

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).

2017 IL App (4th) 160653-U
NOS. 4-16-0653, 4-16-0730, cons.

FILED
January 24, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: L.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-16-0653))	14JA88
JUSTIN HENRY,)	
Respondent-Appellant.)	
-----)	
In re: L.H., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-16-0730))	Honorable
SAMANTHA HENRY,)	Brett N. Olmstead,
Respondent-Appellant.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's decision to terminate the parental rights of respondents to L.H. was not against the manifest weight of the evidence.
- ¶ 2 On August 31, 2016, the trial court terminated the parental rights of respondents, Justin Henry and Samantha Henry, to their son, L.H. (born February 1, 2010). Respondents' appeals have been consolidated. Respondents argue the court erred in terminating their parental rights. Respondents also ask this court to find its prior ruling affirming the trial court's dismissal of their motion to dismiss the State's petition to terminate their parental rights was palpably erroneous. See *In re L.H.*, 2014 IL App (4th) 140079-U, ¶ 13. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In March 2010, the State filed a petition for wardship, alleging L.H. was neglected by reason of being in an environment injurious to his welfare (705 ILCS 405/2-3(b) (West 2008)). L.H. was born with marijuana, cocaine, and prescription pain medication in his system. Samantha had cocaine, (nonprescribed) benzodiazepines, and cannabis in her system. This case began in Douglas County in April 2010. At that time, Samantha understood she needed substance abuse and mental health treatment and to find a licensed day-care facility.

¶ 5 The trial court and the parties agreed to continue the case under supervision pursuant to section 2-20 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-20 (West 2008)). The court later terminated supervision and found L.H. neglected on November 17, 2010. The court made L.H. a ward of the court and named the Department of Children and Family Services (DCFS) his temporary custodian.

¶ 6 On November 9, 2011, the State filed a motion to terminate respondents' parental rights to L.H. In May 2013, respondents stipulated they each failed to make reasonable efforts within nine months of adjudication to correct the conditions requiring L.H.'s removal.

¶ 7 In September 2013, Samantha filed a motion to dismiss the State's petition to terminate her parental rights. Justin joined in the motion in December 2013. The trial court denied the motion to dismiss. On January 16, 2014, the trial court found it was in L.H.'s best interest to terminate respondents' parental rights. Respondents appealed.

¶ 8 This court held respondents failed to establish the trial court erred in denying their motion to dismiss, stating:

"Respondents base their argument on the absence of the admonitions in the written dispositional order. However, the plain

text of sections 1-5(3) and 2-23(1)(c) does not require the admonishments to be in writing. Further, because the record does not contain a transcript of the dispositional hearing, respondents have failed to establish the court did not give the admonishments in question." *L.H.*, 2014 IL App (4th) 140079-U, ¶ 13.

This court agreed the trial court erred in accepting respondents' stipulations with regard to their unfitness for termination purposes without hearing a factual basis for the stipulation. *Id.* ¶ 14.

As a result, this court vacated both of their stipulations as to their unfitness, reversed the order terminating their parental rights, and remanded the case for a new fitness hearing. *Id.* ¶ 18.

¶ 9 On remand, as directed, the trial court held a fitness hearing. Brigitte Spelbring, a caseworker at One Hope United, testified this case was originally under court supervision.

However, court supervision was later revoked, and L.H. came into care. When Spelbring took over the case, Samantha was living at the Manor Hotel in Urbana. Spelbring testified Samantha denied knowing Justin's whereabouts, and Spelbring was unable to locate him.

¶ 10 According to Spelbring, Samantha said she was doing odd jobs to pay rent at the motel. Spelbring told Samantha the motel was not an appropriate place for her to have L.H. She explained to Samantha it would be hard for her to recommend L.H.'s return if Samantha stayed at the motel. Samantha later obtained suitable housing in Urbana.

¶ 11 In December 2010, the Prairie Center recommended Samantha complete inpatient substance abuse treatment. However, a space for inpatient treatment was unavailable, so intensive outpatient treatment was recommended. Samantha attended, but she did not complete outpatient treatment because she claimed to have lost faith in her counselor. Samantha testified she later realized this was a mistake and went for another assessment at Prairie Center later in

2011. After the second assessment, her treatment went from intensive outpatient to Level 1 treatment. She started seeing a counselor again once a month and attended group meetings. During the first half of 2011, Samantha provided Spelbring with random drug drops, which were negative. However, she was unsuccessfully discharged again.

