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2018 IL App (3d) 170657-U

Order filed February 14, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> E.I., E.I., E.I., D.I., R.H., and R.H.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Minors	)	McDonough County, Illinois.
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-17-0657
	)	3-17-0658
Petitioner-Appellee,	)	3-17-0659
	)	3-17-0660
v.	)	3-17-0661
	)	3-17-0662
A.H.,	)	Circuit Nos. 15-JA-24
	)	15-JA-25
Respondent-Appellant).	)	15-JA-26
	)	15-JA-27
	)	15-JA-28
	)	15-JA-29
)	
	)	Honorable Heidi Benson,
	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.

Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence supported the trial court's fitness and best-interest findings.

¶ 2 Respondent, A.H., appeals the trial court’s termination of the parental rights to her children, Es.I. (born April 22, 2004), Enn.I (born March 30, 2005), D.I. (born March 27, 2011), Ena.I. (born June 9, 2012), Ro.H. (born June 9, 2015), and Re.H. (born June 9, 2015). Respondent challenges both the court’s fitness and best-interest determinations. We affirm.

¶ 3 **FACTS**

¶ 4 **A. Events Preceding the State’s Petition for Termination of Parental Rights**

¶ 5 On December 11, 2015, the State filed petitions for adjudication of wardship alleging the minors were neglected because their environment was injurious to their welfare. Specifically, the petitions alleged that respondent left her four youngest children in the care of her two oldest children and that she medically neglected Ro.H. by failing to follow up with his primary care physician following an emergency room visit where he was in respiratory distress. At a shelter care hearing that same day, the trial court heard testimony that (1) respondent and her live-in paramour, Steve, had a volatile relationship, (2) the trailer in which they lived was littered with trash, dirty dishes, dirty diapers, and had cockroaches in the kitchen, and (3) respondent often left the four youngest children in the care of the two oldest children despite one of the four-month old twins having medical issues. Thereafter, the trial court found probable cause to believe the minors were neglected as alleged in the petitions and placed the minors into the temporary custody of the Department of Children and Family Services (DCFS).

¶ 6 On December 21, 2015, the trial court adjudicated the minors neglected based on respondent’s stipulations that on December 9, 2015 (1) she left her two oldest children in the role of caregiver for their four younger siblings for long periods of time, (2) EMS transported the four-month old twins to the hospital, and (3) she left her children home alone while she went to the McDonough County courthouse.

¶ 7 On March 3, 2016, the trial court entered its dispositional order finding respondent unfit and ordering her to complete services “as deemed necessary.” The court made the minors wards of the court and approved DCFS as their guardians. DCFS placed Es.I., Enn.I., and D.I. in the custody of their biological father, Don. DCFS also placed Ena.I. in Don’s custody although she is not his biological daughter. DCFS placed Ro.H. and Re.H. into a traditional foster home.

¶ 8 In anticipation of a June 2, 2016, status hearing, the child welfare specialist submitted a report indicating as follows. Respondent currently lived in a clean three-bedroom home but she and her paramour, Steve, planned to move into a five-bedroom home. Steve declined to participate in an integrated assessment and refused to discuss services that could benefit him. Respondent was unemployed but seeking employment. She planned to obtain her general equivalency diploma (GED). Respondent participated in domestic violence services but missed the first three classes due to doctor’s appointments. If she missed one more class, she would have to take a different course. She completed a six-week parenting course in February 2016 that covered basic parenting skills. Respondent attended therapy and planned to complete a mental health assessment shortly. Her therapist diagnosed respondent with social adjustment disorder due to “trauma from DCFS involvement.” Respondent was pregnant with Steve’s child and due in September 2016. She attended visits with her children every Monday and Friday.

¶ 9 In anticipation of an August 25, 2016, permanency review hearing, the child welfare specialist submitted a report indicating as follows. Respondent continued to live in the three-bedroom house with Steve. The house had a “slight odor of cigarette smoke,” but respondent stated she only smoked outside. Respondent gave birth to her seventh child, A.J., on August 11, 2016. He was placed in the same foster home with Ro.H. and Re.H. Since the child’s birth, Steve stated he is willing to participate in services. Respondent continued to be unemployed during the

reporting period and told the caseworker she would begin GED classes August 23, 2016. Respondent reported that she had completed the domestic violence course, but the caseworker had not received verification as of the date of the report. Respondent completed a mental health assessment and continued to attend therapy. Although respondent engaged in services, the caseworker continued to be concerned with Steve's unwillingness to engage in services. The caseworker observed Steve being "verbally aggressive" toward respondent following an August 2016 court hearing.

