2018 IL App (2d) 170981-U
No. 2-17-0981
Order filed May 8, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re N.S., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County
	)	
	)	No. 15-JA-431
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee v. Julie B., Respondent-Appellant).	)	Mary Linn Green,
	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Section 2-18(4)(a) of the Juvenile Court Act of 1987 (705 ILCS 405/2-18(4)(a) (West 2016) made hearsay nature of statements recorded in various documents maintained by Department of Children and Family Services a matter of weight rather than admissibility; trial court's determinations that mother was an unfit parent and that it was in the best interests of the minor to terminate her parental rights were not contrary to the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Julie B., appeals an order of the circuit court of Winnebago County terminating her parental rights to the minor, N.S. On appeal, respondent contends that the State failed to meet its burden of proving her unfit by clear and convincing evidence because much of

the State's evidence, according to respondent, was hearsay. She further contends that the State failed to prove it was in the best interests of the minor to terminate her parental rights, again pointing to the alleged hearsay evidence submitted by the State. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 On November 17, 2015, the State filed a three-count neglect petition, thereby initiating the instant case. N.S. was four years old at the time. All three counts alleged an injurious environment based on, respectively, respondent's history of substance abuse, the parents' history of domestic violence, and that the parents brought him to a store where they then committed retail theft. Respondent stipulated to the first count. A dispositional hearing was held on May 19, 2016, and N.S. was made a ward of the court. Respondent agreed to the terms of the dispositional order. At a permanency hearing held on November 15, 2016, the trial court found that respondent had not made reasonable efforts towards the return of the minor to her care. On May 6, 2017, following another permanency hearing, the trial court found that respondent had not made reasonable progress towards the return of the minor.

¶ 6 The State filed a petition to terminate respondent's parental rights on May 17, 2017, and amended it the next day. The petition set forth three counts as to why respondent was an unfit parent. First, it alleged she failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)). The second count alleged that respondent failed to make reasonable efforts to correct the conditions that caused the minor to be removed from her care during a nine-month period following the adjudication of neglect, specifically from April 18, 2016, to January 18, 2017. Third, the petition alleged that respondent did not make reasonable progress toward the return of the minor to her during a nine-

month period after the adjudication of neglect, specifying the same period as in the second count. The trial court ultimately found respondent unfit as to all three counts.

¶ 7 At the hearing on the State's petition to terminate respondent's parental rights, the sole witness to testify was Michelle Garnhart, a case manager with Children's Home & Aid. She was the case worker for N.S. Garnhart testified that she had never been able to place the minor with respondent "[d]ue to her lack of follow-through with services." Services requested of respondent were "substance abuse treatment, completing drug screens, domestic violence services, individual counseling, parenting classes, maintaining safe and stable housing, maintaining a financial income, participating in visitation, and general cooperation." Of these, the only one she completed was substance-abuse treatment; however, after being discharged, she tested positive for opiates. Respondent interposed a hearsay objection to this testimony. Respondent was unsuccessfully discharged from domestic violence services due to lack of attendance (respondent objected to this testimony as well). Respondent's counsel then asked for a continuing objection to any testimony from Garnhart based on anything she was relating from written reports that constituted hearsay. Respondent never began individual counseling because the service provider was not willing to do so until she was more consistent in attending domestic violence services. Parenting classes never commenced because, Garnhart explained, "I never did refer her for that because, in discussing her services, she was very overwhelmed with the services she was trying to participate in, so she didn't feel that she was ready to participate in parenting classes. Garnhart further testified that respondent did not consistently visit the minor, though, Garnhart acknowledged, "[s]he attended more than she didn't." As for maintaining housing, respondent had two or three residences while Garnhart was her caseworker, reported that she was evicted from one of them, was homeless for a while and living with various friends, and also lived with

her boyfriend. As for maintaining an income, "most of the time she hasn't had employment." Recently, she reported that she was working for a laundry company, but had not provided verification. Respondent acknowledged to Garnhart that she had relapsed on heroin around Labor Day of 2016 and that she had used cocaine around Halloween of that year.

