

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (3d) 170710-U

Order filed March 7, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> S.M.L.D.W.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
a Minor)	Fulton County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0710
)	Circuit No. 16-JA-9
v.)	
)	
Shane D.W.,)	Honorable
)	Anthony William Vaupel,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly found father unfit because the applicable nine-month time frame used to measure parental progress toward the goal of returning the child home may begin with the date the trial court entered an order adjudicating the minor to be neglected.
- ¶ 2 Following an adjudication of neglect and a dispositional finding of parental unfitness in proceedings concerning the minor, the State filed a petition for the termination of father's

parental rights to the minor. The State's termination petition alleged that father failed to make reasonable progress toward the return of the minor within nine months beginning the day after the date of adjudication on May 21, 2016, and ending on February 21, 2017. The trial court found father unfit by clear and convincing evidence because father failed to make reasonable progress toward the return of the minor within the alleged nine-month time frame and terminated father's parental rights. Father appeals.

¶ 3

FACTS

¶ 4

On May 4, 2016, the State filed a petition for adjudication of neglect (neglect petition) alleging that father neglected S.M.L.D.W. (the minor), born March 11, 2016, by subjecting the minor to an environment injurious to his welfare pursuant to 705 ILCS 405/2-3(1)(b) (West 2016). Count I of the neglect petition alleged that the minor's parents engaged in acts of domestic violence in the presence of the minor. Count II of the neglect petition alleged that the minor's parents violated a safety plan which was put into place after father's arrest and incarceration for an act of domestic violence against mother.

¶ 5

On May 19, 2016, father admitted to count II of the neglect petition. According to the agreed factual basis recited to the court, the Department of Children and Family Services (DCFS) became involved with the family after receiving a hotline call. During the investigation, DCFS put a safety plan into place prohibiting father from having contact with the minor until further contact with DCFS. After father was advised of the prohibitions included in the DCFS safety plan, father still had contact with the minor while the safety plan was in place. Based on the admission and together with the factual basis recited to the court, the trial court adjudicated the minor neglected. At the conclusion of the May 19, 2016, hearing, the court ordered the parents to schedule appointments with The Center for Youth and Family Solutions (CYFS) so

that an integrated assessment could be completed. On May 20, 2016, the trial court entered a written order memorializing the adjudication of neglect.

¶ 6 On June 16, 2016, the trial court conducted a dispositional hearing. Following the hearing, on June 21, 2016, the trial court entered a written order finding father dispositionally unfit.

¶ 7 On March 9, 2017, the State filed a petition for termination of father's parental rights. The termination petition alleged that father failed to make reasonable progress toward the return of the minor within the nine months following the adjudication of neglect, with the applicable time period being from May 21, 2016, through February 21, 2017, pursuant to 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 8 On June 15, 2017, the trial court conducted a hearing on the State's termination petition. During the hearing, father's attorney questioned Taryn Dunlap, a caseworker for CYFS, regarding whether father was required to complete any tasks between May 21, 2016, and June of 2016. Dunlap advised that between May 21, 2016, and June of 2016, father was required to contact CYFS in order to participate in an integrated assessment, to cooperate with all court orders, and to cooperate with CYFS. Dunlap testified that father refused to cooperate with the court-ordered integrated assessment.

¶ 9 During argument, father's attorney claimed there were no services for father to complete between May 21, 2016, and June of 2016, prior to the dispositional order entered on June 21, 2016. On this basis, father's attorney argued that the State failed to prove that father failed to progress during the alleged nine-month time frame.

¶ 10 At the conclusion of the hearing, the trial court found father unfit by clear and convincing evidence pursuant to 750 ILCS 50/1(D)(m)(ii) (West 2016). Specifically, the court found that

father failed to make reasonable progress toward the return of the minor within the nine-month time period from May 21, 2016, to February 21, 2017.

¶ 11 On September 12, 2017, the court conducted a best interests hearing. The next day, the trial court entered a written order terminating father's parental rights. On October 13, 2017, father filed a timely notice of appeal.

