2018 IL App (2d) 170878-U
No. 2-17-0878
Order filed April 6, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re COLTEN T., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-112
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Stephanie F., Respondent-Appellant).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determination that respondent was unfit as to her son was not against the manifest weight of the evidence. It was also not against the manifest weight of the evidence for the trial court to conclude that it was in the child's best interest to terminate respondent's parental rights. Therefore, we affirmed.

¶ 2 Respondent, Stephanie F., appeals from the trial court's rulings terminating her parental rights to her son, Colten T. Respondent argues that the trial court's findings, that she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failed to protect the minor from conditions within the environment injurious to his welfare (750 ILCS 50/1(D)(g) (West 2016)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the child's removal during

certain nine-month periods after the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); and (4) failed to make reasonable progress towards the return of the child during certain nine-month periods (750 ILCS 50/1(D)(m)(ii) (West 2016)), were against the manifest weight of the evidence. She also argues that the trial court erred in finding that it was in Colten's best interest to terminate her parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Colten was born on March 20, 2016. The State filed a neglect petition four days after his birth, on March 24, 2016. The State alleged that Colten was neglected because (1) respondent had a substance abuse problem that prevented her from parenting properly; (2) his environment was injurious to his welfare because respondent failed to cure the conditions that led to the removal of Colten's siblings from her care; and (3) his environment was injurious to his welfare because respondent had mental health issues that prevented her from parenting properly.

¶ 5 A Department of Children and Family Services (DCFS) statement of facts was filed summarizing the situation as follows. Respondent had a history of anxiety and depression. On February 7, 2015, she was seen in a hospital emergency room due to being intoxicated and threatening to kill herself. During that visit, she tested positive for marijuana and cocaine. Respondent had another child, Braelynn H., who was born in January 2012 and was taken into protective custody in 2013 due to respondent using substances in the child's presence. In September 2014, respondent ceased contact with DCFS, and her parental rights to Braelynn were terminated on June 12, 2015. Respondent had a third child who resided with an aunt. Respondent had been involved with the police, including for a domestic violence incident involving Colten's father, Monte T. Monte also had a child to whom his parental rights had been terminated.

¶ 6 Also on March 24, 2016, respondent waived her right to a shelter care hearing. The trial court gave temporary guardianship and custody of Colten to DCFS. Respondent was ordered to remain free of illegal drugs and alcohol. On May 19, 2016, based on the parents' factual stipulation, the trial court adjudicated Colten to be neglected based on his siblings being taken into care. The State dismissed the remaining counts, and guardianship and custody of Colten remained with DCFS. A DCFS report to the court filed that day stated that respondent had completed an integrated assessment and had been recommended to take domestic violence and substance abuse assessments, individual counseling, and parenting classes. Respondent had been visiting Colten almost daily in his relative foster home placement, which was his paternal aunt and uncle's house.

¶ 7 A permanency review hearing took place on September 20, 2016. A report to the court filed that day stated that on June 13, 2016,[1] respondent and Monte were caring for Colten unsupervised, which was unapproved by DCFS. Respondent was intoxicated. An altercation occurred between respondent and Monte, and respondent was arrested. As a result of her arrest, there was a no contact order between her and Monte, but they thereafter continued to have contact with each other. Colten was moved to a traditional foster home. Respondent had taken a domestic violence assessment and was approved to begin domestic violence classes. She was engaging in parenting education classes and had been attending scheduled visitation with Colten at the agency office, with no concerns reported. Respondent had not yet completed a substance abuse assessment. The trial court found that respondent had not made reasonable efforts. It left the permanency goal at return home within 12 months.

¶ 8 The next permanency review hearing occurred on March 6, 2017. A report to the court

[1] An attached service plan listed the date of the incident as June 12, 2016.

filed that day stated that respondent had completed parenting education classes and was attending individual counseling, with a 71% attendance rate. She had completed a mental health assessment and was diagnosed with adjustment disorder with mild anxiety and depressed mood. Respondent had been attending her scheduled weekly visitation, and there were no concerns about the visits. However, on January 28, 2017, respondent was again arrested for domestic battery to Monte for punching him in the face, at a time they were both intoxicated. They were to have no contact with each other, but they still both showed up for a parent-child visit on February 10, 2017, and the caseworker had to ask one of the parents to leave. The trial court found that respondent had not made reasonable efforts or progress. The permanency goal remained at return home within 12 months, but the trial court warned that it would have another hearing in three months to ascertain whether progress had been made.