¶ 8 On cross-examination by respondent, Garnhart testified that respondent had missed approximately half of her domestic violence counseling sessions. After reviewing pertinent records, Garnhart stated respondent had missed seven sessions with a medical excuse and three for other reasons. She agreed that 7 of the 10 sessions respondent missed were excused. Further, she agreed that respondent had seen a psychiatrist, which meant that she had participated in individual counseling as well. However, she was unsuccessfully discharged from that program after having "missed the last few sessions." Respondent was required to attend Narcotics Anonymous and Alcoholics Anonymous meetings. She provided verification that she was attending for a while, but eventually stopped doing so.

¶ 9 On cross-examination by the Guardian *ad litem*, Garnhart stated that when the July 2016 service plan was graded, respondent was rated inconsistent with respect to visitation. At the time, respondent was supposed to visit the minor one time per week for a period of two hours. In April and May of 2016, respondent had several positive drug tests, and a sample was diluted in July 2016. Counsel for respondent reiterated his standing objection and explained that he did not intend it to be limited to the State's presentation of evidence. Garnhart then testified that a parent using illegal substances cannot engage in parenting classes. Because respondent tested positive after completing substance-abuse treatment, she would have had to undergo another substance-abuse assessment. An April 2017 drug-screening test was not completed. Failure to complete such a test meant that it is considered a positive result.

¶ 10 The trial court took judicial notice of various documents, namely: the neglect petition filed on November 15, 2015; the adjudicatory order dated April 18, 2016; the dispositional order of May 19, 2016; and permanency review orders dated November 15, 2016, and May 16, 2016. Respondent object on relevancy grounds, and the trial court overruled the objections. Additionally, the State submitted five exhibits into evidence. The first was an indicated packet generated by the Department of Children and Family Services (DCFS) regarding respondent, which was dated November 25, 2014. This packet involved a sibling of the minor coming to school smelling like urine. The second was a service plan dated February 1, 2016. The third was a service plan dated July 11, 2016, and the fourth was another service plan from December 28, 2016. The fifth and final was also a service plan that was dated July 11, 2017.

¶ 11 Respondent stipulated that these records were admissible pursuant to section 2-18(4)(a) of the Juvenile Court Act (Act) of 1987 (705 ILCS 405/2-18(4)(a) (West 2016)). However, she objected on relevancy grounds as it pertained to the second and third counts of the petition to terminate her parental rights. She also objected to the use of any multi-level hearsay—that is, hearsay within hearsay—contained in these records. The trial court overruled the objection, stating simply, "I believe they are business records, if nothing else, under the Juvenile Court Act, but certainly the objections are so noted and made part of the record."

¶ 12 The trial court found that that State had met its burden with respect to all three counts of the petition. The court noted that there had been a finding on May 16, 2017, that respondent had not made reasonable progress toward returning the minor to her care. Further, respondent stipulated on January 21, 2016, that she had a substance-abuse problem. It noted that respondent's visits with the minor were inconsistent, as was her attendance at domestic violence services. Further, there were positive drug screens in April and May of 2016 as well as a diluted

sample in August 2016 (the record of proceedings indicates that this actually occurred in July). Respondent was arrested for possession of drug paraphernalia while she was in treatment. Moreover, the court observed, respondent was, for the most part, unemployed and she did not obtain stable housing. She was homeless for a time. The court found that though respondent had made some efforts, they were not reasonable in that it is not reasonable to continue to use drugs while in treatment. As for reasonable progress, the trial court noted that there was never consistent visitation or participation in services.

¶ 13 The court proceeded immediately to the best interests phase. The court took judicial notice of the proceedings in the unfitness phase, subject to the objections respondent made there. It also took notice of two reports from Children's Home & Aid, subject to respondent's objection concerning it containing multiple levels of hearsay.

¶ 14 Garnhart then testified. She stated that she had worked for Children's Home & Aid for 11 years and first became involved in the instant case in March 2016. At that time, the minor was already residing in the foster home he was residing in at the time of the hearing. In fact, the case had been opened in November 2014 and the minor was residing in this home since that time. Garnhart visited the home initially two times per month and later, after the foster parents became licensed to be foster parents, once per month. The minor was six years old at the time of the hearing. He has special needs and is educated in accordance with an individualized education program (IEP). His foster parents have been involved in the IEP. They have taken him to doctors' appointments and signed "commitments to permanency," which indicates that they are willing to adopt the minor. They take the minor on vacations, including camping trips to Wisconsin. They attend church. Two other children live in the foster home, and the minor relates to them like siblings. The minor goes to the foster parents to meet his needs. Garnhart

testified that the minor is "very difficult to understand because of his speech delay." Garnhart has a hard time understanding the minor, and, therefore, he has not been able to articulate his desires to Garnhart. Garnhart testified that the foster parents "have a loving relationship towards" the minor. Further, it would be in the minor's best interests for the foster parents to adopt him.

