2017 IL App (4th) 170501-U

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December 4, 2017
Carla Bender
4th District Appellate
Court, IL

NOS. 4-17-0501, 4-17-0502, 4-17-0503, 4-17-0504, 4-17-0505 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re D.K., a Minor	)	Appeal from
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-17-0501)	)	No. 15JA83
Corey Smoot,	)	
Respondent-Appellant).	)	
	)	
In re D.K., a Minor	)	No. 15JA83
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0502)	)	
Lindsey Knapp,	)	
Respondent-Appellant).	)	
	)	
In re Je. W., a Minor	)	No. 15JA82
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0503)	)	
Lindsey Knapp,	)	
Respondent-Appellant).	)	
	)	
In re Ja. W., a Minor	)	No. 15JA81
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0504)	)	
Lindsey Knapp,	)	
Respondent-Appellant).	)	
	)	
In re D.L., a Minor	)	No. 15JA80
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0505)	)	Honorable
Lindsey Knapp,	)	Craig H. DeArmond,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgments terminating respondents' parental rights.

¶ 2 In November 2015, the trial court adjudicated the following minors neglected under section 2-3 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (West 2014)): (1) D.K. (born October 18, 2012); (2) Je. W. (born May 7, 2005); (3) Ja. W. (born September 10, 2003); and (4) D.L. (born May 21, 2001). Respondent, Corey Smoot, was the father of D.K. Respondent, Lindsey Knapp, was the mother of all four minors. In January 2016, the court found that Smoot and Knapp were unfit and unable to care for their children for reasons other than financial circumstances alone. The court made all four minors wards of the court and placed them in the guardianship of DCFS.

¶ 3 In November 2016, the State filed petitions to terminate the respondents' parental rights. After fitness hearings in January and February 2017, the trial court found that respondents were unfit parents. After a July 2017 best-interest hearing, the court terminated respondents' parental rights.

¶ 4 This appeal followed.

¶ 5 I. BACKGROUND

¶ 6 A. Proceedings Prior to the Petitions To Terminate Parental Rights

¶ 7 In August 2015, the State filed petitions for adjudication of wardship, alleging that the following children were neglected minors under section 2-3 of the Juvenile Court Act (705 ILCS 405/2-3 (West 2014)): (1) D.K. (case No. 15-JA-83; appeal Nos. 4-17-0501, 4-17-0502); (2) Je. W. (case No. 15-JA-82; appeal No. 4-17-0503); (3) Ja. W. (case No. 15-JA-81; appeal No. 4-17-0504); and (4) D.L. (case No. 15-JA-80; appeal No. 4-17-0505). The petition

alleged that respondent Lindsey Knapp was the mother of all four children and that respondent Corey Smoot was the father of D.K. The petitions also named the father of Je. W. and Ja. W. (Jerome C. White) and the father of D.L. (Jeremy L. Loewenstein). Those fathers are not involved in these consolidated appeals.

¶ 8 Specifically, the petitions for adjudication of wardship alleged that the minors' environment was injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2014)) because (1) Knapp engaged in domestic violence in front of the children with Jerome White—her paramour and the father of Je. W. and Ja. W.; (2) White suffered from mental health issues; and (3) the minors' home was unkempt. In addition, the petitions alleged that the minors were neglected under section 2-3(1)(d) of the Juvenile Court Act (705 ILCS 405/2-3(1)(d) (West 2014)) because they were under 14 years of age and were left without supervision for an unreasonable period of time.

¶ 9 After an August 2015 shelter-care hearing, the trial court placed the children in the temporary guardianship of the Department of Children and Family Services (DCFS).

¶ 10 At the November 2015 adjudicatory hearing, Knapp and Smoot stipulated that the environments of their respective children were injurious to their welfare because they were exposed to domestic violence. The State provided a factual basis stating that Knapp had stabbed White. The trial court adjudicated all four children neglected.

¶ 11 After two dispositional hearings in January 2016, the trial court found that both Knapp and Smoot were unfit and unable to care for their children for reasons other than financial circumstances alone. 705 ILCS 405/2-27(1) (West 2014). The court made all four minors wards of the court and placed them in the guardianship of DCFS.

