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April 19, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160859-U

NOS. 4-16-0859, 4-16-0860, 4-16-0861, 4-16-0862 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-16-0861)	)	No. 14JA147
ANDREW WOODS,	)	
Respondent-Appellant.	)	
	)	
In re: J.W., a Minor,	)	No. 14JA147
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee.	)	
v. (No. 4-16-0862)	)	
JULIE WOODS,	)	
Respondent-Appellant.	)	
	)	
In re: L.W., a Minor,	)	No. 14JA148
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0859)	)	
ANDREW WOODS,	)	
Respondent-Appellant.	)	
	)	
In re: L.W., a Minor	)	No. 14JA148
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0860)	)	Honorable
JULIE WOODS,	)	Thomas E. Little,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment finding respondents unfit and terminating their parental rights is affirmed.

¶ 2 In August 2014, the State filed a petition alleging J.W., a minor born in November 2005, was neglected and abused because respondent father, Andrew Woods, used her to shoplift at Walmart. The petition alleged substance abuse was an ongoing problem with respondent father and respondent mother, Julie Woods. A separate petition alleged L.W., born in November 2004, was neglected and abused as the result of her father involving her sibling, J.W., in shoplifting. Both parents defaulted on October 1, 2014. On October 2, 2014, the trial court entered written orders adjudicating both minors neglected and abused and making them wards of the court. In September 2015, the State filed a motion seeking a finding of unfitness and termination of respondents' parental rights. In August 2016, the court found both parents unfit, and in November 2016, it terminated their parental rights. Respondents appeal, contending the court's findings they were unfit and it was in the minors' best interests to terminate their parental rights were against the manifest weight of the evidence.

¶ 3 We affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On August 21, 2014, the State filed petitions (in separate cases) alleging L.W. and J.W. were neglected as a result of Andrew involving J.W. in retail theft at Walmart, thus causing an environment injurious to their welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2014)). The petitions also alleged the minors were abused as a result of the above actions pursuant to section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2014)). Both counts alleged substance abuse was an ongoing issue with both parents.

¶ 6 The shelter-care report filed on August 21, 2014, revealed Andrew took L.W. and J.W. to Walmart. Andrew told L.W., who was nine years old, to return body wash so they could

have money for gas. Andrew then took J.W., who was eight years old, through the store. J.W. left the store with a bag full of breakfast food that had not been paid for. Both minors and Andrew reported the minors' mother (Julie) was not present because she is banned from the area Walmart Stores and parking lots due to prior thefts.

¶ 7 A family case had been opened by the Department of Children and Family Services (DCFS) in December 2012, when the family lived in Charleston, Illinois. Andrew and Julie had never completed their 2013 service plan. Their caseworker had only recently learned the family was living in Decatur, Illinois. The family had extensive prior DCFS involvement, with a total of six investigations. There was an open case in Logan County, but the family had moved away from there. Both Andrew and Julie were on probation out of Shelby County.

¶ 8 Both parents appeared in court for the shelter-care hearing on August 21, 2014, and for the first appearance on the petition on September 17, 2014. At that time, the case was set for October 1, 2014. On October 1, 2014, neither parent appeared, and each of their attorneys reported they had no contact with their client. The trial court defaulted both parents and entered written adjudicatory and dispositional orders on October 2, 2014, making the minors wards of the court and placing guardianship with DCFS.

¶ 9 On October 27, 2014, both parents filed a motion to vacate their default. They failed to appear in court on November 20, 2014, January 21, 2015, and February 18, 2015, when the trial court denied the motion to vacate.

¶ 10 On September 28, 2015, the State filed a motion seeking to terminate Andrew's and Julie's parental rights. The motion alleged five different bases for termination, including failure to make reasonable progress toward the return of the minors during the nine-month period of October 2, 2014, to July 2, 2015, and December 28, 2014, to September 28, 2015 (750 ILCS

50/1(D)(m)(ii) (West 2014)). On October 21, 2015, Julie appeared with counsel on the motion to terminate. This was the first time Julie appeared in court since September 17, 2014.

¶ 11 On November 18, 2015, Andrew appeared with counsel on the motion to terminate. This was the first time he appeared in court since September 17, 2014.

¶ 12 On August 15, 2016, the case proceeded to hearing on respondents' fitness. Julie failed to appear at the hearing, but Andrew appeared in person. Julie's attorney was present on her behalf.