¶ 15 Respondent's attorney did not cross-examine Garnhart. On cross-examination from the guardian *ad litem*, Garnhart testified that the foster parents have provided all to the minor's food, clothing, and shelter. They have provided for all his health and educational needs. They invited respondent to attend IEP meetings and doctors' appointments; however, respondent has not consistently attended them. Respondent had not been consistent in visiting the minor. The foster mother is a distant relative of respondent, and "they have known each other for all of their lives." The foster mother is "very supportive of [respondent] and would continue to be open to having [respondent] visit [the minor]." The minor is "very attached to his foster parents." He goes to them for his needs. They "understand what he is saying and what his needs are." The minor is "incorporated into the foster parents' home and their relationships with other relatives." The minor "feels that he is loved and that he has a stable home life with" the foster parents.

¶ 16 The trial court found that the State met its burden of proving that it was in the minor's best interests that respondent's parental rights be terminated. The court stated it had considered all of the statutory factors and the evidence before it. Respondent now appeals.[1]

¶ 17 III. ANALYSIS

[1] Good cause exists for filing this disposition two business days after the expiration of the period specified in Illinois Supreme Court Rule 311(5) (eff. July 1, 2017). An extension of time caused the briefing schedule in this case to be modified.

¶ 18 On appeal, respondent contends that the trial court erred both in finding her unfit and in finding that it was in the minor's best interests that her parental rights be terminated. Respondent also raises, as a predicate argument, the hearsay nature of the various exhibits offered by the State. We will address this preliminary issue first.

¶ 19 Before turning to the substance of that issue, we note that respondent contends that she should be excused from not making a more specific objection identifying particular parts of the State's exhibits that constitute multi-level hearsay. We agree. The exhibits were submitted in their entirety, and the trial court treated them as such. Indeed, the submission of such material in this manner is generally discouraged. See *In re J.P.*, 316 Ill. App. 3d 652, 663 (2000) ("Wholesale judicial notice of all matters occurring prior to the unfitness hearing is unnecessary and inappropriate, and a trial court should only take judicial notice of those portions of the underlying court files that have been proffered by the State and to which the respondent is given an opportunity to object."). We see no reason to hold respondent to a higher standard than the proponent of the evidence.

¶ 20 A. HEARSAY

¶ 21 Respondent contends that the five exhibits submitted by the State contain multi-level hearsay (that is, hearsay within hearsay). Respondent agrees that the exhibits themselves are admissible pursuant to section 2-18(4)(a) of the Act (705 ILCS 405/2-18(4)(a) (West 2016)). However, she contends, "[T[hat does not mean that every hearsay statement contained in those records is also admissible." She argues that the hearsay statements contained in the exhibits require the application of another hearsay exception before they may be considered. To this end, respondent cites Illinois Rules of Evidence 805 (eff. January 1, 2011), which states, "Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined

statements conforms with an exception to the hearsay rule provided in these rules." She also cites *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 121, asserting that it stands for the proposition that "multiple hearsay is not admissible unless each layer of hearsay is excused by its own exception." Indeed, *McCullough* holds that "multiple hearsay is excused by Rule 803(6) only where both the source and the recorder of the information, as well as every other participant in the chain producing the record, are acting in the regular course of business." *Id.* Thus, for example, where an informant provided information that was recorded in hospital records, a federal court considered, *in dicta*, whether a hearsay exception applied to the informant's statement. *Wilson v. Zapata Off-Shore Co.*, 939 F.2d 260, 271-72 (5th Cir. 1991).

¶ 22 Respondent then contends that, "While the *McCullough* court was ruling pursuant to Illinois Rule of Evidence 803(6), there is no substantial difference between that rule and section 2-18(4)(a) [of the Act], pursuant to which the DCFS reports were admitted." We disagree. The text of Rule 803(6) is as follows:

> "*Records of Regularly Conducted Activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, but not including in criminal cases medical records. The term 'business' as used in this paragraph includes

> business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

Section 2-18(4)(a) provides as follows:

> "Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. A certification by the head or responsible employee of the hospital or agency that the writing, record, photograph or x-ray is the full and complete record of the condition, act, transaction, occurrence or event and that it satisfies the conditions of this paragraph shall be prima facie evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. *All other circumstances of the making of the memorandum, record, photograph or x-ray, including lack of personal knowledge of the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility*." (Emphasis added.) 705 ILCS 405/2-18(4)(a) (West 2016).

