2018 IL App (2d) 170761-U
No. 2-17-0761
Order filed January 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re C.P. and A.D., Minors.	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 11-JA-21 11-JA-22
(The People of the State of Illinois, Petitioner-Appellee v. Sarah P., Respondent-Appellant.)	)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that: (1) respondent is unfit; and (2) termination of her parental rights is in the children's best interests, are not contrary to the manifest weight of the evidence. Affirmed.

¶ 2 On August 28, 2017, the trial court found that the State had established by clear and convincing evidence that respondent, Sarah P., is an unfit parent to her children, C.P. (born January 31, 2006) and A.D. (born May 27, 2008). On September 12, 2017, after finding it in the children's best interest to do so, the court terminated respondent's parental rights. Respondent appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This case originated in 2011, when the Department of Children and Family Services (DCFS) received a report that A.D. was brought to the hospital for what appeared to be a burn near his groin. It was later determined to be eczema. After a shelter care hearing, respondent retained guardianship and custody of the children, but she was ordered to cooperate with DCFS. A series of court hearings followed and, at one point, DCFS was awarded guardianship and custody of the minors. On January 12, 2015, however, guardianship and custody returned to respondent.

¶ 5 One month later, on February 9, 2015, a second shelter care hearing was held. The State alleged that respondent had allowed unsupervised contact between the children and two sex offenders and that another minor had alleged assault by one of the sex offenders while in the same home as one of respondent's children. The sex offenders were respondent's brother and mother. Temporary guardianship and custody over the children reverted back to DCFS.

¶ 6 Five permanency review hearings followed. In September and October 2015, the court found that respondent had made reasonable efforts, but not reasonable progress, toward the goal of return home. On May 9, 2016, the court found that respondent had made reasonable efforts, noting that she had successfully completed individual counseling during the review period, but it deferred making a progress finding. At the May hearing, the court learned that respondent was inconsistent with her visitation. La'Tonya Pullam, caseworker for Youth Service Bureau (YSB) (a DCFS contracting agency), agreed that the report prepared for hearing stated that respondent had been consistent with weekly two-hour visits. However, she testified that respondent's Saturday visits had been inconsistent in that there was a period that she chose not to visit the children because of employment and would instead see them in church. Other times, respondent would visit the children, but would not actually engage with them. On one occasion, for

example, she did the neighbor's hair. Pullman explained that the visits did not last the full allotted time. Pullman was advised that, during a visit, respondent had allowed the foster parent's 14-year-old daughter to smoke cigarettes with her. When Pullam asked respondent about it, she replied, "They should be glad that they don't know she's smoking blunts," or something to that effect. Respondent had not yet progressed from supervised to unsupervised visitation.

¶ 7 On November 7, 2016, the court learned that DCFS was concerned that respondent had family living in her home that she had not disclosed. Respondent asserted that those persons had left the home, and she requested that DCFS return to her home to verify her representation. Accordingly, the court deferred making findings and continued the case for DCFS to visit respondent's home and update the report.

¶ 8 The fifth permanency review hearing was held on January 4, 2017, where DCFS presented an updated report. There, the court learned that DCFS remained concerned about respondent allowing people to reside in her home, as well as others having access to the children. For example, respondent's paramour went to the children's school for a meeting. Respondent had related that no one was living with her, but, when DCFS visited, men's laundry and a pair of men's shoes were in respondent's home. Respondent continued to receive only supervised visitation. The court found that respondent did not make reasonable efforts or reasonable progress for the review period, and it noted that the case had become stagnant and that its findings were not "necessarily about laundry and a pair of shoes. It goes much deeper than that with the mother's ability to learn protective skills to keep her children safe." The court changed the goal to substitute care pending termination of parental rights.

¶ 9 On February 17, 2017, the State moved to terminate respondent's parental rights, alleging that she was unfit on four bases under the Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2016)); however, the trial court ultimately found respondent unfit on only two: (1) failure to protect the children from conditions within their environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2016)) (Count II); and (2) failure to make reasonable progress toward the return of the children to her home within any nine-month period after the neglect adjudication, specifically, from April 2, 2016, to January 2, 2017, and from "August 24, *2016*[,] to November 24, *2015*" (emphasis added.)[1] (750 ILCS 50/1(m)(ii) (West 2016)) (Count III).