¶ 12 Samantha twice tested positive for hydrocodone in August 2011. According to Samantha, she was using hydrocodone, which had been prescribed by a doctor at Carle Hospital, to treat mouth ulcers in May 2011. She testified the prescription was still valid in August 2011 and claimed her counselor was aware of the prescription. However, Spelbring testified Samantha never presented an actual prescription.

¶ 13 Spelbring also testified Samantha told her she had been diagnosed with depression, anxiety, and bipolar disorder and received mental health treatment. Samantha said she was not taking any medication for her mental health issues because she was no longer receiving benefits under her medical card because the children were in state custody. Spelbring recommended Samantha receive a mental health assessment and follow any recommendations made.

¶ 14 In January 2011, Spelbring recommended parenting classes at Catholic Charities to Samantha. She recommended parenting classes again in June 2011 because Samantha did not start the class after the first recommendation. Samantha did complete parenting classes on August 16, 2011.

¶ 15 In October 2011, Spelbring located Justin at the Douglas County jail. Justin told Spelbring he had been trying to support his family. Justin began engaging in visits with L.H. in November 2011. When released, Justin began residing with Samantha in Urbana. Justin was

included in the December 2011 service plan. Justin participated in and finished parenting classes.

¶ 16 Lisa Rankin testified she began counseling Samantha in August 2011. Rankin could not remember the specific treatment plan goals. However, counseling was not completed because of Samantha's substance abuse issues, which were beyond the scope of Rankin's treatment. Rankin believed it was more important for Samantha to address the substance abuse issues first. Samantha was told she could later come back for counseling with Rankin. Rankin recalled no further contact with Samantha through November 9, 2011.

¶ 17 Kathleen Davis testified she had been a foster care supervisor at One Hope United and supervised the caseworkers in this case. She did not become involved until February 2011, and she was the case manager from September 2012 to February 2013. Samantha was cooperative until June 2011. However, Davis testified Samantha did not sign releases, attend appointments, or show up for drug tests on many occasions.

¶ 18 Davis supervised approximately 15 visits between Samantha and L.H. and did not see anything unusual occur. Davis's first contact with Justin was in December 2011 when she accompanied Spelbring to respondents' home for a child and family team meeting. She also had 10 or 12 interactions with Justin. She did not remember very many interactions with Justin when Samantha was not also present. She supervised about 8 to 10 visits between Justin and L.H. Davis testified Justin was referred to parenting class, which he completed.

¶ 19 Davis testified she became concerned with Justin because of his unusual level of irritation and aggravation in 2012. According to her testimony, in January or February 2012, Justin made a general threat to her and Spelbring, saying they would get what was coming to them. After the threats, respondents' visits were moved to a DCFS field office.

¶ 20 Samantha Henry testified she lived in Urbana. She and Justin married in March 2009. Besides L.H., Samantha testified she had two other children, M.H. (born August 20, 2005) and B.H. (born November 10, 2007), who lived with their biological father in Iowa. At the time of L.H.'s birth, she, Justin, and the three children lived together in Tuscola. She claimed she started drug and alcohol treatment on her own in Tuscola in February 2010, shortly after L.H. was born.

¶ 21 Samantha testified she participated in a mental health assessment at Douglas County Mental Health sometime after November 2010. She had been diagnosed with depression and anxiety when she was young and had received mental health treatment prior to L.H.'s birth. Further, after the birth of each of her children, she suffered postpartum depression. She also testified she was assessed by a health care professional at the Francis Nelson Center. She stated she has never suffered a manic or psychotic episode and does not have bipolar disorder. According to her own testimony, she felt like she was having mental health problems throughout 2011. She testified she had a lot of anxiety, stress, and depression. However, this was nothing out of the ordinary for her. One Hope United offered mental health services to Samantha. She started treatment with a therapist in July 2011. She was discharged for not attending in September 2011.

¶ 22 In May or June 2010, the family moved to the Manor Motel in Urbana. Initially, they were in a regular room, but they later moved into an apartment on the back side of the motel. According to Samantha, the family moved to Urbana in May or June 2010 because she needed to begin treatment at the Prairie Center and did not have transportation to go back and forth from Tuscola. However, she did not get an assessment through Prairie Center until December 2010. She testified this was the earliest she could get an appointment at Prairie Center

because the facility was so busy. Prairie Center was able to get her in for three days for detoxification in October 2010. They lived as a family unit at the Manor Motel until November 2010.

