

2018 IL App (4th) 180510-U

NO. 4-18-0510

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 17, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

**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).

<i>In re</i> Z.R., a Minor	)	Appeal from the
	)	Sangamon County
	)	Circuit Court
(The People of the State of Illinois,	)	No. 15JA225
Petitioner-Appellee,	)	
v.	)	Honorable
Nicole R.,	)	Karen S. Tharp,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.  
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In July 2018, the trial court terminated the parental rights of respondent, Nicole R., as to her minor child, Z.R. (born December 11, 2015). On appeal, Nicole argues the court’s fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

I. BACKGROUND

¶ 3 Nicole and Dominick R. are the parents of Z.R. The record reflects that Nicole is also the mother of C.R. (born September 16, 2006), but he is not a subject of this appeal. Dominick’s parental rights were also terminated; however, we address the issues only as they

relate to Nicole and Z.R.

¶ 4 In December 2015, the State filed a petition for adjudication of wardship, alleging Z.R. was a neglected minor because, as a newborn infant, Z.R.'s blood, urine, or meconium contained opiates. The petition further alleged Z.R.'s environment was injurious to her welfare. On March 10, 2016, the trial court entered an adjudicatory order finding Z.R. was neglected. On April 14, 2016, the court entered a dispositional order adjudicating Z.R. a dependent minor, making her a ward of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 5 In October 2017, the State filed a petition seeking a finding of unfitness and termination of parental rights. The State alleged Nicole was unfit because she (a) failed to maintain a reasonable degree of interest, concern, or responsibility as to Z.R.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (b) failed to make reasonable efforts to correct the conditions that were the basis for the removal of Z.R. within nine months (March 10, 2016, through December 10, 2016) after the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); (c) failed to make reasonable efforts to correct the conditions that were the basis for the removal of Z.R. within nine months (December 10, 2016, through September 10, 2017) after the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); (d) failed to make reasonable progress toward the return of Z.R. within nine months (March 10, 2016, through December 10, 2016) after the adjudication of neglect, abuse, or dependency (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (e) failed to make reasonable progress toward the return of Z.R. within nine months (December 10, 2016, through September 10, 2017) after the adjudication of neglect, abuse, or dependency (750 ILCS 50/1(D)(m)(ii) (West 2016)). The State further alleged termination of

parental rights was in Z.R.'s best interest.

¶ 6 In April and May 2018, the trial court conducted fitness hearings. The State presented the testimony of multiple counselors from the Family Service Center. Megan Fellows, an adoption coordinator at the Family Service Center, was assigned to Z.R.'s case from December 22, 2015, to August 3, 2016. She testified that Z.R. came into care shortly after birth when Z.R. and Nicole both tested positive for opiates.

¶ 7 Fellows testified that the first service plan was established in January 2016 and an administrative case review (ACR) was conducted in June 2016, which Nicole failed to attend. During that time frame, Nicole was rated satisfactory with respect to housing, attending scheduled visitations, cooperating with the agency, and completing outpatient treatment. However, she was rated unsatisfactory with respect to income and substance abuse.

¶ 8 Fellows stated Z.R. was returned home to Nicole and Dominick in May 2016 because they had completed their service plans. However, 10 days later, Nicole became intoxicated while in the presence of Z.R. Fellows testified that there was also a physical altercation between Nicole and Dominick. As a result, Z.R. was placed in substitute care again.

¶ 9 Fellows testified that, after the relapse, Nicole was willing to cooperate with counseling but she had difficulty understanding the reason Z.R. was removed from her care. Further, Fellows stated Nicole failed to attend all substance abuse counseling and individual counseling appointments. Nicole also had positive drug drops after the relapse in May 2016. However, she was able to provide proof of prescriptions that she was taking for a degenerative disk issue.

¶ 10 With respect to visitation, Fellows testified Nicole had two-hour supervised visits

with Z.R. twice a week. The visits were increased as progress was made with respect to the service plan. However, visitation was reduced after Nicole's relapse. According to Fellows, Nicole attended approximately 68 out of 82 visits between December 2015 and August 2016. Fellows also explained that Nicole missed scheduled visitations due to illness and because she was attempting to obtain employment.