Contrary to respondent's claim about the similarity between these two provisions, Rule 803(6) contains nothing like the language italicized above in section 2-18(4)(a). Respondent does not

argue that Rule 803(6) or any other rule of evidence abrogates this portion of section 2-18(4)(a), and we express no opinion on that issue.

¶ 23 In light of this statutory language, respondent's multi-level hearsay objection is not well founded. Quite simply, the lack of knowledge of the maker of the documents at issue is, in accordance with the statute, a matter of weight rather than admissibility (705 Ill. App. 3d 405/2-18(4)(a) (West 2016)). Thus, the trial court could properly consider the exhibits respondent here complains of and attribute to them whatever weight they were due, taken into account their hearsay nature.

¶ 24 Parenthetically, we find unpersuasive respondent's argument based on the foundational requirements of section 2-18(4)(a) of the Act (705 Ill. App. 3d 405/2-18(4)(a) (West 2016)). Respondent notes that the writing "is the full and complete record of the condition, act, transaction, occurrence or event." *Id.* From this, respondent argues that section 2-18(4)(a) does not make everything within a writing admissible. That the statute has certain foundational requirements does not alter the language stating that the maker of the writing's lack of personal knowledge is a matter of weight. Respondent's reliance on a requirement imposed by an unrelated statutory subsection—section 2-18(4)(c) (705 Ill. App. 3d 405/2-18(4)(c) (West 2016)) is also misplaced.

¶ 25 B. MANIFEST WEIGHT

¶ 26 We now turn to respondent's arguments that the trial court erred in finding that the State met its burden with respect to finding her unfit and finding that it was in the minor's best interests to terminate her parental rights.

¶ 27 1. Fitness

¶ 28 As noted, the trial court found that respondent was an unfit parent on three separate grounds: the failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)); the failure to make reasonable efforts to correct the conditions that caused the minor to be removed from her care during a nine-month period following the adjudication of neglect (750 ILCS 50/1(D) (m)(i) (West 2016)); and the failure to reasonable progress toward the return of the minor to her during a nine-month period after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)). As to the latter two counts, the petition set forth April 18, 2016, to January 18, 2017, as the relevant period.

¶ 29 A proper finding of unfitness on any one of these grounds would be sufficient to sustain the trial court's judgment. *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). Thus, though the trial court ruled on all three grounds, we need only consider one of them, and, if the trial court's judgment is not contrary to the manifest weight of the evidence as to that count, we need not evaluate its additional findings. *Id*. The issue of a parent's unfitness presents a question of fact. *In re G.W.*, 357 Ill. App. 3d 1058, 1059 (2005). Therefore, we owe significant deference to a trial court's findings concerning a parent's fitness, and we will reverse such a decision only if it is contrary to the manifest weight of the evidence. *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000). A finding is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *In re C.M.*, 305 Ill. App. 3d 154, 163 (1999).

¶ 30 Here, we will consider the third count—the failure to make reasonable progress toward the return of the minor from April 18, 2016, to January 18, 2017. Our supreme court has stated, "Reasonable progress" means "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001). Put differently, "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re J.G.*, 298 Ill.

App. 3d 617, 625 (1998) (citing *In re Allen*, 172 Ill. App. 3d 950, 956 (1988)). It "is an objective standard that exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the near future, will be able to order the child returned to parental custody." *Id*. Here, the trial court determined that respondent was not making such progress.

¶ 31 Ample evidence supports the trial court's determination. Various service plans indicate respondent is to "keep safe, stable housing." However, as set forth above, the evidence indicated that respondent never established a stable home and, in fact, was homeless for a time. Respondent completed substance-abuse treatment; however, after doing so, tested positive for opiates. Respondent was unemployed for most of the time she was in services, and, though she claimed to work for a laundry company, never provided verification. Respondent declined to commence parenting classes because she was "overwhelmed" by the services she was trying to participate in. Respondent relapsed on heroin around Labor Day of 2016 and used cocaine around Halloween of 2016 as well. While respondent provided verification that she attended Narcotics Anonymous and Alcoholics Anonymous meetings for a while, she eventually stopped doing so. Because respondent tested positive after completing substance-abuse treatment, she would be required to undergo another substance-abuse assessment. Respondent was not consistent in visiting the minor. All of this evidence was unrebutted.

