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2018 IL App (3d) 180023-U

Order filed May 17, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

<i>In re A.J.,</i>	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
a Minor	)	McDonough County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-18-0023
	)	Circuit No. 16-JA-15
v.	)	
	)	
Ashley H.,	)	Honorable
	)	Patricia Anne Vander Meulen-Walton,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Carter and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Neither the trial court's fitness finding nor the trial court's best interests finding were against the manifest weight of the evidence.

¶ 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 mother's parental rights to the minor. Following the hearing, the court again found mother unfit, and found

it was in the best interests of the minor to terminate mother's parental rights. Mother appeals and contests the court's fitness and best interests findings.

¶ 3

### FACTS

¶ 4

Mother's youngest child, A.J. (the minor) born August 11, 2016, is the subject of this appeal. On August 15, 2016, the State filed a petition for adjudication of wardship (neglect petition) alleging that mother neglected the minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987. 705 ILCS 405/2-3(1)(b) (West 2016).

¶ 5

On September 22, 2016, mother stipulated to the allegations in the State's neglect petition alleging that mother provided inadequate supervision to the minor's older siblings on December 9, 2015, was currently unfit, and had not been restored to fitness regarding mother's six other children, *inter alia*. Based on the stipulation, the court entered an adjudicatory order finding the minor neglected. On October 13, 2016, the trial court entered a dispositional order finding mother unfit and making the minor a ward of the court. The court's dispositional order instructed mother to cooperate with the Department of Children and Family Services (DCFS), comply with the terms of the service plan, and correct the conditions that led the minor into DCFS care.

¶ 6

Following a permanency review hearing on August 17, 2017, the permanency goal for the minor was changed to substitute care pending court determination of parental rights because mother was not completing services, and because the minor's biological father, Steve Jones, had been convicted of domestic battery against mother.

¶ 7

On September 18, 2017, the State filed a petition to terminate mother's parental rights (termination petition). The termination petition alleged that mother was an unfit parent because she failed to make reasonable progress towards the return home of the minor during any nine-

month period following the adjudication of neglect, that period being October 31, 2016, through July 31, 2017. 750 ILCS 50/1(D)(m)(ii) (West 2016). The termination petition also alleged that mother 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).

¶ 8 The trial court conducted a fitness hearing on November 2, 2017. Macomb Police Officer Todd Tedrow testified that on July 20, 2017, he investigated a report of a mail package that had allegedly been stolen by mother and Steve Jones, the minor's biological father. On July 20, 2017, Officer Tedrow went to the hospital to speak with mother and Jones about the stolen package. At that time, mother had a package in her possession. The ER nurse stated that she saw mother picking the label off of the package in an evaluation room. Officer Tedrow found the labels in the trash can of the evaluation room.

¶ 9 Susan Denecke, mother's mental health counselor, testified mother was ultimately discharged from mental health services at the McDonough District Hospital on January 4, 2017, for missing several appointments and failing to return to treatment. Mother did attempt to reengage in services by making an appointment in August 2017, but did not show up to the appointment. Denecke testified that mother exhibited adjustment disorder, or in other words, a form of depression likely caused by the removal of her children. Denecke also testified that she made a service plan for mother, and that mother did not complete the requirements of the service plan.

¶ 10 Rosemary Waelder, a caseworker with Chaddock foster adoption services testified that she was the minor's and the minor's siblings' caseworker. Waelder stated that mother's parental rights concerning the minor's siblings had terminated. Waelder testified that mother's service plan required her to complete a parenting class, a substance abuse assessment, a mental health

assessment, ongoing treatment, and domestic violence services. The service plan also required mother to comply with Chaddock services, obtain housing, and obtain legal means of support. Mother did complete a parenting course, but Waelder had concerns about mother's supervision of the children because the children would fight with one another during visits. Waelder stated that Mr. Jones was not supposed to be at the visits between mother and the minor, but that he attended anyway, a behavior which mother encouraged. With regard to domestic violence between mother and Jones, Waelder reported that:

“Visitation specialists would report in seeing her covered up in bruises and - - and marks, heavy makeup on her.

I had concerns with the children from the previous reports at the removal time being - - they were fearful of - - of Mr. Jones, and just hearing from community members that there's still domestic violence occurring in the home involving alcohol.”

Waelder stated that there were domestic violence issues between mother and Mr. Jones both before and after the minor's birth.

¶ 11 According to Waelder, between October 31, 2016, and July 31, 2017, father was charged in two domestic violence cases against mother and was also charged with resisting a police officer. On July 26, 2017, Jones pled guilty to domestic battery against mother in McDonough County case Nos. 17-CM-116 and 17-CM-177. Mother continues to deny there has been domestic violence between herself and Jones, and continues to put Jones before her children. Waelder also witnessed Jones being verbally aggressive toward mother outside of the courthouse in October 2016.

