.'s basic needs of food, shelter, health, clothing, and medical needs were met by her current caregivers. The potential adoptive parents' home was appropriate for N.C. and she already bonded with the family.

¶ 16 Z.C. had been with her foster parent for most of her life. Z.C. and her foster parent had a strong attachment, and her foster parent was willing and able to adopt Z.C. The foster mother had a biological child and Z.C. bonded with and looked up to her foster sister. Z.C. was an energetic, friendly, and happy child, and she recognized her foster parent as her primary caregiver. Z.C.'s basic needs of food, shelter, health, and clothing were met by her caregiver. She knew her extended foster family and had developed a strong relationship with them. Z.C. appeared to be happy, comfortable, and content around her foster family. She had a lot of friends and enjoyed playing with her foster sister and cousins.

¶ 17 The trial court found that it was in the best interests of the children to terminate respondent's parental rights. Respondent appealed.

¶ 18

ANALYSIS

¶ 19

I. Unfitness

¶ 20

Respondent alleges that the trial court's finding that she failed to make reasonable progress toward the return of the minors pursuant to section 1(D)(m) was against the manifest weight of the evidence because she (1) participated in drug treatment, (2) attended Al-Anon each week, (3) completed domestic violence counseling, (4) completed parenting and life skills classes, (5) regularly visited her children, (6) acted appropriately during the visitations, (7) maintained "living arrangements," and (8) worked full-time.

¶ 21

Section 1(D)(m) states, in relevant part:

"D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***

* * *

(m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependant minor under Section 2-4 of that Act. If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act,

‘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 correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.” 750 ILCS 50/1(D)(m) (West 2016).

¶ 22 In light of the child’s best interest, reasonable progress requires demonstrable action toward the goal of the return of the child. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. “[T]he 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.” (Internal quotation marks omitted.) *Id.* Evidence of reasonable progress is present when “the trial court can conclude that it will be able to order the child returned to parental custody in the near future.” *Id.* Courts must only consider evidence occurring during the nine-month period stated in section 1(D)(m). *Id.* ¶ 35; see 750 ILCS 50/1(D)(m) (West 2016). A trial court’s determination of parental unfitness will be reversed only if it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d at 208. A finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *Id.*

¶ 23 We acknowledge that respondent had made some progress as she maintained employment and completed some courses in accordance with her service plan. However, respondent’s actions did not constitute reasonable progress toward the return of the minors. The counseling reports showed that respondent failed to accept responsibility for her actions

throughout the relevant nine-month period. When the counselor provided feedback on how respondent could make better life choices, she was repeatedly defensive. Furthermore, respondent was defiant in following the directives of her service plan. The June 16 report stated that respondent had tested positive for cannabis while she was pregnant. The June 20 report stated that respondent had cigarettes during a session and told her counselor that “it’s either the cigarettes or the marijuana.” The medical reports revealed that respondent’s pregnancy had been complicated by alcohol use and she had tested positive for THC before giving birth to her fourth child. Respondent lost visitation of her minors because she had unapproved individuals at the visitation locations, and she instructed her son not to answer the case aide’s questions. Respondent also told the counselor that she did not care to follow the visitation rules. Moreover, there is no evidence that respondent maintained stable housing. The counseling reports indicated that respondent did actively seek, and obtain, housing. But the July 11 report stated that respondent informed her counselor that her home had become uninhabitable and there is no evidence that respondent maintained housing thereafter. Given the circumstances, we find that the trial court’s finding that respondent failed to make reasonable progress toward the return of the minors was not against the manifest weight of the evidence.

¶ 24 Respondent also argues that the trial court’s finding that she was a depraved person pursuant to section 1(D)(i) was against the manifest weight of the evidence. In particular, respondent does not dispute that the State made a *prima facie* case to establish a rebuttable presumption. Rather, respondent contends that she rebutted the presumption that she was depraved. We decline to address this issue because we have determined the trial court’s order finding respondent was unfit pursuant to section 1(D)(m) was not against the manifest weight of

the evidence. See *In re D.J.S.*, 308 Ill. App. 3d 291, 295 (1999) (any one proven basis is sufficient to declare respondent unfit).

¶ 25

II. Best Interest

¶ 26

Next, respondent asserts that the trial court's decision to terminate her parental rights was against the manifest weight of the evidence because (1) respondent "substantially complied" with her service plan and dispositional goals, (2) there was a history of instability for the children in their foster homes, and (3) there was an unwillingness to adopt N.C.

¶ 27

At the best interest stage, the State must prove by a preponderance of the evidence that it is in the child's best interest to terminate parental rights. In making its determination, a court must consider several factors "in the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These statutory factors include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background; (4) the child's sense of attachment, including love, security, familiarity, and continuity of relationships with parent figures; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). "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). The trial court's determination to terminate parental rights will be set aside if it is against the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). A determination 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. *Id.* at 697-98.

¶ 28 The evidence shows that it was in the best interest of the children to terminate respondent's parental rights. Specifically, the evidence reveals the children were in safe and loving environments. Z.C. and M.E. had developed strong relationships with their foster families. Z.C. and M.E. had a lot of friends in their communities, knew their foster parents' extended families, and were also involved in various activities within their communities. Furthermore, Z.C.'s foster parent was willing and able to adopt her, and M.E.'s foster parent was excited about the opportunity to provide him a permanent placement. Although N.C.'s current foster parents could not provide her with a permanent placement, there was another family interested in adopting N.C. N.C.'s potential adoptive family was able to afford for N.C.'s extensive medical needs and N.C. had already bonded with the family. Lastly, all the children's basic needs were met by each foster family. Thus, we hold that the trial court's determination to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Peoria County is affirmed.

¶ 31 Affirmed.