¶ 10 A. Unfitness

¶ 11 The fitness hearing commenced on April 25, 2017. The trial court took judicial notice of the prior disposition and permanency review orders. Jan Johnson, principal at the children's school, testified that, on November 18, 2016, respondent and her paramour appeared at the school and tried to see the children, in violation of DCFS's restrictions. Respondent was upset when Johnson told her that she could not see the children. According to Johnson, respondent had appeared at the school to see the children on possibly two other occasions, one in late Fall 2016 (possibly October), without DCFS approval.

¶ 12 Pullam testified that respondent had completed services required of her (with the exception of one, which respondent herself had requested). However, she was "very inconsistent" with visits between September 2015 and April 2016. Pullam clarified that respondent did not see the children at all in September or October 2015, missed two visits in

[1] This date error appears, as quoted, in the petition to terminate; however, it appears that the dates were inadvertently reversed, and the pertinent period is November 24, 2015 to August 24, 2016.

December 2015, and went to the neighbor's house during another (which upset the child), and she missed some visits in January, February, and April 2016. There were several occasions when, instead of visiting with the children on Saturday at the foster home, respondent chose to see them at church on Sunday, where she would talk to them in the pews. Respondent stated that she could not make the Saturday visitations because of work, but she never provided Pullam with requested proof of employment. It was reported to Pullam that, on April 29, 2016, respondent smoked cigarettes with the foster parent's 14-year-old daughter, and she responded to that incident by stating that the parents would be really upset if they knew about the "blunts." (Respondent later testified and denied both smoking with the 14-year-old or telling anyone she smoked blunts). Pullam agreed, however, that respondent's visitation improved after the children were moved to a different foster home. Despite being informed of them, respondent had not attended any doctor's appointments or any of A.D.'s IEP meetings.[2] A.D. requires medication. In January 2017, Pullam went to A.D.'s school because it reported to her that he was displaying behavioral issues. A.D. told her that he had had a sleepover with respondent, and she had not given him his medication.

¶ 13 Further, respondent was required to maintain safety for the children by advising YSB of any household composition changes and, in the event that someone resided in her house for more than 48 hours, notifying YSB so that it could perform background checks. However, Pullam was concerned that from February 2016 to January 2017, unknown persons were living in respondent's home. This troubled Pullman because, in the past, respondent had allowed

[2] However, on one occasion, respondent asked Pullam for a ride to the IEP meeting. Pullam initially planned to drive respondent, but her schedule later did not permit it and respondent was unable to find alternative transportation.

individuals with sexual-abuse histories to have unsupervised access to the children. Pullam further explained that, although, in February 2016, respondent reported that she was moving and would be living alone, her paramour was listed on the lease. In August 2016, Pullam went to the home and there was a gentleman sitting in the window, drinking beer, and several individuals were coming in and out of the house. Respondent said that her cousin, her children, and her paramour were residing in the house, and that they would not leave. On August 22, 2016, respondent called Pullam and said that some people had moved out, but that her uncle would remain in the home. Pullam urged respondent to "rethink that," but respondent assured Pullam it would be fine. Pullam ran a background check on the uncle and found on his 2015 record information concerning a prior theft, possession of a firearm, and resisting arrest. In November 2016, Pullam returned to the home after respondent testified that she resided alone, but there was evidence of a male living in the house, with men's shoes on the floor and a clothes basket containing clothes that respondent identified as belonging to her paramour. Pullam had previously informed respondent that the paramour would need to participate in and complete services if he were to be part of the return-home plan. However, despite Pullam's request, respondent did not provide her with the paramour's social security number for a background check. In January 2017, both children confirmed that they had had a sleepover with respondent and that her paramour had also been present. Pullam testified that she was not able to place the children back with respondent because respondent was not forthright about individuals residing within the home and would not ask them to leave.

¶ 14 Pullam agreed that a therapist reported that respondent showed evidence of thinking errors and poor judgment, and a psychological evaluation reflected that respondent has a low IQ (reportedly 65), which might make it difficult for her to meet minimum parenting standards.