¶ 12 B. The Proceedings To Terminate Parental Rights

¶ 13 1. *The Petitions To Terminate Parental Rights*

¶ 14 In November 2016 the State filed petitions to terminate the parental rights of Knapp and Smoot, alleging, in part, that respondents were unfit parents under section 1(D)(m)(ii) of the Adoption Act for failing to make reasonable progress toward the return of their children during the nine-month period from November 16, 2015, to August 16, 2016. 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 15 2. *The Fitness Portion of the Termination Hearing*

¶ 16 The trial court conducted three hearings in January and February 2017 on the fitness portion of the termination hearing. The transcript of the January 2017 fitness hearing does not appear in the record. In their briefs, the parties do not address what occurred at the January 2017 hearing.

¶ 17 At the February 2017 hearings, therapist Amy Farrow testified that she provided counseling to Knapp beginning in December 2015. Knapp's attendance at counseling was "fairly consistent" until September 2016, when Knapp suffered a head injury. After the injury, Farrow did not meet with Knapp again until November 2016. Since resuming counseling sessions in November 2016, Knapp had missed nine weekly sessions.

¶ 18 Respondent Knapp told Farrow that she had relapsed by using alcohol four times between December 2015 and May 2016. By July 2016, Knapp and Smoot were engaged in an "on and off" relationship. The children told Farrow that they did not support Knapp's relationship with Smoot. Knapp told Farrow that the relationship was going well. Knapp's case-management team recommended that she end the relationship with Smoot.

¶ 19 Knapp testified that since the stabbing incident with White, she had not been involved in any acts of domestic violence. Approximately four years earlier, she had had a physical altercation with Smoot. Knapp explained that Smoot assaulted her because she was drinking

while pregnant. Knapp stated that the domestic violence in her past resulted from her alcohol use. Knapp testified that she had not drank alcohol since May 2016. She was attending services with Prairie Center to address her problem with alcohol. In February 2017, she completed her services with Prairie Center but continued to attend classes there. Knapp was currently working at a bar and as a secretary.

¶ 20 Knapp acknowledged that her home used to be in bad condition. In approximately February 2016, Knapp cleaned her home and removed the pets that lived there. In October 2016, a caseworker came to her home and told her she needed to repair holes in the walls and broken windows. Shortly thereafter, Knapp made the requested repairs.

¶ 21 Knapp testified further that after suffering a head injury in September 2016, she was released from the hospital in October 2016. Knapp was suffering from traumatic head trauma and needed assistance at that time. As a result, Smoot lived with her for approximately two months to help her with daily tasks. Knapp suffered the head injury when she "passed out" and hit her head, suffering a serious concussion. She denied that she was drinking when she suffered the injury. At the time of the fitness portion of the termination hearing, she was no longer in a relationship with Smoot, but Smoot would visit her home occasionally.

¶ 22 Carol Larkin testified that she was the caseworker for all four children and conducted parenting classes that Knapp attended. Larkin also met individually with Knapp on some occasions. Knapp consistently attended parenting classes from November 2015 through July 2016.

¶ 23 Smoot testified that he moved to Danville from Chicago in January 2016 in an effort to maintain his parental rights to D.K. Smoot was employed in Danville. Since D.K.'s case was opened, Smoot had not been involved in any domestic-violence incidents. Smoot testified

further that he was unaware what services he was required to complete. He was referred to anger-management and domestic-violence counseling, but he did not complete those services because, he claimed, the services conflicted with his work schedule. Smoot completed a sex-offender assessment in June 2016.

¶ 24 The State called Larkin as a rebuttal witness, and she testified that Smoot was a registered sex offender. She added that Smoot's sexual-offender assessment concluded that he was a medium risk to reoffend. The assessment recommended that Smoot not be left alone with any children. Larkin testified further that after Smoot completed his psychosexual evaluation, Larkin referred him to Michael Kleppin. Larkin referred Smoot to Kleppin in November 2016, but Smoot did not contact Kleppin until February 2017. Larkin presented Smoot with a service plan in January 2016 that described the services Smoot was required to complete. From January 2016 until July 2016, Smoot's service plan did not allow him to visit D.K. because D.K. had not yet begun attending play therapy.