¶ 11 Britanni Provost, a caseworker with the Family Service Center, was assigned to Z.R.'s case in August 2016. According to Provost, Nicole was not cooperative with the agency. She was not providing drug drops, she failed to consistently attend counseling appointments, she was not engaged in parenting classes, and she did not have consistent employment or housing. Provost explained that Nicole and Dominick failed to appear at the December 2016 ACR because they had been evicted from their home.

¶ 12 Provost testified that, in March 2017, she conducted an unscheduled visit at Dominick's home. Provost discovered Z.R. unsupervised, without the foster parent, alone with Nicole and Dominick. Provost testified that Nicole attempted to "flee with [Z.R.] \*\*\* behind the house with [Z.R.] stuffed up her sweatshirt." Provost noted it was approximately 40 or 45 degrees outside and Z.R. did not have pants or a diaper. After the incident, Z.R.'s placement was changed and visitations took place at the agency.

¶ 13 Provost testified that, at the end of the first nine-month period in December 2016, Nicole was not close to having Z.R. returned to her care. At that time, there were concerns that Nicole was selling prescription medication or asking others for medication. Provost also received reports from family members that there were instances of domestic violence between Nicole and Dominick. Further, Provost testified that Nicole missed visitations due to transportation issues

despite offers of bus tokens. According to Provost, Nicole texted that “she loved her children but it wasn’t worth the gas money to attend the visitation.” On cross-examination, Provost acknowledged Nicole might have said that out of anger because her visitations had recently been reduced. Provost also testified Nicole ultimately accepted the bus tokens to attend the visitation.

¶ 14 Ashley Horton testified she previously worked for the Family Service Center and was assigned to Z.R.’s case from March 2017 to July 2017. Prior to that, she supervised Z.R.’s case from April 2016 until March 2017.

¶ 15 Horton testified that, from March 2017 through July 2017, Nicole was rated satisfactory with respect to visitation, income, and stable housing. However, she received unsatisfactory ratings for mental health counseling, parenting classes, and substance abuse treatment. She also stated Nicole was not actively engaged or cooperating with the agency. She testified that, in July 2017, Nicole was not close to having Z.R. returned to her care because she failed to successfully complete services.

¶ 16 Nate Helms testified that, on April 20, 2017, he began treating Nicole for heroin dependency. He stated Nicole was discharged from the treatment program unsuccessfully because she only attended the planning sessions and did not keep appointments thereafter. Roxanne Woodrum, a clinical intern with the Family Service Center, corroborated Helms’s testimony, stating another treatment plan was created for Nicole but she again missed treatment sessions due to transportation issues, illness, and sometimes she failed to provide an explanation.

¶ 17 Cassandra Pratt, a case worker with the Family Service Center, was assigned to Z.R.’s case on July 21, 2017, through the date of the fitness hearing. She testified that, between July 2017 and September 2017, Nicole had stable housing and income. However, she failed to

complete parenting classes, she was not attending counseling sessions on a regular basis, and she missed a scheduled drug drop. Pratt explained that, if a parent failed to appear for a drug drop, it was considered a “positive test.”

¶ 18 Dominick testified on his own behalf. With respect to Nicole, he stated there was an incident between them that occurred while Z.R. was in their presence. Specifically, in the spring of 2016, he went to a party with Nicole, she had “a little too much to drink,” and they returned home and started yelling at one another while Z.R. was sleeping in another room. He maintained the argument never developed into a physical altercation. He acknowledged that, on other occasions, the neighbors had called the police due to “disturbances.”

¶ 19 Dominick testified he did not believe Nicole abused alcohol or prescription medications. He stated he thought it was safe for Nicole to be alone with Z.R. However, he acknowledged that Nicole had not completed her service plan “in the way we all wanted her to.”

¶ 20 The trial court found Nicole unfit as alleged in the State’s motion, stating, in pertinent part, as follows:

“\*\*\* [W]hy did this case come into the system? [Z.R.] was born positive for opiates, [a] controlled substance. [Nicole] I believe at the time was positive for benzos, opiates \*\*\* herself.