Parenting coaching was recommended, and respondent attended those sessions; however, the coach never met with respondent and her children to see if respondent had implemented the skills. The parenting coach, Gina Beaver, later testified and confirmed that respondent began coaching in March 2016 and completed 10 sessions. She was receptive and cooperative, and she was successfully discharged from parenting-coaching services; however, she never observed respondent with her children during those sessions.

¶ 15 Dr. Michelle Iyamah, a clinical psychologist, testified that she interviewed respondent for two hours and, using a variety of testing measures, performed a psychological evaluation. Iyamah diagnosed respondent with severe depression and post-traumatic stress disorder, and she recommended that respondent receive psychiatric care. In Iyamah's opinion, respondent's examination reflected that she would have difficulty meeting minimum parenting standards. Iyamah recommended that respondent continue all efforts to maintain sobriety and, if needed, she could apply for social security disability due to lowered intellectual functioning and, along that vein, the possibility of an adult guardian might be considered. Iyamah testified that respondent was cooperative, pleasant, sincere, likeable, and was "honestly trying" to be a good parent, but she was hindered by her deficits.

¶ 16 The court ruled that the State had proved by clear and convincing evidence that respondent was unfit as alleged in counts II and III of the petition to terminate.

¶ 17 B. Best Interests

¶ 18 On August 28, 2017, the case proceeded to the best-interests hearing. Pullam testified that the minors had been in their current placement home since October 2016. The placement is one of "fictive kin," such that the children have had an ongoing relationship with the foster parent their entire lives. Pullam testified that the foster parent already had photos of the children

in the home when Pullam went there for the first time. The children are "extremely comfortable" there and are well-bonded with the foster parent. The children snuggle with the foster parent, are playful with her, and she is encouraging and supporting to them as it relates to their needs, including medically and emotionally. The children hug the foster parent when leaving her, share affections like "I love you," and call her "auntie." Pullam testified that the home is safe and appropriate. The foster parent is willing to maintain a relationship between respondent and the children, as respondent and the children have a good bond and "it's very apparent [respondent] loves the children and vice versa." Pullam explained that the children told her that they desire a continued relationship with respondent and would like to return to her, but that they are "ok" with their placement as well. The children love respondent, but they feel safe and are willing to be adopted by the foster parent.

¶ 19 Respondent testified about the strong bond that she has with her children, as well as the activities in which she and the children engaged during visitation. Further, she testified that the children do not like to leave her and cry at the end of her visits.

¶ 20 Pullam testified in rebuttal that she observed a few visits in June and July 2017. The children were sad when the visits ended, but they did not cry at the observed visits. Pullam testified that it was her opinion that parental rights should be terminated because respondent has repeatedly placed the children in bad situations and that, coupled with her psychological evaluation, left Pullam lacking confidence that respondent can safely parent them.

¶ 21 On September 12, 2017, the trial court found that it was in the children's best interests that respondent's parental rights be terminated. Respondent appeals.

¶ 22 II. ANALYSIS

¶ 23 A. Unfitness

¶ 24 A trial court's unfitness finding will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). A finding of unfitness is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). Here, although the trial court found respondent unfit on two grounds alleged in the State's petition, we need not consider both grounds, as any one ground, properly proved, is sufficient to affirm the court's finding. *Gwynne P.*, 215 Ill. 2d at 350; see also *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). The question of reasonable progress is an objective one, which requires the court to consider whether the parent's actions reflect that the court will be able to return the child home in the near future. See *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7.

¶ 25 Here, it was not contrary to the manifest weight of the evidence for the court to find that respondent failed to make reasonable progress toward the return of the children to her home within any nine-month period after the neglect adjudication, specifically, from November 24, 2015, to August 24, 2016. Respondent argues that she completed her services and that her visitation improved after the children were moved to a different foster situation. She further argues that the State relies heavily on her low IQ, and she suggests that it may not do so without seeking termination on that under section 50/1(d)(p) of the Act (750 ILCS 50/1(d)(p) (West 2016)).