¶ 13 Heather Brady testified she was the family's caseworker and is employed by One Hope United. A service plan was put in place in late September 2014. The plan recommended a substance-abuse assessment and treatment, a mental-health assessment, a legal source of income, and stable housing for both parents. Domestic-violence services were recommended for Andrew and parenting classes were recommended for Julie.

¶ 14 Brady met Andrew on October 28, 2014, and did not see him again until one year later. Neither parent participated in the recommended services, although Andrew provided a certificate to show he completed the Gateway drug program while he was incarcerated in the Illinois Department of Corrections (DOC). Brady frequently performed diligent searches for the parents because she could not locate them. She finally learned they were both incarcerated in DOC. She sent letters to both parents in DOC. Andrew wrote back, indicating he would like visitation with L.W. and J.W. Brady never heard from Julie. The children did not visit Andrew in prison, but he sent a handful of letters to them through Brady. After Andrew's release from DOC, he began employment with McDonald's, then worked at a factory in Effingham. He then left the factory and returned to work at McDonald's. Brady did not know where Andrew was residing, and he had not provided proof of his employment to her. Brady believed Andrew was

incarcerated in DOC in April 2015 and was released in November 2015. Julie was incarcerated from April through September 2015. From October 2014 until April 2015, neither parent began any services.

¶ 15 Andrew testified he was in DOC from March 2015 until November 2015. During his time there, he attended the Gateway drug program, which held meetings three times a day. Andrew completed phases one and two of the drug program. He was unable to complete phase three prior to his release. He went to a "men challenging violence" class every Thursday morning and attended two weekly Bible study groups while in DOC. After the shelter-care hearing, L.W. and J.W. were placed with Andrew's parents. At that time, he knew there were quite a few outstanding warrants for him and he knew he would be going to prison, so he just ran from his problems. He did not have contact with Brady because he was bouncing from place to place. He completely turned his life around in prison and hoped his children could forgive him. After his release from prison, he went to Shelby County Community Services (SCCS) to complete his drug treatment and graduated after 12 weeks. Andrew also began mental-health counseling in SCCS after he completed substance-abuse counseling. This was subsequent to his release from DOC.

¶ 16 Brady was recalled after Andrew testified. She stated he completed no assessments between October 2014 and September 2015. With respect to the Gateway drug program in DOC, that program was not sufficient to satisfy the service plan. Brady acknowledged Andrew later completed an assessment and treatment in Shelbyville, but this was after the nine-month period at issue. The anger-management counseling in DOC also did not satisfy the service-plan requirements. As of September 28, 2015, neither parent was in a position to have the minors returned to them in the reasonably near future.

¶ 17 The trial court found, by clear and convincing evidence, both parents failed to make reasonable progress toward the return of the minors during either nine-month period.

¶ 18 On November 22, 2016, the trial court held a best-interests hearing. The children's caseworker, Heather Brady, testified she had been the caseworker since October 2014 and both L.W. and J.W. were doing great. The children had been placed in their current foster home since January 2016. J.W. had improved her grades and reading level since living in the current foster home. L.W. was maintaining a straight-A average. The minors were engaged in church and other extracurricular activities. They called the foster parents "mom" and "dad" and felt a sense of love, attachment, and safety. (The children called their biological parents "Andrew" and "Julie.") The foster parents were willing to adopt both children. The children had frequently expressed to Brady their desire to remain in their foster placement.

¶ 19 Brady testified Julie had gone missing in August 2016. Brady was notified Julie was back in the beginning of November. Julie told Brady she had relapsed and gone into drug treatment. The parents asked to visit the minors and Brady requested they submit to a drug screen the next day. Neither parent showed up for the screen. Julie had not seen the minors since the end of June 2016, and Andrew had not seen J.W. since August 2016 and had not seen L.W. for an even longer period of time. (L.W. asked to terminate her visits with Andrew.) After Julie's release from DOC, she engaged in substance-abuse counseling and mental-health treatment, but she was discharged unsuccessfully from both. Julie completed a parenting class through One Hope United.

¶ 20 Julie declined to testify at the best-interests hearing. Andrew testified he loved his children and had done everything he could to get them back.

¶ 21 The trial court considered the best-interests report filed August 29, 2016. The

report reflected the minors were residing in relative foster care with their maternal cousin and her husband in Mattoon, Illinois, and had been there since January 26, 2016. Both L.W. and J.W. were engaged in weekly therapy to address trauma and abandonment issues. When Brady picked the minors up for visitation with their parents, they usually said they did not want to go. L.W.'s visitation with Andrew was suspended at her request following an argument between L.W. and Andrew where L.W. walked out of the visit crying and visibly upset.