¶ 12 Sometime between October 31, 2016, and July 31, 2017, Jones was charged with the offense of resisting a police officer. Waelder found out that mother and Jones had been living

together even though mother denied she was living with Jones. Mother missed some of the minor's doctor's appointments because she did not answer her voicemails promptly. Waelder stated that mother did not cooperate with the agency and reiterated that mother did not cooperate with visitation, did not communicate with Waelder properly, and did not attend mental health services. Mother was evaluated as unsatisfactory concerning mother's cooperation with the services mandated in her client service plan dated June 2017.

¶ 13 On cross-examination, Waelder testified that mother completed a parenting class and domestic violence services. With regard to the channels of Waelder and mother's communication, Waelder stated that mother did provide her with mother's email, however, Waelder did not attempt to contact mother through email.

¶ 14 Mother testified that she completed a parenting class and a domestic violence class. Mother also stated that she attended all of the minor's doctor visits up until June 2017, but did not attend after that time because she did not receive notice of the appointments due to difficulties with her phone and voicemail. With regard to not completing mental health services, mother stated that she had an adjustment disorder and "not a mental health that they diagnosed me with it." Mother testified that she did not live with Jones from June 2016 to November 2016, though mother was told she could live with Jones as long as Jones was engaged in services.<sup>1</sup>

¶ 15 Following the witness testimony, the trial court stated that mother's compliance with the service plans had been evaluated as unsatisfactory in December 2016 and June 2017. The trial court recapped much of the testimony presented before the court and found that mother and Jones were still in a relationship through July 2017. The trial court found that even though mother completed domestic violence classes, domestic violence incidents continued to occur.

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<sup>1</sup>The record reflects that Jones did not engage in services.

The court found that mother made no progress toward the return of the minor from October 31, 2016, though July 31, 2017, and found the State's allegations of unfitness had been proven by clear and convincing evidence.

¶ 16 The case proceeded to a best interests hearing on November 30, 2017. Waelder testified that the minor was taken into the care of her agency when he was two days old. The minor has never resided with mother. The minor was originally placed with Natasha and Bill Walker and is currently placed with Kim and David Campbell, where he had remained for approximately seven months. The minor's siblings, Remy and Royal, and the Campbell's three children live in the Campbell's home. The Campbells are adopting Remy and Royal. The minor is very bonded to the Campbells and the Campbells are willing to provide permanency for the minor. The minor is happy, safe, and well provided for in the Campbell's care. The minor refers to the Campbells as mama and dada.

¶ 17 During visits with the minor, mother became easily frustrated with him, and had issues with inappropriately feeding the minor. Mother's visits with the minor were always supervised. Waelder testified that mother continued to have contact with Jones even after mother told Waelder that she was not having any contact with Jones. Mother identified the Campbells as a placement option for the minor. Waelder opined that she would not move the minor from his current home because that would be harmful to the minor. Waelder believed it was in the best interests of the minor to terminate mother's parental rights, and to be adopted by the Campbells.

¶ 18 On cross-examination, Waelder testified that she was present for two to three visits between the minor and mother. Waelder agreed that mother genuinely loves the minor.

¶ 19 David Campbell testified that he had been married to his wife Kim for 12 years. David worked at Chem Gro while Kim ran a daycare in their home. The minor sleeps in a bedroom

with Royal and has many toys and clothes. The Campbell's biological children love to play with the minor. The Campbells attend a Methodist church and have many family members in the area. The Campbells love the minor and are willing to provide permanency for him.

¶ 20 Mother testified that she currently lived by herself and had a full time job at the Red Ox. Mother was not currently in a romantic relationship with Jones. Mother cares for her child and is opposed to termination of her parental rights.

¶ 21 Following the witness testimony, the trial court found it was in the best interests of the minor to terminate mother's parental rights, and entered a written order reflecting this finding. On December 21, 2017, mother filed a timely notice of appeal.

¶ 22 ANALYSIS

¶ 23 Mother presents two contentions on appeal. First, mother argues that the State did not prove by clear and convincing evidence that mother is an unfit parent. Second, mother argues that the State did not prove by a preponderance of the evidence that the termination of mother's parental rights is in the best interests of the minor. The State argues that the trial court's fitness and best interests' rulings were proper.