¶ 9 A permanency review hearing therefore took place on May 30, 2017. A DCFS report to the court stated that respondent had begun domestic violence counseling at Clarity in October 2016 and had been attending weekly. However, a Clarity report dated December 2016 stated that she did not show progress because she did not participate in discussion, did not complete all of the homework, and did not "acknowledge any behaviors aside from the incident that initially led to her involvement in services." A second Clarity report, dated April 2017, also stated that respondent did not show progress. She still remained quiet in groups, had been involved in two domestic violence incidents since October 2016, and did not acknowledge her behaviors leading to involvement in services. On May 5, 2017, respondent and her sister came to Monte's apartment while both were intoxicated, and respondent hit Monte in the chest and face. After Monte called the police, respondent asked her sister to hit her so that she would get a bruise and Monte would have to go to jail, but the sister refused. The police arrested respondent for

domestic battery, and she was currently incarcerated. Respondent needed to restart domestic violence counseling due to this incident. She had begun individual counseling but was not currently attending due to her incarceration. She had also not yet completed a substance abuse assessment. The trial court found that respondent had not made reasonable efforts or progress. It further found that it was in Colten's best interest that the goals be changed to substitute care pending court determination on termination of parental rights.

¶ 10 The State filed a petition to terminate parental rights on June 6, 2017. It alleged that respondent was unfit in that she had: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failed to protect the minor from conditions within the environment injurious to his welfare (750 ILCS 50/1(D)(g) (West 2016)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the child's removal during certain nine-month periods after the adjudications of abuse or neglect, specifically May 19, 2016, to February 19, 2017, and September 6, 2016, to June 6, 2017 (750 ILCS 50/1(D)(m)(i) (West 2016)); and (4) failed to make reasonable progress toward the return of the child during the nine-month periods listed above (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 11 A hearing on the petition to terminate parental rights took place on September 7, 2017. Colten's parents were absent without explanation, and the trial court denied their attorneys' requests to continue. Caseworker Taylor Nibbe testified as follows. He had been Colten's caseworker since November 2016. Colten was now 1½ years old. Nibbe was never able to place Colten back with his parents due to domestic violence and substance abuse concerns. There were domestic violence incidents between them in June 2016, January 2017, and May 2017, all stemming from respondent's intoxication. Respondent visited Colten consistently, calling the

case aide if she was going to miss a visit, and the visits were "great." Respondent completed a substance abuse assessment on May 26, 2017, which recommended an intensive outpatient program. She said that she could not go to day classes because of her work schedule; she tried to get on a wait list for night classes. She attended counseling between December 2016 and June 2017, when she was discharged due to the goal change. She had missed only four of those sessions during that time, and the counselor said that she was making progress towards her goals. However, she was ultimately unable to make progress due to her repeated domestic violence incidents. Respondent completed parenting classes in September 2016. The discharge for the program indicated she was to complete the partner abuse intervention program at Clarity, which she had not successfully completed. DCFS had never been able to allow respondent to have unsupervised contact with Colten or place him with her, due to a lack of efforts and progress to correct the conditions that brought him into care.

¶ 12 On December 4, 2017, the trial court found that the State had proven all four counts against respondent by clear and convincing evidence. It stated that respondent had two other children. The eldest child lived with an aunt and had had no contact with respondent for about two years. Respondent had her parental rights terminated to her second child, Braelynn, on June 12, 2015. Respondent had not cooperated with services needed for Braelynn to return home, particularly services for mental health, substance abuse, and domestic violence. Colten was born on March 20, 2016. The hospital had a record from a prior emergency room visit that showed that respondent had THC and cocaine in her system. Respondent's boyfriend had called the police because she was intoxicated and had threatened to kill herself.

¶ 13 Regarding count 1, the trial court stated that respondent had not completed services, particularly for domestic violence and substance abuse. Similarly, for count 2, respondent had

continued to have domestic violence incidents in June 2016, January 2017, and May 2017, which all occurred due to her intoxication. For count 3, respondent was found not to have made reasonable efforts at the permanency reviews on September 20, 2016, March 6, 2017, and May 30, 2017. For count 4, she was found not to have made reasonable progress at the permanency reviews on March 6, 2017, and May 30, 2017. Also, there were no unsupervised visits or any movement towards placing Colten with respondent.