¶ 32 Respondent complains of the hearsay nature of much of the evidence. However, as explained above, pursuant to section 2-18(4)(a) of the Act (705 Ill. App. 3d 405/2-18(4)(a) (West 2016)), this is a matter of weight. Attributing weight to evidence is primarily a matter for the trial court, and it is a matter upon which we owe the trial court deference. *In re A.W.*, 231 Ill. 2d

92, 104 (2008) ("We give deference to the trial court as the finder of fact, and will not substitute our judgment for that of the trial court on the credibility of witnesses, the weight given the evidence, or inferences drawn from the evidence."). Respondent cites no case law where the hearsay nature of some of the (admissible) evidence led to the reversal of a factual determination of a trial court.

¶ 33 In light of the state of the record and in light of the deference we owe to the trial court on matters such as these (*In re J.A.*, 316 Ill. App. 3d at 561), we cannot say that an opposite conclusion to the trial court's is clearly apparent. Given respondent's failure to refrain from using drugs, failure to establish safe and stable housing, failure to document a legal source of income, failure to participate in all necessary services, and failure to consistently attend visitation, the trial court could reasonably conclude that respondent had not made "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d at 211. Accordingly, the trial court's determination regarding respondent's unfitness is not contrary to the manifest weight of the evidence. *In re C.M.*, 305 Ill. App. 3d at 163.

¶ 34 2. Best Interests

¶ 35 Respondent next argues that the trial court erred in finding that it was in the minor's best interests to terminate her parental rights. During the best-interests phase, a respondent has already been found unfit, so the focus of the hearing is upon the minor. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Hence, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* We review the trial court's decision concerning a minor's best interests utilizing the manifest-weight standard. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. Thus, to prevail, respondent would have to establish that an opposite conclusion to the trial court's is clearly apparent. *A.B.*, 308 Ill. App. 3d at 240.

¶ 36 Additionally, the legislature has set forth the following list of factors to consider in assessing a minor's best interests:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> > (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
> >
> > (ii) the child's sense of security;
> >
> > (iii) the child's sense of familiarity;
> >
> > (iv) continuity of affection for the child;
> >
> > (v) the least disruptive placement alternative for the child;
>
> (e) the child's wishes and long-term goals;
>
> (f) the child's community ties, including church, school, and friends;
>
> (g) 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;
>
> (h) the uniqueness of every family and child;
>
> (i) the risks attendant to entering and being in substitute care; and
>
> (j) the preferences of the persons available to care for the child." 705 ILCS 405/1 - 3(4.05) (West 2016).

Again, given the state of the record, we simply cannot say that the trial court's decision is contrary to the manifest weight of the evidence.

¶ 37 The evidence set forth above, which was largely uncontroverted, establishes the following. Initially, the trial court took judicial notice of what transpired in the fitness phase of the proceedings. It stated it had considered all of the statutory factors and the evidence before it. Garnhart testified that the minor had resided with the foster parents since at least November 2014 and was only six years old at the time of the hearing. The minor has special needs, which the foster parents attend to. They have provided him with medical care and taken him on vacations. While the foster parents have attended IEP meetings and medical appointments, respondent has not done so consistently. The foster parents have a loving relationship with the minor, and he goes to them for his needs. Respondent has not been consistent in visiting the minor. The minor is "incorporated into the foster parents' home and their relationships with other relatives." The minor relates to the two other children that live in the foster parents' home like siblings.

¶ 38 Respondent again complains of the hearsay nature of some of this evidence. As explained in the preceding section, we do not find this contention well taken. Moreover, as above, respondent cites no case where a reversal occurred under similar circumstances.

¶ 39 Again, much of this evidence is unrebutted. We simply cannot find, having reviewed the record, that an opposite conclusion to the trial court's is clearly apparent. Thus, the trial court's decision is not against the manifest weight of the evidence. *In re C.M.*, 305 Ill. App. 3d at 163.

¶ 40 IV. CONCLUSION

¶ 41 In light of the foregoing, the judgment of the circuit court of Winnebago County is affirmed.

¶ 42 Affirmed.