\* \* \*

[Nicole] did complete outpatient treatment and then \*\*\* the child was returned May of 2016. But unfortunately, after [Z.R.] had been home ten days, the parents decide to go to a party, [and] mom drinks alcohol[,] \*\*\* [S]omeone who[,] according to the Family [Service] Center counselor[,] has a heroin

dependency [and] engage[s] in any sort of activity in which [she's] using an intoxicating substance is \*\*\* [a] problem. So ten days after your child is home, you go to a party. \*\*\* [There is] arguing, [Z.R. is] present. Albeit they say asleep, but [Z.R. is] at home. And mom's intoxicated. [It] [c]omes to the attention of the caseworker, [and] [Z.R. is] removed. Again, \*\*\* the case is in the system [because of] drug use.

Following that, [Nicole] was told to go back to drug treatment. She never successfully completed drug treatment after that. She was unsuccessfully discharged in July of 2017. \*\*\* [S]he was never successful \*\*\* in counseling. \*\*\* [T]he main issue for [Nicole] was the substance abuse. She never successfully completed drug and alcohol counseling.

\* \* \*

[I]n \*\*\* March of 2017[,] \*\*\* Dominick is having a visit, [and] his mother is [supposed] to be supervising. Dominick's own testimony [is that it was] his idea to have his mother leave. She went shopping. Nicole came over at what is now an unsupervised visit whe[n] she's not supposed to be there[.] [The] case worker happens to come by[.] \*\*\* Nicole takes [Z.R.] and runs out the back door. Thankfully she doesn't get too far.

\* \* \*

I believe the State's evidence is clear and I'm convinced [Nicole] did not make reasonable efforts or progress during the two \*\*\* nine-month timeframes to address \*\*\* the sole issue [that] led to the child coming into care, which [related

to] her decisions while pregnant to use heroin. That was never addressed[,] [l]et alone all of the other issues that \*\*\* [were in the] service plan. [Nicole] never successfully addressed that. [She] [d]id not make reasonable efforts to correct it. [She] [d]id not make reasonable progress to correct it and have the child returned to her[.] \*\*\* [S]he failed to maintain a reasonable degree of responsibility as to [Z.R.'s] welfare.”

¶ 21 In July 2018, the trial court conducted a best-interest hearing. Pratt, a case worker with the Family Service Center, was assigned to Z.R.'s case on July 21, 2017, through the date of the best-interest hearing. She testified that Z.R. was living with her maternal grandfather, Harold R., her half brother, C.R., whom Harold had adopted, and Harold's wife, Dana R. According to Pratt, Harold indicated he was willing to adopt Z.R.

¶ 22 Pratt testified Z.R. was making progress in her placement with Harold. She stated Harold attended to Z.R.'s medical, social, and educational needs. Harold also took Z.R. to day care on a daily basis and made sure Z.R. was involved with other family members living in the community. Although Z.R. initially had speech difficulties, she was progressing in speech therapy since her placement with Harold.

¶ 23 Pratt stated Z.R. was attached to Harold and her half brother. She explained that Z.R. sometimes referred to Dana as “mom” but Harold and Dana have corrected her. Pratt testified Z.R. “seem[ed] happy” and appeared comfortable in Harold's home. She stated the bond between Z.R. and her foster parents was more nurturing than what she saw between Z.R. and Nicole. Pratt explained her opinion was based on her observation that the foster parents were “stable” and “provide[ed] [for] [Z.R.'s] needs.”

¶ 24 Pratt acknowledged Z.R. recognized Nicole as her mother and sought her attention during visitations. She stated that, during scheduled visits, Nicole and Z.R. read and played with toys together. Pratt testified Nicole brought food, cards, and gifts for Z.R.

¶ 25 Pratt further testified Z.R. would continue in foster care if Nicole was given additional time to complete her services. Pratt stated Nicole was still not engaged in substance abuse services. In fact, Pratt stated that, two weeks prior to the best interest hearing, Nicole's sister called the police after discovering Nicole had been driving while intoxicated. According to Pratt, when the police arrived, Nicole "had alcohol in her shirt [and] in her bra."