¶ 23 According to Samantha, she and Justin did construction work at the Manor Motel. The owner of the Manor Motel also owned a motel in Monee, Illinois, which is in Will County. Justin went to work on and stayed at the motel in Monee. Samantha did not move to Monee because her caseworker at that time, Connie Myers, did not want her to take L.H. there. At that time, the two older children were living with Samantha's mother in Tuscola. Samantha testified she went to Monee for a week or two. At that time, L.H. stayed with Justin's sister, Amanda Alleman, in Urbana.

¶ 24 Justin provided Samantha with money while he worked in Monee. Justin returned from Monee in late 2011. When he returned, he was incarcerated before moving back in with Samantha. While Justin was gone, respondents stayed in contact with each other through Facebook and via a pay phone. Samantha testified she could not have found stable housing or attended her classes without Justin's financial assistance. Samantha denied telling her caseworker she did not know where Justin was living. According to Samantha's testimony, the caseworker always knew Justin was in Monee. However, reports were filed with the trial court stating Samantha told the caseworker she did not know where Justin was residing. Samantha was aware of those reports and never corrected them.

¶ 25 In April 2011, Samantha moved to her current residence, a house in Urbana not far from the Manor Motel. Justin and her grandmother gave her money for the new place. Her grandmother, who was completely disabled, moved into the house with her and paid Samantha

for in-home health care services and also helped pay bills at the residence. Justin also gave her money, either through the mail or through the owner of the Manor Motel.

¶ 26 Samantha testified she attended all of her appointments and kept in contact with Spelbring as she was required in the months following the adjudicatory order. She had supervised visits with all of her children. She believed she was being cooperative with Spelbring but recognized in hindsight she could have been more cooperative with her. She testified she and Spelbring did not see "eye to eye" on a lot of things.

¶ 27 Justin Henry testified he had been convicted of home improvement fraud three times. He was on probation when L.H. was born. The family was living in Tuscola. He did not know Samantha was using illegal drugs while pregnant with L.H. In 2010, they lost their home in Tuscola and moved to a motel. They then moved to the Manor Motel in Urbana because DCFS wanted Samantha to start taking classes at the Prairie Center. Samantha did not have transportation to Urbana. They were having trouble paying for lodging.

¶ 28 In October or November 2010, Justin became aware warrants had been issued for his arrest. Justin believed he and Samantha would lose any chance of getting L.H. back if he was arrested. According to Justin, he was supporting Samantha in Urbana. He left Urbana in October 2010 to do construction work on a motel in Monee, Illinois, after L.H. was taken by DCFS. He worked in Monee for several months. During this time he did not visit with L.H., attend any court hearings, or meet with the caseworker. According to Justin:

"I thought at the time that it was better for—for one of us to be able to do everything that needed to be done to get our son back. I didn't believe that if I went to jail my wife would even be able to have a roof over her head. And my wife doesn't have a [general

equivalency diploma] or a diploma so it's very hard for her to get work and then with all the classes and—and services she was to do I *** believe that was impossible."

He testified he would have returned to Urbana if he learned Samantha was not participating in services. He returned to Urbana in September or October 2011, having not seen L.H. or participated in services for over a year. Justin felt like he accomplished what he set out to do by working in Monee.

¶ 29 Justin testified he knew about the ongoing DCFS case. However, he did not believe he could participate in the case and accomplish the goals he thought necessary for his family. Between September 2010 and October 2011, he had no goals set for him or services recommended through DCFS or One Hope United. Further, he did not participate in any services. He met Spelbring in October 2011 and met Kathleen Davis toward the end of 2011. He was arrested in October 2011 after returning to Urbana.

¶ 30 On April 15, 2016, in a written order, the trial court found the State proved by clear and convincing evidence Samantha was unfit for termination purposes because she failed to make reasonable progress toward L.H.'s return within nine months of adjudication and failed to demonstrate a reasonable degree of responsibility as to L.H.'s welfare. In addition, the court found the State proved by clear and convincing evidence Justin was unfit for termination purposes because he failed to (1) make reasonable efforts or progress within the first nine months after adjudication and (2) maintain a reasonable degree of interest, concern, or responsibility as to L.H.'s welfare.

