FILED
January 26, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160628-U

NOS. 4-16-0628, 4-16-0629, 4-16-0630, 4-16-0631, 4-16-0632 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.G., Ala. N., Alb. N., S.N., M.S., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	Nos. 14JA110
SAMONIA DAVIS,	)	14JA112
Respondent-Appellant.	)	14JA113
	)	14JA114
	)	14JA115
	)	
	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's unfitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In August 2016, the trial court terminated the parental rights of respondent, Samonia Davis, to her children, K.G. (born March 18, 2014); Ala. N. (born November 22, 2009); Alb. N. (born December 6, 2011); S.N. (born November 1, 2012); and M.S. (born October 5, 2005). Respondent appeals, arguing the court's fitness and best-interest findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 At the outset, we note the children's fathers' rights were also terminated in the underlying proceedings; however, they are not parties on appeal and, therefore, we address the facts and the issues only as they relate to respondent and the children.

¶ 5 On July 11, 2014, the State filed a petition for adjudication of neglect, alleging the children were neglected pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (West 2014)). Specifically, the State alleged (1) the children were not receiving the proper or necessary care in their home which "was found in deplorable condition with dirty diapers, trash, mattresses on the floor, no running water, a fouled toilet full of feces, and an open fan," in addition to the home having only one operating light (705 ILCS 405/2-3(1)(a) (West 2014)) (count I); (2) the children's environment was injurious to their welfare for the same reasons identified in count I (705 ILCS 405/2-3(1)(b) (West 2014)) (count II); and (3) the children were left without adult supervision for an unreasonable period of time (705 ILCS 405/2-3(1)(d) (West 2014)) (count III). At the shelter care hearing that day, the trial court found probable cause to believe the children were neglected, abused, and dependent, and placed custody of the children with the Department of Children and Family Services (DCFS).

¶ 6 On October 31, 2014, the trial court entered an adjudicatory order finding the children were neglected due to "[e]nvironmental neglect, lack of supervision, [and] substance abuse issues in the home." At a hearing two days prior, respondent stipulated to count I of the State's petition, which alleged the children were neglected because the home was found "in deplorable condition."

¶ 7 Also, on October 31, 2014, the trial court entered written dispositional orders, indicating respondent was unfit and unable to care for, protect, train, educate, supervise or discipline the children and that placement with her was contrary to their health, safety, and best

interests due to environmental neglect, lack of supervision, substance abuse in the home, and that respondent was "currently in prison." Accordingly, the court adjudicated the children neglected and made them wards of the court, placing custody and guardianship with DCFS.

¶ 8 Following an April 2015 permanency review hearing, the trial court entered permanency orders with the goal that the children return home within 12 months.

¶ 9 In an October 2015 permanency report, Carole Freeman, the child welfare specialist assigned to the case, reported that respondent had not made satisfactory progress regarding the goal of the children returning home. In particular, Freeman noted respondent was incarcerated and unable to engage in therapy to address her anger issues—issues that also led to a short suspension of visitation with her children. Freeman noted the children had been in care for 15 months and were no closer to returning home than when they entered the system. Freeman further noted the children were young and their foster parent was committed to providing permanency despite their behavioral challenges and anger issues. The report noted that DCFS recommended the permanency goal be changed from return home to substitute care pending the trial court's determination on termination of parental rights. On October 21, 2015, the court entered permanency orders setting the permanency goal as substitute care pending determination of termination of parental rights.

¶ 10 On October 26, 2015, the State filed motions seeking a finding of unfitness and termination of respondent's parental rights. The State alleged respondent was unfit because she (1) abandoned the children (750 ILCS 50/1(D)(a) (West 2014)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to their welfare (750 ILCS 50/1(D)(b) (West 2014)); (3) deserted the children for more than three months prior to the unfitness hearing (750 ILCS 50/1(D)(c) (West 2014)); (4) failed to make reasonable efforts to correct the