¶ 26 Pratt testified Z.R. had been in foster care for over two years. Pratt noted Z.R.'s young age and stated that she did not believe harm would result if parental rights were terminated. Pratt stated it would be in Z.R.'s best interest to achieve permanency.

¶ 27 Dominick testified that he believed it was in Z.R.'s best interest to remain with him and Nicole. He testified he did not believe Nicole's substance abuse issues would pose a threat to Z.R. He further testified that Harold's home was "filthy." He stated Z.R. could live with him and Nicole and that Z.R. could have her own bedroom. He stated that, "[a]t this point in time, [he] [did not] see that [Nicole] ha[d] a problem" with substance abuse.

¶ 28 Brian Rush, Dominick's supervisor at work, testified he was in a relationship with Dominick's mother. He was also a foster parent for Z.R. before she was removed from his care after a caseworker discovered Z.R. unsupervised with only Nicole and Dominick. Rush testified that he "deeply regretted" leaving Z.R. unsupervised. As a result, he had not seen Z.R. interact with her parents for about a year. However, he testified that, prior to Z.R.'s removal, Nicole and Dominick did well feeding Z.R., playing with her, and changing her diaper.

¶ 29 Based on the evidence presented, the trial court found it was in Z.R.'s best interest that Nicole's parental rights be terminated. The court stated, in pertinent part, as follows:

“[T]his child has lived with Dominick and Nicole for, at best, 13 days of her life. \*\*\* [W]ho is \*\*\* actually day in and day out taking care of the child[?] \*\*\* Who is it that's getting this child up every day, getting her clothed, mak[ing] sure she gets breakfast, mak[ing] sure she gets lunch, mak[ing] sure she gets dinner, mak[ing] sure she is cared for[?] When her tummy hurts, who does she go to[?] When she has a nightmare in the middle of the night, who does she go to[?] I understand that the visits go really well [with Dominick and Nicole]. And I understand that she calls Dominick 'Dad' and Nicole 'Mom' or some form thereof, but that doesn't make a parent. Being able to provide a house for a child isn't what we're here to determine. Whether or not you make enough money to provide food, clothing and shelter isn't the issue. \*\*\* [T]his child has spent 13 days in the care of her parents. I think, quite honestly, probably the child was returned too soon in May of 2016. The fact that it lasted only ten days is \*\*\* evidence of that. And again, I go back to what are the issues in this case, what led this case [to] com[e] into the system. The child tested positive for controlled substances, as did [Nicole], at the time of birth. And here, we have evidence that still an addictive substance, alcohol, is rearing its ugly head in Nicole's life. A week or so ago, [she was] drinking at her sister's [and] \*\*\* the police get called. So here we are[,] \*\*\* [at] the end of July 2018, and we still [have] issues to work on.

\* \* \*

[T]he question isn't if a child has an attachment to someone[.] \*\*\* [T]hat's [not] the end all, be all \*\*\*. \*\*\* Either get a child reunited with the parents, place them into guardianship with maybe a relative, or get the child adopted. Permanence, permanence, permanence. \*\*\* There's a difference between being a foster child and a child.

\* \* \*

This is a sad case. \*\*\* [T]he parents \*\*\* had since December of 2015. [They have] been given a chance.

At this time, given the nature of the issues that remain to be addressed, considering all the factors, I do find that \*\*\* the issue of permanence is an overriding factor. \*\*\* [W]e have a child who has lived for a while with [the paternal grandmother], and [is] now living with Grandpa[.] I would note that there's a half sibling in that home. [Z.R.] [is] placed with a relative. \*\*\* [T]hat's who's getting [Z.R.] up every day and caring for her day in and day out. So I do find by a preponderance of the evidence that the State has shown that it is in the best interest of the minor that the parental rights \*\*\* be terminated at this time.”