¶ 22 Both minors have told Brady they enjoy their life in Mattoon, and they enjoy their friends, school, and their extracurricular activities. Both minors told Brady, for the first time in a long time, they finally feel safe and secure. This was the first time the minors could remember having a stable roof over their heads. Both minors told Brady they do not want to ever leave their foster home.

¶ 23 The trial court found the following factors applied in favor of termination:

> "The most important factors that I believe apply to this hearing include the children's sense of attachment, where they actually feel love, a sense of being valued, their sense of security, their sense of familiarity, continuity, the least disruptive placement alternative for the children. Another factor that, obviously, I believe would apply in this case, very important in my analysis, would be the children's need for permanence, including their need for stability and continuity of relationships with parent figures, with siblings and other relatives."

The court found it in the minors' best interests to terminate Andrew's and Julie's parental rights.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondents argue the trial court erred in (1) finding them unfit and (2)

terminating their parental rights as to both minors.

¶ 27 A. Unfitness Finding

¶ 28 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001).

¶ 29 A parent will be deemed unfit if the State proves, by clear and convincing evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). We note the State need only prove one statutory ground to establish parental unfitness. *Donald A.G.*, 221 Ill. 2d at 244, 850 N.E.2d at 177. "Evidence of a single statutory ground is sufficient to uphold a finding of parental unfitness." *In re T.Y.*, 334 Ill. App. 3d 894, 905, 778 N.E.2d 1212, 1220 (2002).

¶ 30 In this case, the trial court found respondents unfit for, *inter alia*, failing to make reasonable progress during the nine-month periods from October 2, 2014, through July 2, 2015, and from December 28, 2014, through September 28, 2015 (750 ILCS 50/1(D)(m)(ii) (West

2014)). This court judges reasonable progress according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 31 Here, both respondent parents failed to engage in services following the neglect and abuse adjudications. Their caseworker, despite diligent searches, did not see either parent for long stretches of time. In Andrew's case, she did not see him between October 28, 2014, and his release from prison on November 5, 2015. Julie did not show up for the fitness hearing. Both respondent parents became incarcerated during the nine-month periods and had no visits with the children during those times. While Andrew sent a handful of letters, Julie never corresponded with the caseworker while incarcerated. Andrew did participate in prison programs, but those programs did not satisfy the service-plan requirements.

¶ 32 It is clear for at least the first four or five months following adjudication, Andrew and Julie made no progress toward the return of their children. Andrew admitted he ran from his problems. Their incarcerations following this period further inhibited their progress. Time spent incarcerated is included in the nine-month period during which reasonable progress must be made. *In re J.L.*, 236 Ill. 2d 329, 343, 924 N.E.2d 961, 969 (2010).

¶ 33 At the end of both nine-month periods, Andrew and Julie were not in a position to have the children returned to them, nor would they be so in the reasonably near future.

Accordingly, the trial court's finding respondents were unfit because they failed to make reasonable progress was not against the manifest weight of the evidence.

¶ 34 B. Best-Interests Findings

¶ 35 Respondents argue the trial court's decision to terminate their parental rights was against the manifest weight of the evidence. We disagree.

¶ 36 At the best-interests stage, a "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, 818 N.E.2d 1214, 1227 (2004). Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interests for those rights to be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. When considering whether termination of parental rights is in a child's best interests, 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 factors include the following:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
>
> (ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05)(a) to (j) (West 2014).

The trial court must consider all of the above-cited factors; however, no single factor is dispositive. *In re Austin W.*, 214 Ill. 2d 31, 50, 823 N.E.2d 572, 584 (2005).

¶ 37 The trial court's best-interests finding will not be reversed unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). 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. *In re M.H.*, 196 Ill. 2d 356, 361, 751 N.E.2d 1134, 1139 (2001). We will not substitute our judgment for that of the trial court regarding witness credibility, the weight to be given to 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). A decision is against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368

Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 38 In this case, L.W. and J.W. were living together in a relative foster placement. This was an adoptive placement with real permanency available. The children were thriving, progressing in school, and felt safe and secure for the first time in their lives. They were attached to their foster parents and expressed their desire to remain in their foster home. L.W.'s and J.W.'s needs were being met in all respects. The trial court's finding it was in the minors' best interests to terminate respondents' parental rights was not against the manifest weight of the evidence.

¶ 39 III. CONCLUSION

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

¶ 41 Affirmed.