conditions that were the basis for the removal of the children during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); and (5) failed to make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect, specifically the periods of October 31, 2014, through July 31, 2015, and January 26, 2015, through October 26, 2015 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 11 A fitness hearing was conducted on June 22, 2016. Tamika Hall, a mental health counselor at Youth Advocate, testified first. Hall provided counseling services for M.S. over a one-year period that ended in May 2015. She had observed one of the visits between respondent and the children at the correctional center where respondent was incarcerated. Hall testified that during the visit, her coworker, Dawn McCoy, observed respondent "swat[] the second to youngest" child when he tried to climb onto the table. Shortly thereafter, Hall observed respondent swat the child again when he tried to crawl on the table to reach a snack. Hall stated McCoy asked respondent to "stop hitting [her] kids," but respondent replied that she had a right to discipline her children. According to Hall, a "blowup" between respondent and McCoy ensued. Hall testified that during this disruption, M.S. was "cracking up." Hall told respondent, "this is the behavior I'm working with your son on" as he had been diagnosed with intermittent explosive disorder. Respondent later stated that "when she got out [of prison], she was going to get him right." At this point, the visit was terminated.

¶ 12 Carole Freeman testified that she was the caseworker from August 2015 until May 2016, but she had been filling in for the previous caseworker who was on medical leave since March or April 2015. Freeman stated that the children came into care due to environmental issues on July 9, 2014, and that respondent's service plan goals had been in place

since October 2014. Freeman explained that respondent's goals, as indicated in her service plan, included engaging in individual counseling, providing a stable and clean living environment, completing parenting classes, visiting her children and engaging them in age-appropriate play, cooperating with service providers and the home interventionist, and developing a schedule and routine for cleaning her household.

¶ 13 Freeman stated respondent initially received a satisfactory rating on her service plan because she was engaged in a parenting program at the correctional facility. However, it was later determined that the program, which respondent completed in February 2015, was not an appropriate parenting course per DCFS standards and that respondent needed additional parenting instruction. According to Freeman, with the exception of a three-month period beginning in March 2015 when visitation was suspended after respondent was observed hitting the children, visitation was consistent during respondent's incarceration. Following the hitting incident, Freeman made a referral for the parenting educator to attend the visits to teach respondent some "techniques." Freeman stated the parenting educator attended one or two visits but that respondent told the educator she did not need her assistance.

¶ 14 Freeman testified she visited respondent at the correctional facility in April 2015, at which time respondent was agreeable to services and signed a release of information after having refused to do so "for several months." However, Freeman explained after that date, "[respondent] was not so pleasant with services. She cursed me out on several occasions, called [me] names, and she didn’t care what we did." Freeman testified, "overall[, respondent] didn't have a satisfactory service plan[.]" According to Freeman, respondent had not complied with services, had not contacted her children outside of visitation via letters or cards, and had not contacted DCFS for updates of her children. While respondent received some certificates in

prison, Freeman stated the courses were tailored to helping an inmate cope with being incarcerated and to successfully reenter society.

¶ 15 Freeman further testified that respondent was still incarcerated as of October 2015. As a result of her incarceration, respondent had not reached a point where she could have unsupervised visits with the children; she was unable to provide financially for her children or provide stable housing; and it was not within "the realm of possibility that she would be able within six months to have her children returned to her."

¶ 16 Following respondent's March 2016 release from prison, Freeman met with respondent at her office to explain the status of her case. Freeman testified at that meeting she referred respondent for "parenting and other services to help her in preparing for what may happen with her children."

¶ 17 Lena Gavin, respondent's mother, testified she had observed respondent "basically every day" with her children. In her opinion, respondent was able to properly provide for and parent her children, including providing food and medical care. She had never observed respondent abusing her children. Gavin stated she was employed and was willing and able to provide any help that she could to respondent and her children.

¶ 18 Respondent testified that, prior to her initial DCFS involvement, she did not have any run-ins with government authorities regarding her children. She completed several courses while incarcerated, including the STEP program, which is a parenting class; a course designed to help inmates cope after they are a released from prison; and a course which taught her how to budget and manage money. Respondent further testified that when DCFS suspended her visits with her children, she contacted her attorney for assistance in having visitation reinstated. Respondent felt she had been as active and involved with her case as possible.