¶ 26 While we agree that respondent completed services, we disagree that the State improperly relied upon her low IQ. Rather, setting aside intellect, the court's finding that respondent failed to make reasonable progress, *i.e.*, some "demonstrable movement toward the goal of reunification" (*In re C.N.*, 196 Ill. 2d 181, 211 (2001)) between November 24, 2015, and August 24, 2016, was not contrary to the remaining evidence. Specifically, the assessment plan required

respondent to partake in visitation with her children. However, the evidence presented relevant to that period established that, even if it ultimately improved, respondent's visitation during that period was inconsistent. Respondent missed two visits in December 2015 and went to the neighbor's house during another within the relevant period. Further, respondent missed visits in January, February, and April 2016. There were apparently several occasions when, instead of visiting with the children on Saturday at the foster home, respondent chose instead to see them at church on Sunday, where she would talk to them in the pews. Respondent stated that she could not make the Saturday visitations because of work, but she never provided Pullam with requested proof of employment.

¶ 27 In addition, there existed concern during this period over respondent's ability to provide a safe environment for her children. Although outside the time period, we note that the case initially came into care due to concerns over a serious wound on A.D.'s leg, and a second shelter care hearing was held when respondent allowed unsupervised contact between her children and two sex offenders. With that context in mind, respondent's plan required that she maintain safety for the children by advising YSB of any household composition changes and, in the event that someone resided in her house for more than 48 hours, notifying the agency so that background checks could be performed. However, Pullam testified that, from February 2016 through at least the end of the period in August 2016, unknown persons were living in respondent's home. Specifically, in February 2016, respondent reported that she was moving and would be living alone, but her paramour was listed on the lease. In August 2016, Pullam went to the home and there was a man sitting in the window, drinking beer, and several individuals were coming in and out of the house. Respondent said that it was her cousin, her children, and her paramour that were residing in the house and that they would not leave. On

August 22, 2016, respondent called Pullam and said that they had moved out, but that her uncle would remain in the home. Pullam urged respondent to "rethink that," but respondent assured Pullam it would be fine. Pullam ran a background check on the uncle and found on his 2015 record information concerning a prior theft, possession of a firearm, and resisting arrest.

¶ 28 At this time, and through the duration of the case, visitation never moved from supervised to unsupervised. The foregoing reflects that, although respondent might have engaged in services and exhibited other positive traits, the court's finding that there was not, during this period, demonstrable movement toward the goal of reunification, is not contrary to the manifest weight of the evidence.

¶ 29 B. Best Interests

¶ 30 A trial court's best-interest findings also will not be disturbed on review unless contrary to the manifest weight of the evidence. See *Gwynne P.*, 215 Ill. 2d at 354. In making a best-interests determination, the trial court must consider factors such as the child's developmental needs, physical safety, health, and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; the child's wishes; and the uniqueness of every child. See 705 ILCS 405/1-103(4.05) (West 2016)).

¶ 31 Here, the evidence reflects that the case came into care when A.D. presented with a serious wound and that respondent had, at least once, failed to give A.D. required medication and did not attend the children's doctor's appointments. Further, A.D. is subject to an IEP at school, but respondent did not attend any of the IEP meetings. The foster parent, however, has encouraged and met the children's physical and medical needs.

¶ 32 As previously discussed, the evidence reflects that respondent has not maintained a safe home for the children, whereas the foster parent's home is safe and appropriate and the children

are "extremely comfortable" there. Although it is undisputed that there exists mutual affection between respondent and the children, the children are also affectionate with, say "I love you" to, and are well-bonded with the foster parent. The foster parent is willing to maintain a relationship between respondent and the children, which the children desire, and, although the children would like to return to respondent, they also expressed that they are "ok" with their placement, and they feel safe and are willing to be adopted by the foster parent.

¶ 33 As to a need for permanence, we note that the evidence established that the children had multiple placements from 2011 through 2016. The final placement presented stability and familiarity, as the foster parent had known the children throughout their lives. In sum, we cannot find contrary to the manifest weight of the evidence the court's finding that termination of respondent's parental rights is in the children's best interests.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, the judgment of the circuit court of Winnebago County is affirmed.

¶ 36 Affirmed.