¶ 24 In order to terminate parental rights, the Juvenile Court Act of 1987 first 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 223, 228 (2003). 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). Additionally, section 1(D)(m)(ii) of the Juvenile Court Act of 1987 provides that if

a service plan has been established to correct the conditions that were the basis for the removal of the child, “failure to make reasonable progress toward the return of the child to the parent (internal quotations omitted) includes the parent’s failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication.” 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. The trial court’s fitness ruling is reviewed under the manifest weight of the evidence standard. *In re K.H.*, 346 Ill. App. 3d 443, 452 (2004). The trial court’s determination is against the manifest weight of the evidence where the opposite conclusion is clearly evident, or if the court’s determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 25 On September 22, 2016, mother stipulated to the allegations in the State’s neglect petition that she provided inadequate supervision to the minor’s siblings on December 9, 2015, and that mother is currently unfit regarding mother’s six other children, *inter alia*. The fitness proceedings revealed that mother had been rated as “unsatisfactory” in her service plan evaluations in December 2016 and June 2017.

¶ 26 Denecke, mother’s mental health counselor, testified that she made a service plan for mother, and that mother did not complete the requirements of the service plan. Denecke stated that mother exhibited adjustment disorder, and was ultimately discharged from services at the McDonough District Hospital on January 4, 2017, for missing several appointments and failing to return to treatment.



¶ 27 Waelder testified that mother's service plan required her to complete several services and to reach several milestones. Mother did complete a parenting course, however, Waelder had concerns over mother's supervision of her children because her children would get into fights during visits. Waelder stated that Jones was not supposed to be at the visits but that he attended anyway, a behavior which mother encouraged. Waelder testified that mother did not cooperate with the agency and reiterated that mother did not cooperate with visitation, did not communicate with Waelder properly, and did not attend mental health services.

¶ 28 Further, visitation specialists informed Waelder that they would see mother covered in bruises and marks. On July 26, 2017, Jones pled guilty to domestic battery against mother in McDonough County case Nos. 17-CM-116 and 17-CM-177. Mother continues to deny there has been domestic violence between herself and Jones. Waelder was concerned about Jones's controlling behaviors and was concerned about reports that mother and Jones were employed at the same place. Jones told mother not to complete an integrated assessment, and mother chose not to complete an integrated assessment.<sup>2</sup> Waelder also witnessed Jones being verbally aggressive toward mother outside of the courthouse in October 2016. Ultimately, Waelder testified that mother continues to put Jones ahead of her children. The court found that although mother completed a domestic violence course, domestic violence continued to occur.

¶ 29 Here, mother did not comply with the recommended service plans, and mother continued a destructive relationship with Jones throughout the relevant nine-month period. We agree with the trial court's fitness ruling and find that mother did not make reasonable progress toward the return of the child from October 31, 2016, through July 31, 2017.

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<sup>2</sup>An integrated assessment was eventually completed after DNA results confirmed that Jones was the minor's biological father.

¶ 30 Next, we address the trial court’s best interests finding. The case law is well settled that once the court makes a finding of unfitness, all considerations yield to the best interests of the child. *In re D.M.*, 298 Ill. App. 3d 574, 581 (1998). During best interest proceedings, the State must prove by a preponderance of the evidence that termination of the parent’s parental rights is in the best interests of the minor. *In re S.R.*, 2014 IL App (3d) 140565, ¶ 29. The trial court’s best interests finding will not be disturbed unless it is against the manifest weight of the evidence. *Id.*

¶ 31 When making a best interest determination the trial court’s considerations should include: (1) the physical safety and welfare of the child, including food, shelter, clothing, and health; (2) the development of the child’s identity; (3) the child’s background and ties, including familial, cultural, and religious; (4) the child’s sense of attachments; (5) the child’s wishes and long-term 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 attendant to entering and being in substitute care; and (10) the preference of the persons available to care for the child, *inter alia*. 705 ILCS 405/1-3(4.05) (West 2016); *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45.

¶ 32 In this case, the minor has never resided with mother, and has lived with Kim and David Campbell for approximately seven months. The minor’s siblings, Remy and Royal, and the Campbell’s three children live in the home. The Campbells are adopting Remy and Royal. The Campbell’s home is safe and provides adequate space for the children. The minor sleeps in a bedroom with Royal, and has many toys and clothes. The Campbell’s biological children love to play with the minor. The Campbells love the minor and are willing to provide permanency for him.

¶ 33 In this placement, the minor also has the opportunity to visit his other siblings who live in Quincy, Illinois, once per month. The Campbells attend a Methodist church and have many family members in the area. The minor is very bonded to the Campbells. The minor refers to the Campbells as mama and dada. Waelder opined that she would not move the minor from his current home because that would be harmful to the minor. Waelder believed it was in the best interests of the minor to terminate mother's parental rights, and to be adopted by the Campbells.

¶ 34 We commend mother for obtaining a full-time job and for ending her romantic relationship with Jones, however, the best interest factors weigh heavily in favor of the termination of mother's parental rights. For this reason, the trial court's finding that it was in the best interests of the minor to terminate mother's parental rights was not against the manifest weight of the evidence.

¶ 35 **CONCLUSION**

¶ 36 The judgment of the circuit court of McDonough County is affirmed.

¶ 37 Affirmed.