¶ 25 Larkin testified further that prior to her September 2016 injury, Knapp attended 29 out of the 49 scheduled visits with her children. Knapp was required to participate in services or else she would not receive visits.

¶ 26 In June 2017, the trial court entered a written order finding both Knapp and Smoot to be unfit parents on multiple grounds, including a failure to make reasonable progress toward the return of their children during the nine-month period from November 16, 2015, to August 16, 2016.

¶ 27 3. *The Best-Interest Portion of the Termination Hearing*

¶ 28 a. The Best-Interest Report

¶ 29 The best-interest report filed by Larkin alleged that D.L. was living in a foster

home with a pastor and his wife. D.L. had been attending the pastor's church. Her grades in school were improving. D.L. was 16 years old at the time of the report and had obtained her driver's permit. D.L. requested a goal of independence if she could not return to living with Knapp. She had attended various counseling services.

¶ 30 Ja. W. was 13 years old at the time of the best-interest report. She had been living in a traditional foster home since March 2017 after three previous placements did not work out. Larkin reported that Ja. W. was doing "fairly well" in her most recent placement. Ja. W. was attending counseling "to address some of her issues[,] including lying and being incredibly sad due to missing her mom." Ja.W. struggled to understand why Knapp would continue to date Smoot despite knowing that her children disliked him because of the way he treated Knapp. Ja. W. was doing well academically despite some "behavioral issues." Ja. W.'s foster mother was willing to adopt her.

¶ 31 Je. W. was 12 years old at the time of the best-interest report. He was doing "very well" in his foster placement, where he lived with only his foster mother. He was bonded to his foster mother and enjoyed her company. Je. W. was attending therapy to deal with anger he felt toward Knapp and his father. Je. W. participated in sports and was improving his behavior at school. He was becoming better at expressing his frustration and controlling his anger. Je. W.'s foster mother was willing to become Je. W.'s permanent guardian.

¶ 32 D.K. was four years old at the time of the best-interest report. She was upset that Knapp was pregnant because she was worried the baby would not have enough food. She was acting aggressively at school but was doing better over the past month. Her foster siblings' wrestling made her uncomfortable because of violence she witnessed between Knapp and Smoot. Her counselor recommending that D.K. not visit with Knapp or Smoot because of "the lack of bond

and the turmoil and confusion it would cause" the child. D.K.'s foster parents were eager to adopt D.K.

¶ 33 All four siblings were attending weekly sibling counseling through Hooves of Hope.

¶ 34 Larkin recommended that parental rights to all four children be terminated because the parents, including Knapp and Smoot, had failed to correct the conditions which led to the children being placed in care.

¶ 35 b. The July 2017 Best-Interest Hearing

¶ 36 In July 2017, the trial court conducted the best-interest portion of the termination hearing.

¶ 37 Larkin testified that D.K., D.L., and Je. W. were living in "fictive kin" foster homes, while Ja. W. was living in a traditional foster home. All four children were doing "very well" in their foster placements. Larkin recommended that D.L.'s goal should be independence, Ja. W.'s goal should be adoption, Je. W.'s goal should be guardianship, and D.K.'s goal should be adoption. Larkin recommended that respondents' parental rights be terminated because the minors had "been in foster care for far too long and they are in need of permanence."

¶ 38 Larkin testified further about the four children as follows. D.K. had "sensory issues" and was attending occupational and play therapy. Her foster parents had signed a commitment to adopt her.

¶ 39 Ja. W. was in her fourth foster placement, which began in March 2017. The other placements ended when the foster families requested Ja. W. be moved because of her behavior. Her current foster parent had signed a commitment to adopt her. The foster parent had not reported Ja. W.'s engaging in any behaviors that the parent could not handle.