¶ 31 On August 31, 2016, the trial court found it was in L.H.'s best interest to terminate Samantha's and Justin's parental rights. The court noted L.H. had lived with the same foster

family for almost six years, since the time he was seven months old, and had no memory of living anywhere else. L.H. was attached to his foster parents and his identity developed in the foster home.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 A. Motion To Dismiss

¶ 35 In the first appeal in this case, respondents argued the trial court erred in denying their motion to dismiss the State's petition to terminate their parental rights. According to respondents, they were not properly admonished pursuant to sections 1-5(3) and 2-23(1)(c) of the Juvenile Court Act (705 ILCS 405/1-5(3), 2-23(1)(c) (West 2010)) of their obligation to cooperate with DCFS, comply with the terms of any service plans, and correct any conditions requiring L.H. to be in care to avoid the termination of their parental rights. *L.H.*, 2014 IL App (4th) 140079-U, ¶ 12. This court found respondents failed to establish the trial court erred in denying the motion to dismiss because the record did not include a transcript of the dispositional hearing. This court noted respondents could have been orally admonished at that hearing. *Id.* ¶ 13.

¶ 36 This court affirmed the denial of respondents' motion to dismiss, but we vacated respondents' stipulations as to their unfitness, reversed the order terminating their parental rights, and remanded the case for a new fitness hearing because no factual basis was provided for the respondents' stipulation to unfitness. *Id.* ¶ 20. On remand, respondents attempted to renew their motion to dismiss and included a transcript of the dispositional hearing. The trial court denied the motion to renew the motion to dismiss because of the law-of-the-case doctrine. Respondents concede the trial court was correct. "Questions of law that are decided on a previous appeal are

binding on the trial court on remand as well as on the appellate court in subsequent appeals." *Bjork v. Draper*, 404 Ill. App. 3d 493, 501, 936 N.E.2d 763, 770 (2010).

¶ 37 However, respondents ask this court to look at this issue again, citing an exception to the law-of-the-case doctrine when a reviewing court finds its prior decision was palpably erroneous. *Id.* at 501, 936 N.E.2d at 770. According to respondents, our prior decision on the motion to dismiss was palpably erroneous because the transcript of the dispositional hearing does not contain the admonitions at issue. We disagree. Our decision was not palpably erroneous. We did not find respondents were properly admonished at the dispositional hearing. Instead, we affirmed the denial of respondent's motion to dismiss because they failed to provide a complete record establishing the alleged error. This court's decision was correct based on the record before it.

¶ 38 B. Termination of Parental Rights

¶ 39 1. *Findings of Unfitness*

¶ 40 Before a trial court can terminate parental rights, the State must prove by clear and convincing evidence (*In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001)) the parent is unfit as defined by the Adoption Act (750 ILCS 50/0.01 to 24 (West 2014)). *In re B.B.*, 386 Ill. App. 3d 686, 698, 899 N.E.2d 469, 480 (2008). A reviewing court will reverse a trial court's finding of unfitness only if it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940-41 (2002). A decision is against the manifest weight of the evidence where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *In re Cornica J.*, 351 Ill. App. 3d 557, 566, 814 N.E.2d 618, 626 (2004). An individual's parental rights can be terminated if

even a single alleged ground for unfitness is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005).

¶ 41 We first address Samantha's argument the trial court erred in finding her unfit based on a failure to make reasonable progress toward reunification during the nine months following the adjudication of neglect (November 17, 2010, to August 17, 2011). Reasonable progress may be found when "the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such quality that the court, in the *near* future, will be able to order the child returned to parental custody." (Emphasis in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). This is an objective standard. *Id.* at 461, 577 N.E.2d at 1385.

¶ 42 L.H. was born with cocaine in his system. Samantha needed to deal with her mental health and substance abuse issues if she wanted L.H. returned to her care. Samantha participated in a substance abuse assessment at Prairie Center in December 2010. This assessment recommended inpatient treatment, followed by intensive outpatient treatment. Unfortunately, Prairie Center did not have space available for inpatient treatment, so Samantha started outpatient treatment. However, she did not successfully complete treatment and was discharged. She returned to treatment in June 2011, but she again was discharged without completing treatment. She did not complete a mental health assessment until July 2011. She began counseling but was discharged in September 2011 because she was not attending.

¶ 43 We will not overturn a finding of unfitness unless the court's finding was against the manifest weight of the evidence. We give great deference to the trial court's finding because it was in a better position to observe witnesses and evaluate their credibility. *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28, 22 N.E.3d 1241. While Samantha had successfully completed parenting

classes and acquired suitable housing, we cannot find the trial court's finding she failed to make reasonable progress toward reunification during this nine-month period was against the manifest weight of the evidence because she had been given opportunities to address her substance abuse issues and mental health issues and failed.