¶ 10 In anticipation of a September 22, 2016, hearing, the child welfare specialist filed a status hearing update with the court. The update noted that both respondent and Steve refused to complete the integrated assessment scheduled for September 14, 2016. While the screener and caseworker were present, Steve told respondent not to participate and then he refused to participate. The caseworker noted, "[t]his worker told [respondent] it was her choice [whether to participate] and again explained how she should choose her children over [Steve] because ultimately this is her demonstrating a lack of not cooperating with services and would impact her case and her children. She said she was making her own choice to not participate in the Integrated Assessment Interview. She said she would cooperate in it after she talked to her attorney and had an appeal." The caseworker continued to note respondent "is really backtracking in taking any ownership for her children being in care." According to the caseworker, respondent "is preoccupied with [Steve's] issues and concerns and does not see how it impacts her decision making and *** parenting of her children."

¶ 11 A February 10, 2017, CASA report indicated that respondent continued to reside with Steve. She secured employment and had been working for four months. Respondent's home was clean and neat but smelled of smoke. The visits with the minors were "less chaotic" since being

moved to respondent's home in December. Respondent missed all of Ro.H. and Re.H's doctor, therapy, and hospital visits but told the CASA worker the appointments were made without consideration of her schedule or ability to get to the appointments.

¶ 12 In anticipation of a February 23, 2017, permanency hearing, the child welfare specialist filed a permanency hearing report with the court indicating as follows. During the review period, respondent did not have a working telephone and had not provided a contact number until the week before the hearing. As such, communication during this period was primarily accomplished via letters. Respondent continued to live in the same three-bedroom home, which continued to be clean with a slight cigarette odor. Respondent and Steve were still in a romantic relationship. Respondent continued to digress in her understanding of the reason her children were in care. Respondent continued to be employed with the same employer since October 2016. During the reporting period, respondent expressed no further interest in obtaining her GED. Respondent did not have a driver's license and relied on city transportation. The report further noted as follows:

“During this reporting period and since [the birth of her seventh child] worker has noticed a change in [respondent's] attitude regarding the reasons her children came into care and moving forward. She and [Steve] are very focused on proving this worker wrong. When this worker met with [respondent] in June 2016, [she] reported she wasn't with [Steve] and wasn't living with him. When this worker discussed seeing photos of [Steve] and [respondent] together in the home or alcohol being present in the photo, [respondent] stated she had dinner with [him] occasionally and said he is still a part of her life due to them having a child

together. *** Since [their child's birth] in August 2016, [respondent] and [Steve] have maintained a romantic relationship. [Respondent] had reported during the Administrative Case Review in December 2016 how her and [Steve] have never broken up or not been together. [She] was angry with this worker and told this worker she was 'making up lies.' ”

¶ 13 In addition, the caseworker expressed concerns regarding whether respondent's issues were actually being addressed despite the fact that she was completing some services. While respondent completed parenting education, mental health counseling and domestic violence classes, she “continues to not understand or take ownership of the severity of her choice for leaving the children unattended. She is hyper focused on stating how DCFS and Chaddock reports lies on her.” While respondent had “ample opportunities to attend appointments in the Macomb area for the twins[, she] hasn't attended an appointment for the twins since the last review period.” Respondent allowed Steve to attend a doctor appointment for their child and a scheduled visit with her other children despite knowing that he could not be there. Respondent “failed to demonstrate she is putting her children's needs and safety as a priority and ahead of [Steve].” She continued to deny incidents of domestic violence between her and Steve although the caseworker observed Steve being “verbally aggressive” toward respondent. The caseworker opined that respondent “is still in need of support services” and “needs to advocate for herself, her children, and their overall safety by making good choices regarding her ongoing relationship patterns. [Respondent's] resistance, fear and/or inability to confront [Steve] has [*sic*] impeded her progress in this case.”

¶ 14 B. State's Motion Seeking a Finding of Unfitness
and the Termination of Respondent's Parental Rights

¶ 15 On April 19, 2017, the State filed petitions to terminate respondent’s parental rights to the six named minors, asserting that respondent was unfit for (1) failing to make reasonable progress towards the return home of the minors during any nine-month period following the adjudication of neglect and specifically between June 15, 2016, and March 15, 2017, and (2) failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors’ welfare.

¶ 16 1. Fitness Hearing

¶ 17 A hearing on respondent’s fitness took place on July 25, 2017, during which the following evidence was elicited.