¶ 14 The case then proceeded to the best interest hearing, at which the foster mother testified that Colten had been living with her since he was four months old. She testified regarding his bedtime routine, celebration of holidays with her extended family, and his relationship with her parents, who lived on a farm across the street. The foster mother identified pictures of Colten interacting with her and her family. He attended daycare and church, and he would soon be starting swimming lessons. She wanted to provide permanency for him, but she was open to allowing Colten to have some contact with his siblings and his biological parents. The trial court found that the State had proven by at least a preponderance of the evidence that it was in Colten's best interest to terminate respondent's parental rights. Respondent timely appealed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent argues that it was against the manifest weight of the evidence for the trial court to find that she was unfit on all four counts, and to find that it was in Colten's best interest to terminate her rights.

¶ 17 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2016)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2016)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the

Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re M.I.*, 2016 IL 120232, ¶ 20. If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 18 A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009). We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence, because the trial court has a superior opportunity to view and evaluate the parties. *In re M.I.*, 2016 IL 120232, ¶ 20. A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.*

¶ 19 We first examine the trial court's determination on count 4, that respondent failed to make reasonable progress during the time periods alleged. One statutory ground of unfitness is a parent's failure to make reasonable progress towards the child's return during any nine-month period after the initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2016). Our supreme court has defined reasonable progress as " 'demonstrable movement toward the goal of reunification.' " *In re C.N.*, 196 Ill. 2d 181, 211 (2001) (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)). Progress towards the child's return is measured by the parent's compliance with the service plans and the court's directives, in light of both the conditions which caused the child's removal and conditions that became known later and which would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. We review reasonable progress using an objective standard, and reasonable progress can be found if the trial court can conclude that it can return the child to the parent in the near future. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 20 Respondent argues as follows. She began individual counseling in December 2016 and remained engaged in the counseling until the permanency goal changed in May 2017. For the period of May 9, 2016, to March 31, 2017, she was rated satisfactory in the areas of gaining an understanding of children's developmental and emotional needs, completing all necessary requirements of parenting education as outlined by YSB, and actively participating in group instruction and discussion. Respondent completed her domestic violence and mental health assessments. She was further visiting Colten when she was able. "What derailed her efforts were the domestic violence incidents that caused her to miss some visits and have to restart services." Instead of waiting for the ultimate outcome of the charges against her, the State decided to terminate her parental rights. Still, she had made the progress reflected in the record.

¶ 21 We begin by looking at the period of May 19, 2016, to February 19, 2017. In a service plan evaluated on September 9, 2016, it was reported that in June 2016, respondent was arrested for domestic battery towards Monte at a time they were both intoxicated and engaged in an unauthorized, unsupervised visit with Colten. The parents were ordered to have no contact with each other, but they continued to do so. Additionally, respondent failed to complete a drug screen on September 8, 2016. She was therefore rated unsatisfactory in the area of abstaining from using drugs and alcohol. She was rated unsatisfactory in the area of domestic violence because although she completed a domestic violence assessment on July 6, 2016, she had not yet begun group classes. She was also rated unsatisfactory in the area of individual counseling because she was given a referral but had not yet begun services. Respondent was rated satisfactory in the area of parenting education because she successfully completed her parenting education class on September 12, 2016.

¶ 22 In a service plan evaluated on February 13, 2017, respondent was rated unsatisfactory in the area of counseling because she "was slow to engage in the parent group that [was] required before being assigned an individual counselor." It was noted that she achieved the goal in the area of parenting education. She was rated unsatisfactory in the area of domestic violence because, although she started classes in October 2016, she was not participating in group discussion, turning in homework, or acknowledging her abusive behaviors. Respondent was rated unsatisfactory in the area of maintaining a drug and alcohol-free lifestyle because she was arrested for domestic violence on January 28, 2017, at a time she was highly intoxicated, and she had not completed a substance abuse assessment.