¶ 44 The trial court also found Justin failed to make reasonable progress during the first nine months after L.H. was adjudicated neglected. According to Justin's brief, citing *S.H.*, 2014 IL App (3d) 140500, ¶ 30:

"The trial court is to 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 this case, we review respondent's efforts for the nine-month period following the September 11, 2012, adjudication."

We note the September 11, 2012, date referenced by Justin is not relevant in this case. This date was referenced as the date of adjudication in *S.H.* and was mistakenly noted as the date of adjudication in this case.

¶ 45 As noted previously, the date of adjudication here was November 17, 2010. The trial court was considering Justin's progress from November 17, 2010, to August 17, 2011. During this period, Justin made no progress toward his reunification with his son. Instead, he intentionally chose not to reveal his location to DCFS or any of the agencies working on this case. The trial court's unfitness finding with regard to Justin's lack of reasonable progress is not against the manifest weight of the evidence.

¶ 46 *2. Best-Interest Finding*

¶ 47 Once a parent has been found unfit in a termination proceeding, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). The State has the burden of proving termination is in the best interest of the child by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). "A trial court's finding termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence." *M.F.*, 326 Ill. App. 3d at 1115-16, 762 N.E.2d at 706. Under this standard, a reviewing court gives the trial court deference because it is in a better position to observe the parties' and witnesses' conduct and demeanor. *M.H.*, 196 Ill. 2d at 361, 751 N.E.2d at 1139. We will not substitute our judgment for that of the trial court regarding witness credibility, the weight to be given witness testimony, or inferences to be drawn from the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These include the following:

“(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 and ties; (4) the child’s sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child’s wishes and long-term goals; (6) the child’s community ties; (7) the child’s need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the

uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child.” *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

The trial court considered these factors before terminating Justin's and Samantha's parental rights. As the trial court noted, L.H. had lived with the same foster family for almost six years and would have no memory of living anywhere else. L.H.'s identity was developed in the foster home, and he was attached to the foster parents. The trial court correctly concluded terminating Samantha's and Justin's parental rights would allow L.H. to have permanency.

¶ 48 Respondents argue the trial court's "analysis overshadows important considerations." According to respondents:

"[They] have a safe, long-term home with which L.H. is familiar. They are also the only connection between L.H. and [their] affiliation with [the] Jehovah Witnesses. Because of the estrangement between [respondents] and the Allemans, termination of [respondents'] rights will almost surely terminate the relationship between [respondents] and L.H., whereas there is a good bond, according to Dr. Osgood, between the child and his parents."

Respondents also argued the court erred in dismissing "as insufficiently important the fact of L.H.'s life that 'normal' to him is the involvement in his life of four parent figures, not two."

¶ 49 We note the trial court did consider the fact L.H. would not be raised as a Jehovah's Witness and had relationships with both his foster parents and respondents. The court

stated, "I think that is an interest and something for me to consider, but a parent's interests in having his or her biological child raised in his or her chosen faith does not override all other considerations when determining a child's best interests." Further, the court considered the possibility L.H.'s foster parents, who wanted to adopt L.H., would cut L.H.'s ties with Justin and Samantha. The court stated:

"If I do not terminate parental rights and instead look to a time in the future when [L.H.] is returned with both custody and guardianship to the Henrys, the situation for [L.H.] would be much the same, where if this estrangement has permanently severed all ties, then at that point [L.H.] would be cut off from the two people that he has known as his primary parental figures in his life for, as we sit here, almost six years. And so I think, either way, that [L.H.], if that is true, which I do not accept, but if that were true, that it's either one or the other, and no matter which way this case proceeds, [L.H.] would be cut off from the other two of the four parental figures that he's had in his life. Then, either way, it would cause a problem and hardship for [L.H.] And so I don't think that that sort of consideration necessarily favors not terminating parental rights in this specific case."

The transcript of the best-interest hearing reveals the trial court put much thought into its decision to terminate Justin's and Samantha's parental rights to L.H. The court's decision was not against the manifest weight of the evidence.

¶ 51 For the reasons stated above, we affirm the trial court's decision to terminate both Justin Henry's and Samantha Henry's parental rights to L.H.

¶ 52 Affirmed.