¶ 18 Susan Denecke, a counselor with McDonough District Hospital Behavioral Health Services, testified that she treated respondent following a referral from DCFS. Respondent met with Denecke twice a month. Respondent missed 9 of the 17 scheduled appointments. Denecke last saw respondent on October 17, 2016. Denecke opined that respondent was making progress “up until she stopped coming.” She discharged respondent from care because “[s]he did not come back to treatment.” Denecke’s discharge diagnosis noted respondent had “adjustment disorder with depressed mood” and that she “verbalizes little awareness of problems and consequences. Judgment is poor.”

¶ 19 Carol Smith, a sexual assault and domestic violence counselor with Western Illinois Regional Counsel, C.A.A. Victim Services, testified that she began counseling respondent for domestic violence in April 2016. She met with respondent 10 times over a 10-week period for domestic violence classes which respondent successfully completed. Smith denied any knowledge of domestic violence issues or concerns between respondent and Steve and admitted she never asked respondent if she was living with someone. Smith’s job was simply to educate respondent on domestic violence issues. In addition, Smith counseled respondent for one-on-one

support that entailed any other issues with which she was struggling. In that context, respondent attended 12 sessions and missed 4 sessions, all of which were voluntary. Ultimately respondent stopped attending these sessions due to her work schedule and Smith's caseload, which increased after Smith's co-counselor went on maternity leave.

¶ 20 Rosemary Waelder, a child welfare specialist with Chaddock, testified as follows. She began working with respondent in June 2016. Respondent was to complete the following services: mental health counseling, domestic violence, abuse counseling and treatment, a parenting course, and a substance abuse evaluation. She was to maintain housing, employment, and cooperate with Chaddock and Waelder. Respondent successfully completed a parenting course in February 2016. Waelder observed a lack of structure during respondent's visits with her children, as well as concerns regarding what and how often to feed the children. Although the trial court prohibited Steve from visiting his own child until paternity was established or respondent's other children because he refused services, respondent allowed him to attend one of A.J.'s doctor's appointments and to attend a visit the following week with her children. In addition, respondent missed an October 2016 visit with her children so she could visit Steve in jail.

¶ 21 After October 2016, Waelder communicated with respondent by letter since respondent did not have a working phone. Respondent missed approximately six months of her children's doctor's appointments from August 2016 to February 2017, but rather than expressing genuine concern for missing the appointments, she was combative toward Waelder.

¶ 22 Waelder acknowledged that respondent successfully completed domestic violence counseling, but she continued to express concerns of domestic violence between respondent and Steve. Specifically, Steve had two pending battery cases that listed respondent as the victim.

When discussing these charges with respondent, respondent “downplayed it” and said “it was bogus charges.” Waelder observed Steve yelling and shaking his head at respondent following an August 2016 court hearing. Waelder advised respondent that issues of domestic violence were one of the reasons the children were in care and that the children reported witnessing domestic violence between the two. Waelder told respondent she needed to address the domestic violence issues or the children would not be returned to her care because the environment was not safe. Respondent denied she was living with Steve between June and November 2016, however, Steve informed Waelder they were living together. Respondent planned to stay in a relationship with Steve.

¶ 23 Respondent’s cooperation decreased after A.J. was born and taken into protective custody. Prior to that, respondent was “fairly cooperative” and had been completing some services. Waelder opined that Steve impairs respondent’s ability to think for herself, be independent, effectively parent her children, and complete her services.

¶ 24 Diane Banach, the CASA for the children, testified that visits between respondent and her children were initially difficult and chaotic since so many people were present. However, since the visits moved to respondent’s home in December 2016, the visits were more peaceful; respondent’s interactions with the children improved. Banach expressed no concerns with respondent’s ability to feed her children properly or lack of structure in the home. She never saw respondent smoke in the home.

¶ 25 Respondent testified on her own behalf. She agreed that one of her goals included successfully completing therapy. However, she stopped going to her counseling sessions because she obtained full-time employment working second shift and “had a lot of other, like,

things throughout the day.” She tried to reschedule some of her counseling sessions but ultimately decided to stop going to “save us both some time.”

¶ 26 Respondent gave Waelder her e-mail address in November 2016 but Waelder never used her e-mail for communications. Respondent missed quite a few of the children’s doctor’s appointments because she did not have transportation.

¶ 27 Steve moved out of her house in June 2016 and did not return until November 2016, after Waelder told her that he could move back in. She and Steve were no longer in a relationship and had been court ordered to stay apart. She planned to live apart from Steve and forego a romantic relationship so long as he refused services.

¶ 28 Following arguments, the court found respondent unfit for failing to (1) make reasonable progress toward the return of the children and (2) maintain a reasonable degree of interest, concern or responsibility to the children.

¶ 29 **2. Best-Interest Hearing**

¶ 30 The trial court conducted a best interest hearing on August 10, 2017.