¶ 19 Respondent further testified that since her March 2016 release from prison, she had secured housing and employment. She was also attending counseling, parenting classes, and visits with her children. According to respondent, she participated in all the programs which were available to her during her incarceration.

¶ 20 Following closing arguments, the trial court found the State had proved by clear and convincing evidence that respondent was unfit because she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) failed to make reasonable progress toward the return of the children to the parent during any nine-month period following the adjudication of neglect, specifically the periods of October 31, 2014, through July 31, 2015, and January 26, 2015, through October 26, 2015 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 21 A best-interest hearing was conducted on August 25, 2016. Lindsay Horcharik, a child welfare specialist with DCFS, testified first. She had been the caseworker since May 13, 2016. She prepared a best-interest report for the trial court's consideration. The best-interest report noted that all children were doing well in the foster home where they had lived for the last two years. While they maintained regular contact with respondent, they had bonded with the foster parent and had achieved a sense of stability and safety in her home. The foster parent had ensured the children's medical, educational, and developmental needs were met, provided them with an abundance of support, and was prepared to adopt the children.

¶ 22 Consistent with the best-interest report, Horcharik testified that all of the children were placed in the same foster home with their "Godparent" and were doing well. The children

were attached to their foster parent and felt safe in her home. The foster parent provided for the well-being of the children and ensured they got to their doctor's appointments despite not having her own vehicle. The foster parent expressed a desire to adopt the children, and because the foster parent is a family member (she shares a child with respondent's brother), the children continued to have contact with respondent.

¶ 23 Horcharik testified that since respondent's release from prison, she had maintained employment, stayed out of trouble, and "been good with her visits." Horcharik further stated that while respondent had secured housing, the house was "very small" and not adequate. Horcharik recommended that parental rights be terminated and the children freed up for adoption. In her opinion, it was unlikely that respondent would make enough progress within a six-month period of time to return the children to her care. However, Horcharik testified if parental rights were not terminated, she "would continue to work the case" and provide services to respondent.

¶ 24 Lena Gavin, respondent's mother, testified she had observed respondent with her children since her release from prison and they appeared to interact well. She believed the children would like to live with respondent. Gavin was willing and able to offer any support she could to respondent and the children. She stated she was also willing to be a placement for the children.

¶ 25 Respondent testified on her own behalf. Since her release from prison, she was working, had housing, and was back in school. Respondent felt her children should be returned to her as she had been doing everything she could to be a good mother. She also testified that she grew up with her children's foster mom and she expected her visitations with the children would continue regardless of the outcome of the case.

¶ 26 After hearing closing arguments, the trial court announced it had reviewed the relevant factors and the best-interest report. The court indicated the most important factors applicable to the case included the children's sense of attachment; where they felt a sense of security, familiarity, continuity; and their need for permanence. The court noted that all children were doing well in their foster home, were bonded to their foster mother and to each other, and had achieved a sense of stability and safety within their foster home. Further, the court stated the foster mother ensured that the children's medical, educational and developmental needs were met and was willing to adopt all five children. In addition, the court pointed out that if it chose not to terminate respondent's parental rights, "we'd be looking at least six months away before we could even consider the possibility of returning the children to [her] care." Thereafter, the court found the State had proved by a preponderance of the evidence that it was in the children's best interests to terminate respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent argues both the court's fitness and best-interest findings were against the manifest weight of the evidence.

¶ 30 A. Fitness

¶ 31 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001). Evidence of unfitness based on any ground enumerated in section 1(D) of

the Adoption Act (750 ILCS 50/1(D) (West 2012)) is enough to support a finding of unfitness, even where the evidence may not be sufficient to support another ground. *In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 32 Here, the State alleged, and the trial court found, that respondent was unfit based upon multiple grounds. For the reasons that follow, we find the evidence was sufficient to support the court's finding that respondent was unfit for failing to make reasonable progress toward her children's return during the two separate nine-month time frames alleged by the State—specifically, October 31, 2014, through July 31, 2015, and January 26, 2015, through October 26, 2015.

