

**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).

**FILED**  
October 6, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 170388-U

NO. 4-17-0388

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.A.M., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 13JA141
v.	)	
Laura Cox,	)	Honorable
Respondent-Appellant).	)	Craig H. DeArmond,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's findings (1) respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and (2) it was in the minor child's best interest to have respondent's parental rights terminated were not against the manifest weight of the evidence.

¶ 2 In February 2017, the State filed an amended petition seeking the termination of the parental rights of respondent, Laura Cox, as to her minor child, K.A.M. (born in November 2013). After an April 2017 hearing, the Vermilion County circuit court found respondent unfit. In May 2017, the court concluded it was in K.A.M.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding (1) her unfit and (2) it was in K.A.M.'s best interest to terminate her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2013, the State filed a petition for the adjudication of wardship of K.A.M., which alleged he was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)), in that his environment was injurious to his welfare due to respondent's substance-abuse and mental-health issues. At the shelter-care hearing, Tricia Peoples, an investigator with the Department of Children and Family Services (DCFS), testified she received a report concerning the birth of K.A.M. Peoples learned respondent had given birth to K.A.M., had previously been found unfit to parent a child, and had her parental rights terminated. Respondent also tested positive for marijuana at K.A.M.'s birth. At the conclusion of the hearing, the trial court entered a temporary custody order, finding probable cause to believe the minor to be neglected.

¶ 6 At the March 2014 adjudicatory hearing, respondent admitted K.A.M.'s environment was injurious to his welfare due to her substance abuse. Thus, the court found K.A.M. neglected based on an injurious environment. After a May 2014 dispositional hearing, the court (1) found respondent unfit and unable to care for, protect, train, educate, supervise, or discipline K.A.M.; (2) made K.A.M. a ward of the court; and (3) placed his custody and guardianship with DCFS.

¶ 7 In February 2017, the State filed an amended petition to terminate respondent's parental rights to K.A.M. The petition asserted respondent was unfit because she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor child's welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) had been subject to habitual drunkenness or addiction to drugs for at least one year prior to the commencement of this action (750 ILCS 50/1(D)(k) (West 2016)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the minor child's removal during any nine-month period after the adjudication of neglect,

specifically January 1, 2016, to October 1, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (4) failed to make reasonable progress toward the minor child's return during any nine-month period after the adjudication of neglect, specifically January 1, 2016, to October 1, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 8 On February 15, 2017, and April 5, 2017, the circuit court held a fitness hearing. The State presented the testimony of former Cunningham Children's Home employees Sherri Cummins and Tammie Roedl. The evidence relevant to the issues on appeal is set forth below.

¶ 9 Cummins, a case manager at Cunningham Children's Home, testified she was assigned to K.A.M.'s case from December 2015 to July 2016. Cummins testified respondent's required services included substance-abuse treatment, drug tests, parenting classes, and individual counseling. In July 2015, respondent completed a substance-abuse assessment at the Prairie Center and participated in treatment until her discharge for disruptive behavior. Because she had also been referred to the Prairie Center for parenting classes, she became ineligible for those services following her discharge from the facility. Respondent was also removed from a domestic-violence class at the Center for Children Services. Cummins testified respondent had never participated in weekly visitation with K.A.M. because she failed to complete drug tests and participate in required services. On a single occasion during Cummins's tenure as case manager, respondent completed a drug test and tested positive for marijuana. Cummins testified she spoke with respondent monthly, encouraging her to complete the required services, but respondent often became irate, angry, and loud.

¶ 10 Roedl testified she took over the case on July 7, 2016, and remained through November 11, 2016. Roedl referred respondent for a substance-abuse assessment at New Directions, but did not think respondent completed the substance-abuse evaluation at New

Directions. Aunt Martha's Youth Service Center had provided respondent with individual counseling services since August 2015. Roedl believed respondent participated in weekly visitation with K.A.M. three times while Roedl was assigned to K.A.M.'s case. According to Roedl, respondent did not visit K.A.M. because she either tested for marijuana or told Cunningham Children's Home the test would be positive if provided. Roedl discussed with respondent the required services, including substance-abuse treatment and parenting classes, but respondent was not participating in those services. Roedl testified K.A.M. turned three years old in 2016 and respondent had participated in weekly visitation a total of three times since his birth.