¶ 31 Todd Tedro, a police officer with the City of Macomb, testified that he saw respondent and Steve together in an examination room at the hospital on July 20, 2017. Respondent later testified she had not seen Steve since that day.

¶ 32 Rosemary Waelder prepared a report in anticipation of the best-interest hearing. Waelder’s testimony and report indicated as follows.

¶ 33 Re.H. and Ro.H, now two years old, have been in their traditional foster home for almost six months, with their foster mom and dad, as well as their 16-year old biological daughter and two adopted children ages 7 and 9. The home was a large ranch home with four bedrooms and large rooms. The foster parents took all necessary safety precautions for the children. Waelder

had no concerns with the children's care in their current foster placement. Re.H. and Ro.H. get along with the other children, "look up to them," and are "really connected to them." They are "very bonded" to their foster parents and look to their foster mother when they need something or just want attention or affection. Their foster mother is home with the children all day. Ro.H. suffers from reactive airway disorder and asthma. He is being monitored for an extra chromosome. He takes breathing treatments regularly and has many doctor appointments. His foster parents are well versed in his medical needs and ensure he gets to his doctor appointments. Re.H. also has asthma but does not require breathing treatments as frequently as her brother. Their foster parents have friends and family to lean on for support and alternative care plans in the event something were to happen. They are heavily involved in their church and community. They have expressed a desire to adopt Re.H. and Ro.H. and are committed to keeping the children in contact with their siblings.

¶ 34 Re.H.'s and Ro.H.'s foster mother reported the children are "extra irritable and fussy" following visits with respondent and sometimes return home hungry. It takes them a couple of days to readjust to the structure of the foster home following visits. No one came forward indicating he is the twins' father.

¶ 35 Es.I., Enn.I., D.I., and Ena.I have lived with Don since being brought into care. No one came forward indicating he is Ena.I.'s father. They live in a two-bedroom home and also use another area in the living space for a bedroom. The home is "fairly clean" though sometimes "disorganized with all the children." Don provides for their basic needs and consistently provides good care for the children. Waelder had no concerns regarding the safety of the children at this placement, even though Don still had some outstanding services to complete. The children share

a bond with Don and he is willing to provide permanency for Ena.I. While the two older children wish to maintain a relationship with respondent, they are comfortable living with their father.

¶ 36 On the other hand, Waelder continued to express concerns regarding domestic violence issues between respondent and Steve. The trial court took judicial notice of two exhibits offered by the State that indicated Steve had been sentenced for domestic battery in two separate cases. In both cases, as part of his sentences, the trial court ordered Steve to “[have] no offensive contact” with respondent. While it is clear respondent loves her children, Waelder opined that she “struggles to have an understanding or a level of acceptance on how her relationship [with Steve] negatively impacts her parenting skills. She has not demonstrated she can maintain a healthy and safe romantic relationship while providing appropriate supervision, parenting needs, and meeting medical expectations.” In Waelder’s opinion, it was in the best interests of the children that respondent’s parental rights be terminated and that they remain in their current placements.

¶ 37 Diane Banach, the CASA volunteer, testified that the four oldest children would like more visitation time with respondent and their twin siblings. Banach felt that respondent’s parental rights should remain intact. In her opinion, the children loved their mother and termination would “be devastating for them.”

¶ 38 Respondent testified that she no longer resides with Steve and is no longer in a romantic relationship with him. She has a working telephone, is still employed at Burger King, has a three-bedroom house and is able to provide food, shelter, and clothing for the children. She last attended a doctor’s appointment for the twins in June 2017. Respondent has a better relationship with the twins’ foster parents who recently told her that Ro.H. no longer required breathing treatments or therapy.

¶ 39 Following arguments, the trial court found that is was in the children’s best interests that respondent’s parental rights be terminated. The court later denied respondent’s motion to reconsider.

¶ 40 Respondent appeals.

¶ 41 ANALYSIS

¶ 42 On appeal, respondent challenges both the trial court’s fitness and best-interest findings.

¶ 43 A. Unfitness Finding

¶ 44 Respondent first challenges the trial court’s unfitness finding.

¶ 45 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In making such a determination, the court considers whether the parent’s conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re D.D.*, 196 Ill. 2d 405, 417 (2001).

¶ 46 “A trial court’s finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony.” *In re A.S.*, 2014 IL App (3d) 140060, ¶ 15. A reviewing court will not disturb a trial court’s unfitness finding unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417. “A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result.” *Id.*

¶ 47 1. Reasonable Progress

¶ 48 The trial court found respondent unfit under section 1(D)(m)(ii) of the Adoption Act for failing to make reasonable progress toward the return of the children during any 9-month period

following the adjudication of neglect, and specifically between June 15, 2016, and March 15, 2017. See 750 ILCS 50-1(D)(m)(ii) (West 2014).

