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Carla Bender
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NOS. 4-17-0083, 4-17-0085 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.H., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-17-0085) CHERRY SHEPPARD, Respondent-Appellant.	)	Appeal from Circuit Court of Sangamon County No. 14JA161
In re: D.S., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-17-0083) CHERRY SHEPPARD, Respondent-Appellant.	)	No. 14JA162 Honorable Karen S. Tharp, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness finding was not against the manifest weight of the evidence and the court committed no error in terminating respondent's parental rights.

¶ 2 Respondent, Cherry Sheppard, appeals the trial court's orders in two separate cases terminating her parental rights to two minors. She challenges the trial court's fitness and best-interest findings, claiming those findings are against the manifest weight of the evidence.

Although the minors' cases were separate trial court cases, the proceedings were combined, and in the interest of judicial economy, we have consolidated the appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent is the mother of D.S., born September 25, 2012, and D.H., born October 9, 2014. The minors' father, Derrick Turner, was a party in the trial court proceedings and had his parental rights terminated as well, but he is not a party to this appeal.

¶ 5 In November 2014, the Department of Children and Family Services (DCFS) received a report that respondent had not been taking her medication for paranoid schizophrenia. Her behavior was described as erratic. The minors were taken into protective custody. After the shelter-care hearing, the trial court found probable cause to believe the minors were neglected and dependent.

¶ 6 The State filed separate petitions for the adjudication of neglect and dependency as to each minor, though the grounds and allegations were identical. The State alleged D.S. (Sangamon County case No. 14-JA-162, docketed as appellate case No. 4-17-0083) and D.H. (Sangamon County case No. 14-JA-161, docketed as appellate case No. 4-17-0085) were neglected minors in that their environment was injurious to their welfare when they resided with (1) respondent due to her mental-health issues, and (2) both parents due to the existence of domestic violence between the parents. See 705 ILCS 405/2-3(1)(b) (West 2014). The State also alleged the minors were dependent in that they were without proper care due to respondent's mental disability. See 705 ILCS 405/2-4(1)(b) (West 2014).

¶ 7 At the August 2015 adjudicatory hearing, in the presence of respondent and without her objection, the minors' father admitted the allegation of an injurious environment due

to domestic violence. On August 12, 2015, the trial court entered an adjudicatory order, finding the minors neglected based upon the father's admission. On September 10, 2015, the court entered a dispositional order, finding (1) it in the minors' best interest they be made wards of the court; and (2) respondent was unfit, unwilling, or unable due to reasons other than financial reasons alone to care for the minors. The court awarded DCFS custody and guardianship of the minors.

¶ 8 On June 16, 2016, the State filed a petition to terminate respondent's parental rights based on her failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (see 750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis of removal (see 750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) make reasonable progress toward the return of the minors within a certain nine-month period after the adjudication of neglect, namely, August 12, 2015, through May 12, 2016 (see 750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 9 From the transcript of the fitness hearing, conducted on September 29, 2016, November 9, 2016, and December 9, 2016, we find the following relevant evidence. The State's expert witness, Lori McKenzie, a clinical psychologist, testified she evaluated respondent on November 6, 2015, to assess her cognitive, personal, and mental-health functioning. A written report she prepared was admitted into evidence.

¶ 10 McKenzie testified that, upon testing, respondent generally "scored in the mildly impaired range." Respondent scored in the borderline range on an adaptive-functioning test, which McKenzie thought could "have [an] impact on [respondent's] ability to understand certain more complex issues related to parenting." Respondent obtained a reading grade equivalent to the fourth-grade level and a math grade equivalent at the second- to third-grade level. McKenzie

diagnosed respondent with schizoaffective disorder, bipolar type. Respondent told McKenzie she had stopped taking her medication because she said the "people at the mental health center told her that she no longer needed [it]." In McKenzie's opinion, due to respondent's diagnosis and "lack of mental stability and her lack of complete compliance with mental health treatment, [she] felt that [respondent] would not be able to provide minimally appropriate parenting within the time frame available to the court until she could demonstrate that she was mentally stable." McKenzie noted respondent had previously been hospitalized at McFarland Mental Health Center due to violent manic episodes.

¶ 11 Michelle Tremain, a DCFS caseworker, testified she began working with this family on October 27, 2015. The case plan had already been created and covered October 29, 2015, through May 3, 2016. Respondent was required to (1) cooperate with DCFS and all service providers, (2) participate in visitation, (3) complete a parenting course, (4) participate in mental-health treatment, (5) comply with probation, and (6) participate in a substance-abuse assessment and any recommended treatment. Respondent's progress, upon review of the case plan, was rated unsatisfactory due to a general lack of progress and "lack of compliance in mental health as far as making appointments, monitoring medication." According to Tremain, respondent was not present when the case plan was reviewed in May 2016, though she had been provided notice.