¶ 40 Je. W. was living with a single foster parent; he was the only child in the home. Je. W. exhibited some psychiatric issues and aggressive behaviors. The foster parent was willing to become a guardian but not to adopt Je. W. Je. W. was "very bonded" to his foster parent. Larkin thought that moving Je. W. somewhere else would not be in his best interest. Je. W. did not want to return home to Knapp.

¶ 41 D.L. was living with a foster family but because she was 16 years old, Larkin recommended independence as her goal. D.L. reported that she did not want to live with her mother. Although all four children lived in different homes, they visited with each other at least four times a month. Larkin testified that, overall, all four children were doing well in their placements.

¶ 42 Larkin testified further that Knapp's participation in services had been inconsistent. Smoot had participated in all services requested of him, despite having difficulty getting a sex-offender evaluation "due to payment for DCFS."

¶ 43 Larkin testified further that Smoot had visitation with D.K. at some point in 2015. D.K. became scared during one of the visits after Smoot "snapped" at D.K. when D.K. referred to her foster mother as "mom." As a result, visitation with Smoot was stopped. Later, visitation was not recommended by D.K.'s counselor because D.K. did not have a bond with Smoot. Knapp's visitation with her four children was stopped after she (Knapp) suffered a skull fracture in September 2016. Because of the injury she was unable to visit with the children for "quite a few months." Counselors then determined that continued visitation was not appropriate because of the time that had passed since the last visit and the inconsistency of visits.

¶ 44 Knapp testified that she had completed all her required services and had been employed "at various points." She wanted her children to return to her care and was willing to pro-

vide for their needs. She testified further that she was 6 1/2 months pregnant and that Smoot was the father.

¶ 45 Smoot testified that he resided at 1404 Oak Street in Danville and that he was employed. He moved to Danville from Chicago so that he could complete services and maintain his parental rights to D.K. He testified further that he had completed all of his required services.

¶ 46 After the parties rested, the trial court found that it was in all four children's best interests to terminate all parents' parental rights as to all the minors.

¶ 47 This appeal followed.

¶ 48 II. ANALYSIS

¶ 49 On appeal, Smoot argues that the trial court erred by finding that (1) he was unfit and (2) it was in D.K.'s best interest to terminate Smoot's parental rights. Knapp argues that the trial court erred by finding that (1) she was unfit and (2) it was in the children's best interest to terminate her parental rights. Knapp's counsel moved to consolidate the appeals as to termination of her four children, which we granted. We have consolidated Smoot's appeal with Knapp's appeals on our own motion. We disagree with respondents' arguments and therefore affirm the trial court's judgments.

¶ 50 A. Fitness

¶ 51 Knapp and Smoot each argue that the trial court erred by finding them unfit parents. We disagree.

¶ 52 1. *Statutory Language and the Standard of Review*

¶ 53 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 Adoption Act then lists

several grounds that will support a finding of unfitness, including the following:

> "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)(m)(ii) (West 2014).

¶ 54 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."

¶ 55 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 di-

rectives previously given to the parent ***." (Emphases in original.)

¶ 56 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), *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004), *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).

¶ 57 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).

¶ 58 2. *Knapp's Fitness*

¶ 59 The trial court's decision to terminate Knapp's parental rights because she failed to make reasonable progress from November 16, 2015, to August 16, 2016, was not against the manifest weight of the evidence.

¶ 60 Farrow testified that Knapp admitted to relapsing by using alcohol four times from December 2015 to May 2016. Farrow also testified that by July 2016, Knapp was engaged in a relationship with Smoot, who was a registered sex offender. Smoot and Knapp had a history of domestic violence. Knapp's children disapproved of her relationship with Smoot. Larkin testified that prior to September 2016, Knapp attended only 29 out of the 49 scheduled visits with her children.

¶ 61 Knapp's actions from November 16, 2015, to August 16, 2016, did not establish that her children would be returned to her in the near future. In particular, her alcohol use and her relationship with Smoot were contrary to the goals of her service plan. The trial court's determi-

nation that she failed to make reasonable progress was not against the manifest weight of the evidence.