¶ 12 ANALYSIS

¶ 13 On appeal, father does not challenge the trial judge's fitness and best interest findings. Instead, for purposes of this appeal, father argues that the trial court improperly considered an incorrect time frame concerning father's reasonable progress for purposes of the termination of his parental right. Father contends the plain language of the Adoption Act provides that the relevant time frame to measure father's progress could not begin before the date of the dispositional order on June 21, 2016, and the trial court erred by considering evidence from any time frame prior to June 21, 2016.

¶ 14 The State argues that defendant forfeited this argument by failing to raise this issue in the trial court. Alternatively, the State argues that the relevant time frame in this case could begin on May 20, 2016, the date the trial court entered the order of adjudication of neglect.

¶ 15 To begin, we address the State's forfeiture argument. During the hearing on the State's termination petition, father's attorney raised the instant issue by arguing there were no set tasks for father to complete between May 21, 2016, and June of 2016, prior to the dispositional order. We realize that father's argument before the trial court was not identical to the argument presented before this court. However, the essence of both arguments is the same. Thus, we conclude the issue has not been forfeited.

¶ 16 Next, we address defendant’s contention based on the language of the Adoption Act by first addressing our standard of review. Here, both parties assert that the manifest weight of the evidence standard of review is applicable in cases where the parent challenges the trial court’s decision to terminate parental rights. While we agree with the parties’ assertions, father has not challenged the sufficiency of the evidence or asserted the trial judge’s fitness and best interest findings were contrary to the manifest weight of the evidence. The issue raised, as framed by father, pertains purely to the statutory construction of 750 ILCS 50/1(D)(m)(ii) (West 2016). Consequently, we review the interpretation of a statute *de novo*. *In re D.F.*, 208 Ill. 2d 223, 229 (2003).

¶ 17 The Juvenile Court Act of 1987 requires the State to demonstrate by clear and convincing evidence that the parent is unfit based on one or more grounds set forth in section (1)(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re D.F.*, 208 Ill. 2d at 228. Section 1(D)(m)(ii) of the Adoption Act provides that a parent may be found unfit where the parent fails “to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987.” (750 ILCS 50/1(D)(m)(ii) (West 2016)). When determining whether a parent has made reasonable progress toward the return of the minor, the trial court is not permitted to consider any evidence outside of the relevant nine-month time frame. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35.

¶ 18 When measuring the relevant time frame, father urges this court to adopt the approach used by the Fourth District in *In re D.F.*, 317 Ill. App. 3d 461 (2000)¹ In *In re D.F.* the Fourth District held that the relevant time period for the trial court’s reasonable progress analysis

¹The decisions in *In re D.F.*, 208 Ill. 2d 223 (2003) and *In re D.F.*, 317 Ill. App. 3d 461 (2000) are unrelated.

pursuant to section 1(D)(m)(ii) of the Adoption Act began on the date the trial court filed the dispositional order. However, several cases decided after the Fourth District's *In re D.F.* decision in 2000 reach the opposite conclusion by holding that the Adoption Act should be construed to provide that the nine-month evaluation period for parental progress begins when the trial court enters the order adjudging the minor neglected, rather than the date on which the trial court enters a subsequent dispositional order. *In re D.F.*, 208 Ill. 2d at 243; *In re A.S.*, 2014 IL App (3d) 140060, ¶ 23. We decline to follow the holding from the Fourth District in *In re D.F.* because that decision is in direct conflict with more recent precedent from this court and our supreme court. See *In re D.F.*, 208 Ill. 2d 223; See *In re A.S.*, 2014 IL App (3d) 140060.

¶ 19 Here, the minor was adjudicated neglected on May 20, 2016. The State's petition for termination of father's parental rights alleged that father failed to make reasonable progress toward the return of the minor within nine months after the adjudication of neglect with the relevant time period being May 21, 2016, through February 21, 2017. Therefore, the trial court did not err when it considered evidence from May 21, 2016, through February 21, 2017, in this case.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Fulton County is affirmed.

¶ 22 Affirmed.