NOTICE
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2017 IL App (4th) 170134-U

NOS. 4-17-0134, 4-17-0135 cons.

FILED
July 19, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L.W., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0134) Kevin Williams, Respondent-Appellant).	)	Appeal from Circuit Court of Sangamon County No. 13JA181
In re: S.W., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0135) Kevin Williams, Respondent-Appellant).	)	No. 13JA182 Honorable Karen S. Tharp, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which found that respondent was an unfit parent and terminated respondent's parental rights.

¶ 2 In August 2014, the trial court found minors L.W. (born June 28, 2006) and S.W. (born May 16, 2007) neglected by respondent father, Kevin Williams. In January 2016, the State filed petitions to terminate respondent's parental rights to the minors, which the State supplemented in March 2016. In January 2017, the trial court found respondent unfit to parent both minors and, in February 2017, terminated his parental rights. On appeal, respondent claims

the trial court's finding that he was unfit was against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Events Preceding the State's Petition To Terminate Respondent's Parental Rights

¶ 5 In December 2013, the State filed petitions to adjudicate L.W. and S.W. as abused and neglected under the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)). The petitions alleged "excessive corporal punishment upon the minor[s]" by their mother, Carmon Anthony, and her paramour. Both petitions further alleged drug use and domestic violence between Anthony and her paramour, as well as Anthony's failure to follow a Department of Children and Family Services (DCFS) safety plan for L.W. and S.W. In January 2014, the trial court entered a shelter-care order, placing L.W. and S.W. in the temporary custody and guardianship of DCFS.

¶ 6 In June 2014, respondent attended a DCFS administrative case review, where caseworker Linda Jones created the first service plan, requiring him to attend scheduled visitations with L.W. and S.W., obtain substance-abuse treatment, and complete coursework in anger management and parenting.

¶ 7 In August 2014, Anthony stipulated to the State's petition that L.W. and S.W. were neglected minors because of domestic violence between herself and her paramour.

¶ 8 In September 2014, respondent attended two anger-management classes, completed an assessment for substance-abuse treatment, and attended scheduled visitations with L.W. and S.W. Later that month, he was arrested for aggravated battery and remained in custody without being released on bond.

¶ 9 In October 2014, the trial court entered a dispositional order making the minors wards of the court and granting DCFS custody and guardianship of L.W. and S.W. In November 2014, respondent was sentenced to three years in prison.

¶ 10 In December 2014, while respondent was incarcerated, L.W. and S.W. were placed with Anthony following satisfactory progress on her first service plan. However, Anthony's performance on her subsequent service plans was rated unsatisfactory because she was uncooperative, missed classes, and tested positive for drugs.

¶ 11 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 12 In January 2016, the State filed petitions to terminate Anthony's and respondent's parental rights to L.W. and S.W., alleging respondent failed to (1) maintain a reasonable degree of interest in the welfare of L.W. and S.W. (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct conditions causing their removal (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) make reasonable progress toward their return home during the nine-month period following the adjudication of neglect from August 13, 2014, to May 13, 2015 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 13 In February 2016, respondent was released from prison. Three months later, in May 2016, respondent was arrested again for burglary and remained in the custody of the Sangamon County sheriff's office without being released on bond.

¶ 14 In March 2016, the State filed supplemental petitions to terminate the parents' parental rights, alleging respondent failed to make reasonable progress during the nine-month period from May 13, 2015, to February 13, 2016.

¶ 15 1. *The September 2016 and January 2017 Fitness Hearings*

¶ 16 In September 2016, the trial court held a fitness hearing in accordance with

section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2016)). Jones testified that respondent was rated unsatisfactory on all four service plans provided between June 2014 and June 2016. Jones acknowledged that respondent was incarcerated throughout most of the duration of the service plans. She had no personal contact with respondent while he was in prison and made no attempts to contact him or facilitate satisfactory completion of the service plans. However, while incarcerated, respondent did receive notice of administrative case reviews and the criteria for new service plans. According to Jones, the criteria of each new service plan remained the same as in the original June 2014 service plan. Jones testified that none of the scheduled visits occurred during respondent's incarceration because DCFS "seldom take[s] children to the correctional institutions." Therefore, respondent attended only 5 out of 79 scheduled visitations with L.W. and S.W.

¶ 17 In January 2017, the trial court held another fitness hearing, where it continued to hear Jones' testimony, followed by respondent's testimony. Jones testified she did not recall receiving a notarized letter "regarding [respondent's] service plan and the placement of his children with his aunt." Respondent, on the other hand, testified that he sent a notarized letter to Jones requesting information on how to complete his service plan but received no response. Respondent did not send any other letters to Jones, nor did he place her on his visit list while in prison.

¶ 18 2. *The Trial Court's Fitness Findings*

¶ 19 The trial court found Anthony and respondent unfit parents, concluding that "[respondent] [o]bviously had not completed anything" in the service plans. The court further stated to respondent, "You cannot be a parent when you are incarcerated. You did [not] start out

this case being incarcerated. You took it upon yourself to engage in behavior that got yourself locked up and sent to prison." The court explained, as follows:

> "[A] [r]easonable person, first of all, if they want to parent, does [not] get locked up. The fact, then, [is] that while you [were] locked up, you sen[t] one letter, apparently, to a caseworker, you said you had a copy of it, [the trial court has not] seen a copy of it, sending one letter is not showing that you [are] making reasonable progress."