¶ 33 Under the Adoption Act, an unfit parent includes any parent who fails to make reasonable progress toward his or her child's return during any nine-month period following the neglect adjudication. 750 ILCS 50/1(D)(m)(ii), (iii) (West 2012). In addressing section 1(D)(m), the supreme court has stated as follows:

> "[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." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

Additionally, this court has defined "reasonable progress" as follows:

> " '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." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 34 Respondent argues that she "made more than reasonable progress and she has done all that she could do in this case." Specifically, she notes that while incarcerated, she maintained visits with her children, completed a parenting class, and attended two additional classes that were offered. She further notes that following her release from prison, she obtained housing, became employed, and continued to maintain her visits with her children.

¶ 35 Initially, we note that respondent was incarcerated throughout the two nine-month time periods at issue. Accordingly, any progress respondent may have made following her March 2016 release from prison is not relevant to the fitness finding.

¶ 36 Turning to the merits, the record shows that respondent's goals under her service plan included engaging in individual counseling, providing a stable and clean living environment, completing parenting classes, visiting her children and engaging them in age-appropriate play, cooperating with service providers and the home interventionist, and developing a schedule and routine for cleaning her household. Due to her incarceration,

respondent was unable to complete most of her required services. Although she completed a parenting class offered by the prison in February 2015, the class was deemed to be unacceptable by DCFS. The only goal for which respondent's progress was ever considered satisfactory was visitation. We note, however, that one month after completing the parenting class, respondent was twice observed "swatting" one of her children during a visit, which led to a "blow out" between respondent and one of the caseworkers and caused a three-month suspension of visitation. Thus, even respondent's goal of visitation was not satisfactorily met during the second review period.

¶ 37 While respondent's imprisonment may have negatively impacted her ability to meet the requirements of her service plans, we note that respondent's circumstances were of her own making. "[I]n determining whether a parent has made reasonable progress toward the return of the child, courts are to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)." *In re J.L.*, 236 Ill. 2d 329, 341, 924 N.E.2d 961, 968 (2010). "Time in prison is included in the nine-month period during which reasonable progress must be made." *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89, 19 N.E.3d 227; see also *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968 (holding "that time spent in prison does not toll the nine-month period" under which reasonable progress must be made).

¶ 38 Based on the above, the trial court's determination that respondent was unfit for failing to make reasonable progress toward her children's return was not against the manifest weight of the evidence. Because a finding of unfitness on one ground is sufficient, we need not address the other grounds under which the trial court determined respondent was unfit.

¶ 39 B. Best-Interest

¶ 40 "At the best-interest stage of termination proceedings the State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). At this stage, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). Section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) sets forth 10 factors for a court to consider when making a best-interest determination. Those factors must be considered in the context of the child's age and developmental needs and include:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

"A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence." *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24, 16 N.E.3d 930. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 41 Respondent's argument pertaining to the trial court's decision to terminate her parental rights is limited to the following statements: (1) "[t]he children need to grow up with their mother who has continued to fight for them"; (2) "[i]t is apparent from the testimony that the children are very bonded to [her] and want to be returned home to her"; and (3) she has been "doing exceptionally well since her release from prison."

¶ 42 At the outset, we reiterate that, at the best-interest stage, the interests and rights of a parent must yield to the best interests of the minor children. Our review of the record reveals that, at the time of the best-interest hearing, all five children had been living in the same foster home for approximately two years. Although the children were bonded to respondent, they were also bonded to their foster mother and to each other. They felt safe and secure in their foster home where their foster mother ensured that their medical, educational and developmental needs were met. Further, the children's foster mother was willing to provide permanency for the children by adopting all of them. On the other hand, although respondent had been released from prison, the evidence showed that respondent was not in a position to parent the children. At a minimum, it would have been at least another six months before the trial court could even begin to consider returning the children to respondent's care. Finally, the evidence shows that the children will continue to enjoy a relationship with respondent, regardless of whether she retains her parental rights. Given these facts, the record amply supports the trial court's finding that

termination of respondent's parental rights was in the children's best interests. Thus, its decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment.

¶ 45 Affirmed.