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 On appeal, Nicole argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 33 A. Fitness

¶ 34 Parental rights may be involuntarily terminated when the trial court finds that a parent is unfit based on grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and termination is in the child’s best interest. *In re J.L.*, 236 Ill. 2d 329, 337–38, 924 N.E.2d 961, 966 (2010). “A parent’s rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.” *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). “A reviewing court will not reverse a trial court’s fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record.” *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 35 Here, the trial court determined Nicole was unfit based upon each of the grounds alleged by the State. We find the court’s fitness determination was not against the manifest weight of the evidence.

¶ 36 An unfit parent includes one who failed “to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the [neglect] adjudication \*\*\*.” 750 ILCS 50/1(D)(m)(ii) (West 2016).

“[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.” *In re C.N.*, 196 Ill. 2d 181, 216–17, 752 N.E.2d 1030, 1050 (2001).

This court has described reasonable progress as “an ‘objective standard,’ ” which exists “when ‘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.’ ” (Emphasis in original.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 37 On appeal, the State argues Nicole failed to make reasonable progress toward Z.R.’s return home following the adjudication of neglect. Specifically, the State contends Nicole failed to sufficiently engage in services, failed to engage in substance abuse treatment, and caseworkers received reports of domestic violence from family members. Nicole maintains that she had sufficient housing and income, enrolled in substance abuse treatment, engaged in individual counseling, attended scheduled visitations, passed drug drops, and was generally cooperative with the agency.

¶ 38 We find the evidence presented at the fitness hearing was sufficient to support the trial court’s determination that Nicole was unfit because she failed to make reasonable progress following the adjudication of neglect. Although Z.R. was returned to Nicole early in the case in May 2016, soon thereafter, Nicole relapsed with alcohol and Z.R. was placed in substitute care again. Subsequently, from December 10, 2016, through September 10, 2017, Nicole received unsatisfactory ratings for mental health counseling, parenting classes, substance abuse treatment, and cooperation with the agency. Further, during this time frame, Provost, a caseworker with the Family Services Center, testified that Nicole was discovered at an unsupervised visit with Z.R. in March 2017 and she attempted to flee with Z.R. “stuffed up her sweatshirt” without “pants or a

diaper” in 45 degree weather.

¶ 39 Although Nicole may have had extenuating circumstances with respect to a degenerative disk condition and the loss of her grandmother during the pendency of this case, the record reflects that she was given multiple opportunities to correct the conditions that brought Z.R. into care. Nicole had positive drug drops, failed to successfully complete substance abuse treatment, and was unsuccessfully discharged from the substance abuse program in July 2017. We find the evidence demonstrates that she was unfit for failing to make reasonable progress.

¶ 40 Because only one ground for a finding of unfitness is necessary to uphold the trial court’s judgment, we need not review the other bases for the court’s unfitness finding. *Gwynne P.*, 215 Ill. 2d at 349 (A parent’s rights may be terminated if even a single alleged ground for unfitness is supported by the evidence.).

¶ 41 B. Best Interest

¶ 42 Next, Nicole argues termination of her parental rights was not in Z.R.’s best interest. Specifically, Nicole contends that Z.R. was bonded to her, and caseworker Pratt’s opinion that no harm would result from terminating parental rights appeared to be primarily based upon Z.R.’s young age.

¶ 43 “Following a finding of unfitness \*\*\* the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child’s needs, parental rights *should* be terminated.” (Emphases in original.) *In re D. T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). “[A]t a best-interests hearing, the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *Id.* At this stage of the proceedings, “the State bears the burden of proving by a

preponderance of the evidence that termination is in the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). We will not disturb the trial court's best-interest determination unless it is against the manifest weight of the evidence. *Id.* "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 44 Under the Juvenile Court Act of 1987, there are several factors a court should consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). These factors, considered in the context of the child's age and developmental needs, include the following:

"(1) the child's physical safety and welfare; (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, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay. H.*, 395 Ill. App. 3d at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 45 Here, sufficient evidence was presented at the best-interest hearing to support the trial court's determination that terminating Nicole's parental rights was in Z.R.'s best interest. The record reflects that, although Z.R. was bonded to Nicole, Z.R. was also bonded to her foster