¶ 23 As stated, reasonable progress towards the child's return is measured by the parent's compliance with the service plans and the court's directives (*In re C.N.*, 196 Ill. 2d at 216-17), and reasonable progress can be found if the trial court can conclude that it can return the child to the parent in the near future (*In re A.S.*, 2014 IL App (3d) 140060, ¶ 17). Although respondent managed to successfully complete her parenting education requirements during the period of May 19, 2016, to February 19, 2017, she was rated unsatisfactory in other significant areas, particularly mental health, domestic violence, and maintaining a drug and alcohol-free lifestyle. In fact, respondent was arrested for domestic battery towards Monte in June 2016 while she was intoxicated and while they were engaged in an unsupervised, unapproved visitation with Colten. She was again arrested for domestic abuse in January 2017, while she was intoxicated. Thus, during the relevant time period, respondent did not manage to refrain from alcohol abuse and domestic violence, much less progress towards unsupervised visitation with Colten. Indeed, caseworker Nibb testified that Colten could not be placed with respondent due to domestic violence and substance abuse concerns. Accordingly, the trial court's finding that respondent

failed to make reasonable progress towards Colten's return during this time not against the manifest weight of the evidence.

¶ 24 The next relevant period was September 6, 2016, to June 6, 2017. The aforementioned February 13, 2017, service plan covers part of this time. The other part of this period was covered by a service plan evaluated on August 18, 2017. In that service plan, respondent was rated unsatisfactory in the area of maintaining a drug and alcohol-free lifestyle because she did not complete her substance abuse assessment until the end of May 2017. She was rated unsatisfactory in the area of domestic violence because she struggled to engage in groups and could not identify what she had learned. She further had a domestic violence incident with Monte on May 5, 2017, at his home, when she was intoxicated. Respondent was rated satisfactory in the area of mental health counseling, as she had engaged in counseling and made progress with her counselor.

¶ 25 As respondent again was rated unsatisfactory in the majority of her service plan goals and engaged in another domestic violence while she was intoxicated, the trial court's finding that she failed to make reasonable progress during this time period was not against the manifest weight of the evidence.

¶ 26 Respondent could be found unfit for failing to make reasonable progress towards Colten's return during any nine-month period alleged (750 ILCS 50/1(D)(m)(ii) (West 2016)), and we have affirmed the trial court's findings as to both of the time periods alleged. Therefore, we need not examine the trial court's finding that respondent was also unfit because she failed to maintain a reasonable degree of interest, concern, or responsibility as to his welfare; failed to protect him from conditions within the environment injurious to his welfare; and failed to make reasonable efforts to correct the conditions that were the basis for his removal during certain

nine-month periods after the adjudication of neglect. See *In re H.S.*, 2016 IL App (1st) 161589, ¶ 31 (a finding of parental unfitness may be based upon evidence sufficient to support a single statutory ground).

¶ 27 Respondent next argues that the trial court's finding, that it was in Colten's best interest to terminate her parental rights, was against the manifest weight of the evidence. A trial court's ruling that a parent is unfit does not automatically mean that it is in the child's best interest to terminate parental rights. *In re K.I.*, 2016 IL App (3d) 160010, ¶ 65. Still, during the best interest hearing, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. In determining a child's best interest, the trial court is required to consider the following statutory factors of the Juvenile Court Act in light of the child's age and developmental needs: (1) the child's physical safety and welfare, including food, shelter, health, and clothing; (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 attachment, including love, sense of security, sense of familiarity, continuity of affection of the child, and least disruptive placement for the child; (5) the child's wishes and goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re Navaeh R.*, 2017 IL App (2d) 170229, ¶ 27. The State must show by a preponderance of the evidence that termination of parental rights is in the child's best interest. *Id.* ¶ 17. We will not

disturb a trial court's determination that it is in the child's best interest to terminate parental rights unless the ruling is against the manifest weight of the evidence. *Id.*

¶ 28 Respondent argues that although she was not present at trial, it was obvious that there was a bond between her and Colten as evidenced by the fact that she consistently visited him and was appropriate during the visits. She argues that to take Colten away from her is certainly harmful to him and not in his best interest.

¶ 29 We conclude that it was not against the manifest weight of the evidence for the trial court to conclude that it was in Colten's best interest to terminate respondent's parental rights. Colten was made a ward of the State when he was four days old, and he had not been in respondent's care since then. At the time of the best interest hearing, Colten was 18 months old and had been living with his foster mother since he was four months old. The foster mother testified to her strong relationship with Colten and his connection to her extended family. She wanted to provide permanency for him, and she was willing to allow contact with his biological parents and siblings. In contrast, respondent had not managed to make progress on her intoxication and domestic violence issues, to the extent that she had never been allowed unsupervised visitation with Colten. Accordingly, we find no basis to reverse the trial court's ruling.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 32 Affirmed.