¶ 62 3. *Smoot's Fitness*

¶ 63 The trial court's decision to terminate Smoot's parental rights because he failed to make reasonable progress from November 16, 2015, to August 16, 2016, was not against the manifest weight of the evidence. Although Smoot was directed to undergo a sex-offender assessment in 2015, he did not obtain that assessment until June 2016. Smoot's ability to have visitation with his children hinged, in part, on his completion of the sex-offender assessment and any services recommended by the assessment. Smoot's failure to promptly undergo that assessment established a failure to make reasonable progress toward the return of D.K. The trial court's decision was not against the manifest weight of the evidence.

¶ 64 B. Best Interests

¶ 65 Knapp and Smoot both argue that the trial court erred by finding that it was in D.K.'s best interest to terminate their parental rights. In addition, Knapp argues that the court erred by determining that it was in the best interest of J.W., J.W., and D.L. to determine Knapp's parental rights as to those three children. We disagree.

¶ 66 1. *Statutory Language and the Standard of Review*

¶ 67 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). In reaching a best-interest determination, the trial court must consider, within the context of the child's age and developmental needs, the following factors:

"(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." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.
>
> See also 705 ILCS 405/1-3(4.05) (West 2016).

At the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 68 This court affords great deference to a trial court's best-interest decision because the trial court is in a better position to see witnesses and judge their credibility. *In re K.B.*, 314 Ill. App. 3d 739, 748, 732 N.E.2d 1198, 1206 (2000). "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 69 2. *This Case*

¶ 70 In this case, the trial court determined that it was in the best interests of each of the four minors to terminate their parents' parental rights. We address the court's determination as to each minor, in turn.

¶ 71 Before addressing each minor individually, we note that Knapp's relationship with Smoot was relevant to the best interests of all four minors. Since July 2016, Knapp and Smoot had been engaged in at least an "on and off" romantic relationship. At the time of the best-interest hearing, Knapp was pregnant and Smoot was the expectant father. Knapp's relationship with Smoot was a cause of concern for all four minors. Smoot and Knapp had been involved in domestic violence in the past. That history was very troubling, especially when considering that, in this case, the minors were adjudicated neglected because of domestic violence between Knapp and White. In addition, Smoot's sexual-offender assessment recommended that he not be left alone with any children.

¶ 72 a. D.K.

¶ 73 D.K. was living with a foster family who was willing to adopt her. She was concerned about Knapp and Smoot's relationship and their expected child. Because of D.K.'s lack of a bond with Knapp and Smoot, visitations with them were ceased. Visiting with them caused D.K. "turmoil and confusion." Maintaining Knapp and Smoot's parental rights was therefore not in D.K.'s best interest. To obtain a sense of permanence and allow for D.K.'s adoption, Knapp and Smoot's parental rights needed to be terminated. The trial court's determination was not against the manifest weight of the evidence.

¶ 74 b. Je.W.

¶ 75 Je. W. was in a successful foster placement. His foster mother was willing to become his permanent guardian, and Je. W. was "very bonded" to her. He was participating in sports and improving his behavior at school. Meanwhile, he was attending counseling to deal with anger he felt toward Knapp. The trial court's decision to terminate Knapp's parental rights to Je. W. was not against the manifest weight of the evidence.

¶ 76 c. Ja.W.

¶ 77 Ja. W. was living with a foster family, and her foster mother was willing to provide her permanency by adopting her. She missed Knapp and struggled to understand why Knapp would continue a relationship with Smoot. Ja. W. was doing well in school. It was not against the manifest weight of the evidence for the trial court to determine that terminating Knapp's parental rights provided Ja. W. the best opportunity for permanence.

¶ 78 d. D.L.

¶ 79 D.L. was 16 years old and living with a foster family. Her grades were improving. Larking recommended independence as a goal because D.L. did not want to live with her mother. It was not against the manifest weight of the evidence for the trial court to find that it was in D.L.'s best interests to terminate Knapp's parental rights.

¶ 80 III. CONCLUSION

¶ 81 For the foregoing reasons, we affirm the trial court's judgment.

¶ 82 Affirmed.