¶ 12 Although respondent had complied with her task of participating in a substance-abuse assessment, she had not participated in the recommended treatment. She "was dropped from Family Guidance Center on two different occasions based on continued absence and non-compliance in out[]patient treatment, sporadic group attendance, [and] individual attendance."

¶ 13 With regard to visitation with the minors, respondent was rated unsatisfactory as well. She was inconsistent in attendance, with "a lot of no shows." Of 23 scheduled visits,

respondent attended 16. Tremain said the quality of interaction between respondent and the minors was "poor." She had a "lack of understanding and age appropriate play," failed "to make eye contact or engage the kids, fail[ed] to have structure or organization to the visits," and "fail[ed] to provide nutritious meals or snacks during visits."

¶ 14 Further, respondent's cooperation with domestic-violence counseling (a task not mentioned as being part of the case plan but noted as the primary reason for removal) was rated unsatisfactory because it "was never initiated." However, respondent had completed the recommended parenting course.

¶ 15 Respondent testified on her own behalf. She claimed the caseworker lied about the success of her recommended tasks. She stated she was not undergoing any mental-health treatment because her latest mental-health professional told her not to take the medication previously prescribed because it "was overdosing" her. In her opinion, she did not need medicine. She denied she was diagnosed with schizoaffective disorder, bipolar type. She said she had completed parenting classes, her "program with mental health," the domestic-violence program, and her "drug classes." She said she completed "everything that they asked [her] to do," and therefore, she did not understand why she could not have her children returned. She said she had "been to every visit"—"probably missed like one visit because they, like, cancel it out." She asked the court to return the minors to her care.

¶ 16 After considering the evidence presented, the trial court stated:

> "Mother testified that she completed certain things. She said she completed something at the Family Guidance Center. Said she had counseling at the Family Guidance Center. She said the caseworker lied, but she also said that she successfully completed her probation, which clearly by that criminal case, she

> did not. She admitted a petition to revoke her probation based upon not going to drug and alcohol treatment or at least an assessment and testing positive, she was unsuccessfully terminated. So she is either not being truthful or has no insight into what is actually going on, but she lacks credibility when she tells me that she did other things when she said she successfully completed her probation."

The court found the State had successfully proved by clear and convincing evidence that respondent was unfit on each ground alleged in the petition.

¶ 17 On January 26, 2017, the trial court conducted a best-interest hearing. Tremain was called to testify regarding the minors' placement. D.S., age four, had been in the same traditional foster home since coming into placement. He was recently diagnosed with pervasive developmental disorder. He was making progress with his vocabulary through speech therapy. He was in a secure environment, with structure and consistency. The interaction between D.S. and his foster parents was "very positive" and "very loving." Tremain said, "he very much has made a bond and attachment with this family." D.S. relates well with the other children in the home, as there was "a pretty obvious sibling close bond." Tremain said this home was a potential adoptive placement.

¶ 18 Tremain said D.H., age two, was placed in a different traditional foster home than D.S. Like D.S., D.H. had been placed in this home since coming into care. Both sets of foster parents coordinate times to get the siblings together. D.H. was recently diagnosed with autism. Tremain was in the process of securing therapeutic child-care services and behavioral, occupational, and developmental therapies for him. His foster home was a potential adoptive placement and was meeting all of his needs. The family interaction among the foster parents and

siblings was "very strong." D.H. was very attached and "tends to stay very close to both foster parents."

¶ 19 When asked if either minor would suffer harm if respondent's parental rights were terminated, Tremain stated, in her opinion, they would not. She said: "I don't doubt that either parent loves their children. I just think that through the inconsistent visits, lack of progress on services, lack of cooperation with service providers, has made it—you know, everything's been made possible for them to complete services successfully, and it wasn't done."

¶ 20 Respondent testified she had filed "documents" requesting that her sister be allowed to adopt the minors. In her opinion, the minors would be happier placed together. She claimed she was able to care for her children because her mental health was good and she had recently engaged in services. She said she has a home for them and interacts well with them. She said D.S. tells her at every visit that he is ready to go home with her. She said she has a very close bond with both minors and it would be in their best interest to remove them from their respective placements and place them either with her or with her sister.

¶ 21 After considering the testimony, the arguments of counsel, and the statutory best-interest factors, the trial court found it was in the minors' best interest to terminate respondent's parental rights. The court noted it was best for the minors "to remain essentially where they are to obtain that permanence." This consolidated appeal followed.