¶ 11 At the conclusion of the hearing, the circuit court found respondent unfit based on her failure to (1) maintain a reasonable degree of interest, concern, or responsibility as to K.A.M.'s welfare; (2) make reasonable efforts to correct the conditions that were the basis for K.A.M.'s removal, specifically from January 1, 2016, to October 1, 2016; and (3) make reasonable progress toward K.A.M.'s return during any nine-month period after the neglect finding, specifically January 1, 2016, to October 1, 2016.

¶ 12 On May 5, 2017, Cunningham Children's Home filed a best interest report recommending the termination of respondent's parental rights. The report noted respondent had lived in an apartment in Danville, Illinois, for approximately two years, but as of March 2017, she had moved and refused to provide a current address. Her current employment status was unknown. Respondent had not visited K.A.M. since August 4, 2016, because she had positive drug tests, or had advised Cunningham Children's Home that, if she provided a drug test, it would be positive.

¶ 13 According to the report, K.A.M., then three years old, had been in foster care since his birth (born in 2013). He had lived in his present foster home since August 2015 and

was closely bonded with his foster family. The report described K.A.M. as “an active and loving child,” and said his foster family is committed to providing him with permanency through adoption. K.A.M. attended preschool and enjoyed learning new things. According to the report, the foster parents were "doing a wonderful job" ensuring K.A.M.'s medical and developmental needs were met.

¶ 14 On May 10, 2017, the circuit court held the best interest hearing. In addition to the best interest report, the State presented the testimony of Kasey Wells, the current caseworker. Respondent did not present any evidence.

¶ 15 Wells testified she had been the caseworker since November 11, 2016. Currently, K.A.M. resided with a traditional foster family in Champaign, Illinois. K.A.M. had bonded with his foster family. He attended preschool and speech therapy sessions at Carle Clinic. Wells reported limited contact with respondent. Wells attempted each month to arrange visitation for respondent, but respondent did not respond.

¶ 16 Following arguments, the trial court found it in the minor's best interest to terminate respondent's parental rights. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2016)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor child's best interest

that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 19 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Thus, a reviewing court will not disturb a circuit court's unfitness finding and best interest determination unless they are contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010) (best interest determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 20 A. Respondent's Fitness

¶ 21 Respondent contends the circuit court's unfitness finding was against the manifest weight of the evidence. We disagree.

¶ 22 The circuit court found respondent unfit under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)), which provides a parent may be declared unfit if he or she fails "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 under Section 2-3 of the Juvenile Court Act." Illinois courts have defined reasonable progress as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress 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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

¶ 23            Additionally, reasonable progress exists when a circuit 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 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).

¶ 24            In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237–38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the petition alleged the relevant nine-month period as January 1, 2016, to October 1, 2016.

¶ 25 The evidence at the fitness hearing indicated respondent had been discharged from required services for disruptive behavior during the relevant nine-month period. Her visitation with K.A.M. was mostly nonexistent. By the end of the period, she had visited with K.A.M. three times and was not engaged in substance-abuse treatment or parenting classes. Respondent did not visit K.A.M. because she had positive drug tests for marijuana or admitted the tests would be positive if provided. The evidence showed respondent was never close to having K.A.M. returned to her custody during the relevant period. Accordingly, the circuit court's decision finding respondent unfit based on her failure to make reasonable progress toward K.A.M.'s return during the period of January 1, 2016, to October 1, 2016, was not against the manifest weight of the evidence.

¶ 26 Because we have upheld the circuit court's determination respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)), we need not review any other basis for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 27 B. K.A.M.'s Best Interest

¶ 28 Respondent also challenges the circuit court's finding it was in K.A.M.'s best interest to terminate his parental rights. The State contends the court's finding was proper.

¶ 29 During the best interest hearing, the circuit court focus is on "the child's welfare and whether termination would improve the child's future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious



background and ties; the child's sense of attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security, and taking into account the least-disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 30 We note a parent's unfitness to have custody of his or her child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue \*\*\* is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 31 In this case, K.A.M. had been in foster care since his birth. He had been in a traditional foster home since August 2015, and the foster parents desired to adopt K.A.M. K.A.M. had started preschool and his foster family was attentive and loving. K.A.M. was closely bonded to his foster family. The foster parents ensured K.A.M.'s medical and developmental needs were met. During the pendency of this case, respondent had participated in visitation with K.A.M. on three occasions. Moreover, her inconsistency in engaging in services and communicating with Cunningham Children's Home had prevented her from being close to

K.A.M. being placed in her care. K.A.M. is entitled to stability, and the best interest factors favor the termination of respondent's parental rights.

¶ 32 Accordingly, we find the circuit court's conclusion it was in K.A.M.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.