The trial court determined that sending a single letter to Jones was "certainly also evidence that you [are] not demonstrating [a] reasonable degree of interest, concern, or responsibility as to your child[ren]." The court found respondent unfit for (1) failing to maintain a reasonable degree or interest, concern, or responsibility for the welfare of L.W. and S.W. (750 ILCS 50/1(D)(b) (West 2014)); and (2) failing to make reasonable progress toward the return of the children during the periods of (a) August 13, 2014, to May 13, 2015; and (b) May 13, 2015, to February 13, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 20 3. *Best-Interest Hearings, Findings, and Judgment*

¶ 21 In January 2017, two best-interest hearings were held. In February 2017, the trial court terminated the parental rights of Anthony and respondent to S.W. and L.W. In doing so, the trial court awarded guardianship of S.W. and L.W. to DCFS, with a permanency goal of adoption.

¶ 22 This appeal followed. (Anthony is not a party to this appeal.)

¶ 23 II. ANALYSIS

¶ 24 On appeal, respondent argues that the trial court erred by finding him unfit to parent. As to the court's best-interest finding, respondent has provided no argument in support of his bald assertion that the finding was against the manifest weight of the evidence.

¶ 25 The State argues respondent has forfeited his right to challenge the trial court's best-interest finding. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (stating an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); see also *Country Preferred Insurance Co. v. Groen*, 2017 IL App (4th) 160028, ¶ 12, 69 N.E.3d 911 (" 'A contention that is supported by some argument but no authority does not meet the requirements of Rule 341 and is considered forfeited.' [Citation.]").

¶ 26 We conclude that respondent has forfeited his right to challenge the trial court's best-interest finding. Therefore, we address only the trial court's unfitness finding. See *In re Richard H.*, 376 Ill. App. 3d 162, 166, 875 N.E.2d 1198, 1202 (2007) (declining to review a best-interest finding "as respondent does not contest the best-interest portion of the trial court's decision").

¶ 27 A. The Applicable Statute and the Standard of Review

¶ 28 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) defines an "unfit person" as "any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption." The State has the burden to prove unfitness by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). The Adoption Act lists several grounds that will support a finding of unfitness, including the following:

> "(b) Failure to maintain a reasonable degree of interest, concern or responsibility.
>
> * * *
>
> (m) Failure by a parent *** to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor ***." 750 ILCS 50/1(D) (West 2014).

We will uphold a finding of unfitness where it "may be based on evidence sufficient to support any one statutory ground." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004) (citing *In re D.D.*, 196 Ill. 2d 405, 422, 752 N.E.2d 1112, 1122 (2001)).

¶ 29 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following standard for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

> "[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."

¶ 30 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

> " 'Reasonable progress' *** exists when the [trial] court *** can conclude 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 ***." (Emphases in original.)

¶ 31 The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006), *Jordan V.*, 347 Ill. App. 3d at 1068, 808 N.E.2d at 605, *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999), and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 32 B. This Case

¶ 33 Respondent argues the trial court relied too heavily on his incarceration as evidence of unfitness and failed to consider evidence of his efforts to contact DCFS and his participation in the service plan prior to his incarceration. The State counters that time spent in prison should be included in the trial court's consideration of progress under a service plan. We agree with the State.

¶ 34 As noted by the trial court, respondent was arrested in September 2014, while his first service plan was in effect. Respondent's criminal behavior showed his failure to demonstrate a reasonable degree of responsibility for the welfare of L.W. and S.W. See 750 ILCS 50/1(D)(b) (West 2014). Following his release from prison in February 2016, respondent again ignored the opportunity to work toward his service plan goals by being arrested in May 2016.

¶ 35 The trial court explained respondent could not raise L.W. and S.W. while incarcerated. Therefore, the court acted properly in deciding that respondent failed to show reasonable progress under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)). See *In re J.L.*, 236 Ill. 2d 329, 343, 924 N.E.2d 961, 969 (2010) ("[T]ime spent incarcerated is included in the nine-month period during which reasonable progress must be made under section 1(D)(m)(iii). The statute contains no exception for incarcerated parents."); *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89, 19 N.E.3d 227 ("Time in prison is included in the nine-month period during which reasonable progress must be made. **** That [respondent's] personal circumstances prevented her from making reasonable progress is irrelevant to the 'objective standard.' [Citation.]").

¶ 36 The trial court noted respondent could have done more to demonstrate a reasonable degree of interest in L.W. and S.W. than sending a single letter to DCFS inquiring about his service plan. Despite having notice of his service plans, the record shows respondent did not attempt to complete the service plans while incarcerated. Although the court did not make a finding as to reasonable efforts under the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2014)), its other findings were sufficient to find him unfit to parent L.W. and S.W. See *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604.

¶ 37 III. CONCLUSION

¶ 38 We affirm the trial court's judgment.

¶ 39 Affirmed.