¶ 22 II. ANALYSIS

¶ 23 A. Fitness Determination

¶ 24 In this appeal, we review only the trial court's fitness and best-interest findings, as respondent did not appeal the adjudication of neglect upon the entry of the dispositional order.

Thus, those decisions are not properly before this court. See *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000) (because the respondent did not file an appeal from the dispositional order in the neglect proceedings, jurisdiction was never perfected and cannot be raised in an appeal from the termination proceedings). As such, we will not address respondent's apparent claim regarding the propriety of the father's stipulation during the neglect proceedings.

¶ 25 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In doing so, 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 2014)). *In re D.D.*, 196 Ill. 2d 405, 417 (2001). Here, the trial court found respondent unfit on three grounds. Any one ground, properly proved, is sufficient to enter a finding of unfitness. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The court found respondent was unfit because she failed to make reasonable progress toward the return of the minors within the nine-month period between August 12, 2015, and May 12, 2016. See 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 26 Section 1(D)(m)(ii) of the Adoption Act provides that a parent is unfit for failing "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglect[ ] or abuse[ ]." 750 ILCS 50-1(D)(m)(ii) (West 2014). "Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. At a minimum, reasonable progress requires " 'measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child.' " *A.S.*, 2014 IL App (3d) 140060, ¶ 17. (quoting *In re M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991)). " '[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.' " *A.S.*, 2014 IL App (3d) 140060, ¶ 17 (quoting *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001)). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 27 As a court of review, we give great deference to a trial court's finding of unfitness. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). To reverse the trial court's unfitness finding, we must find it was against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208. A trial court's finding is against the manifest weight of the evidence if it is clearly evident that the opposite conclusion should have been made. *C.N.*, 196 Ill. 2d at 208.

¶ 28 During the relevant time period, between August 12, 2015, and May 12, 2016, respondent's progress was rated unsatisfactory on the case plan reviewed in October 2015. The recommended tasks were carried forward to the next case plan, which was reviewed in May 2016. Respondent failed to comply with mental-health treatment. Although she participated in a psychological evaluation, she refused to take her prescribed medication, denying she needed it. She disputed her diagnosis of schizoaffective disorder, bipolar type. Respondent failed to participate in the recommended substance-abuse treatment. According to the caseworker, respondent was dropped from the treatment program on two different occasions for failure to attend and for noncompliance. She was inconsistent with visitation with the minors, and when she did attend, the quality of the visits was "poor." Although she had successfully completed a

parenting course, she did not apply what she had learned. Finally, despite a referral, respondent failed to initiate domestic-violence counseling, even though she testified she successfully completed the program. The caseworker rated respondent's progress during the entire relevant time frame as unsatisfactory.

¶ 29 The evidence presented clearly demonstrated respondent failed to make measurable or demonstrable movement toward the return of the minors within the relevant period of time. Thus, we conclude the trial court's determination that respondent failed to make reasonable progress was not against the manifest weight of the evidence.

¶ 30 B. Best-Interest Determination

¶ 31 Once a trial court finds a parent unfit under one of the grounds of section 1(D) of the Adoption Act, the next step in an involuntary termination proceeding requires the court to consider whether it is in the best interest of the minor to terminate parental rights pursuant to section 1-3(4.05) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-3(4.05) (West 2014)). The State has the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. See *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The court's determination will not be reversed unless it is against the manifest weight of the evidence. See *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004).

¶ 32 Section 1-3(4.05) of the Act requires a trial court to consider a number of factors for termination within "the context of the child's age and developmental needs." Here, the trial court emphasized the factor promoting an environment that will provide the minors with permanence, stability, and continuity of relationships. See 705 ILCS 405/1-3(4.05)(g) (West

2014). The court noted the possibility of a bond between respondent and D.S., less so with D.H., since he was only six weeks old at the time he was removed from respondent's care. Nevertheless, the caseworker testified about the strong bond both minors had with their respective foster parents and family. Both homes were meeting the minors' needs and were potential adoptive placements. The minors were thriving in their current placements, both permanent and stable home environments. D.H. required additional care due to his diagnosis of autism, which his foster parents were providing. Both sets of parents realized the importance of keeping the minors in contact with each other, and there is no reason to believe such practice would not continue.

¶ 33 When we consider the statutory factors as a whole, and in particular the factor promoting the minors' permanence, stability, and continuity of relationships, we are unable to say the trial court made a finding that was against the manifest weight of the evidence when it found that terminating respondent's parental rights would be in the minors' best interest. See *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010).

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.