¶ 49 “Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent.” *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. At a minimum, reasonable progress requires “ ‘measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child.’ ” *Id.* (quoting *In re. M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991)). “[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.” (Internal quotation marks omitted.) *Id.* “Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future.” *Id.*

¶ 50 The record shows that during the period at issue, respondent made some progress in certain areas. For example, she secured and maintained employment and appropriate housing, and visits with the children improved once they were moved to her house. On the other hand, respondent remained in a relationship with Steve despite having knowledge that doing so could prevent her children from being returned to her care, denied issues of domestic violence despite being named as the victim on two battery charges filed against Steve, lied to the caseworker about her relationship with Steve, failed to implement what she learned in domestic violence classes, allowed Steve to attend visits with the children even though she knew he was not allowed, missed a scheduled visit with her children so that she could visit Steve in jail instead,

did not have a working telephone, failed to attend any of the twins' medical appointments, quit going to therapy, refused to complete an integrated assessment following the birth of her seventh child, and digressed in her understanding of the reasons for the children coming into care in the first place.

¶ 51 Based on the evidence presented, the trial court's determination that respondent failed to make reasonable progress was not against the manifest weight of the evidence.

¶ 52 2. Failure to Maintain a Reasonable Degree of Interest

¶ 53 The court also found respondent unfit under section 1(D)(b) of the Adoption Act for "[f]ail[ing] to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50-1(D)(b) (West 2014). Although evidence of unfitness based on any ground enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) is enough to support a finding of unfitness (see *In re D.L.*, 326 Ill. App. 3d 262, 268 (2001)), we find that the same evidence noted above supports the trial court's finding that respondent was unfit for failing to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare.

¶ 54 B. Best-Interest Finding

¶ 55 Respondent also challenges the trial court's finding that it was in the children's best interests to terminate her parental rights.

¶ 56 At the best-interest stage of the proceedings, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). In particular, "the parent's interest in maintaining a parent-child relationship yields to the child's interest in a stable, loving home life." *Id.* At this point, the State must prove by a preponderance of the evidence that termination of parental rights is in the child's best interest. *Id.*

¶ 57 In considering the child's best-interests, the court takes into account (1) the safety and welfare of the child, (2) the development of the child's identity, (3) the child's background and ties, (4) the child's sense of attachment, including where the child feels loved, has a sense of security and familiarity, continuity of affection, and where the least-disruptive placement alternative would be, (5) the child's wishes and goals, if applicable, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of each family and child, (9) the risks of being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). A trial court's finding regarding a child's best-interests will not be reversed on appeal unless it was against the manifest weight of the evidence. *In re I.B.*, 397 Ill. App. 3d at 340.

¶ 58 Here, our review of the record reflects that the children have been removed from respondent's home for more than two years. The four oldest children have resided with Don, the biological father of the oldest three children, for the entire time. Don has expressed a willingness to provide permanency for Ena.I., thus allowing her to remain with her half-siblings. The children are safe and secure with Don and if he so chooses, he may allow the children to remain in contact with respondent.

¶ 59 Although Re.H. and Ro.H. have only lived in their current foster home since March 2017, the record shows that they are thriving. They are safe and secure in their foster home and have spent more of their lives in their current placement than they did in respondent's home. They are bonded to their foster parents and siblings and look to them for attention and affection. Their foster family provides for their medical needs. Their foster family has strong ties to their church and community and alternative plans in place in the event something were to happen to them.

Most importantly, they have expressed the desire, willingness, and ability to adopt the twins and provide permanency while also allowing continued contact with their siblings.

¶ 60 On the other hand, respondent appears only slightly closer to having the children returned to her care now than she did when the case was opened. Although respondent made some progress, she digressed following A.J.'s birth in August 2016. During the relevant review period, respondent remained in a relationship with Steve despite at least two documented instances of domestic violence. More telling is the fact that respondent knew remaining in a relationship with Steven would hinder her ability to regain custody of her children. On one occasion, she even missed a scheduled visit with her children so that she could visit Steve in jail. The evidence shows that regardless of whether respondent and Steven are currently involved in a romantic relationship—she claims they are not—she will put her relationships with men before her children.

¶ 61 Based on the above evidence, and keeping in mind the children's best interests, we find that the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 62 CONCLUSION

¶ 63 For the foregoing reasons, we affirm the judgment of the circuit court of McDonough County.

¶ 64 Affirmed.