2018 IL App (2d) 180571-U
No. 2-18-0571
Order filed December 3, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Jasmine B., a Minor	)	Appeal from the Circuit Court
	)	of Jo Daviess County.
	)	
	)	No. 14-JA-11
	)	
	)	
(People of the State Of Illinois,	)	Honorable
Petitioner-Appellee, v. Ashley B.,	)	William A. Kelly,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's lack of factual findings precludes review of respondent's parental fitness.

¶ 2 On April 19, 2018, the trial court found respondent, Ashley B., to be an unfit parent with respect to her daughter, Jasmine B. The court later concluded that the termination of respondent's parental rights was in Jasmine's best interests. On appeal, respondent challenges the trial court's finding with respect to unfitness. For the reasons set forth below, we remand this cause for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On October 7, 2014, the Jo Daviess State's Attorney (the State) filed a petition for adjudication of wardship alleging Jasmine B. a neglected minor in accordance with section 2-3(1)(b) of the Juvenile Court Act of 1987. 705 ILCS 405/2-3(1)(b). The state's petition alleged two counts of neglect. Count I alleged Jasmine to be neglected in that respondent's boyfriend, Jonathan B, inflicted excessive corporal punishment to Jasmine's brother by slapping him on the buttocks and causing bruising. Jasmine resided in the same house as her brother at the time of the alleged occurrence. Count II alleged Jasmine to be neglected because her environment was injurious to her welfare as respondent's boyfriend was delusional and indicated that he handcuffs himself at night for fear of harming his family.

¶ 5 A shelter care hearing was held on October 8, 2014, and the trial court found probable cause to believe that Jasmine was a neglected minor as alleged in Counts I and II of the State's petition. The trial court ordered that Jasmine be removed from the custody of respondent and the Department of Children and Family Services (DCFS) was given temporary custody. Respondent was admonished that she must cooperate with DCFS and comply with the terms of the service plan and correct the conditions that required the children to be placed in DCFS's care.

¶ 6 On February 17, 2015, the trial court held an adjudication hearing on the State's petition for adjudication of wardship. At the hearing, respondent admitted the allegations contained in the State's petition: (1) that Jasmine's environment is injurious to her welfare; and (2) that respondent's then-boyfriend inflicted excessive corporal punishment on Jasmine's minor brother while she resided in the same residence. The trial court entered an order of adjudication finding that Jasmine was abused or neglected as defined in section 2-3 of the Juvenile Court Act. On March 6, 2015, a dispositional hearing was held in which an agreed disposition order was

entered adjudging Jasmine a ward of the court and placing guardianship with DCFS. The agreed order reflects a goal of Jasmine's return home within twelve months.

¶ 7 The trial court held a permanency review hearing on September 1, 2015. Jasmine's case worker, Amanda Koltz-Slabaugh of Camelot Care Centers, testified on direct examination that respondent had completed parenting training classes, actively participated in counseling, and underwent individual psychotherapy. Respondent had visitation with Jasmine and her two siblings once per week for three hours. Koltz-Slabaugh testified that respondent was not implementing what she learned in parenting training to the weekly visits with the children. Thus, she said that respondent had made reasonable efforts in adhering to the DCFS service plan, but not reasonable and substantial progress in correcting the underlying conditions of Jasmine's removal. The DCFS service plan noted that respondent had ended her relationship with Jonathan B.

¶ 8 On cross-examination, Koltz-Slabaugh admitted that she was unaware of the lessons taught in respondent's parenting classes, but reiterated that she saw no progress. Her given reason for that opinion revolved exclusively around meals. Specifically, Koltz-Slabaugh was concerned over respondent allowing Jasmine and her siblings the choice of eating versus playing. Further, she expressed concern over respondent providing a meal of merely applesauce to the children during one of their visits. She did admit that some of the reports she had seen stated that lasagna, hot dogs, and sandwiches had been provided at other visits. She had personally witnessed the serving of hot dogs and applesauce on at least one occasion.

¶ 9 Jaclyn Rogers next testified on direct for the State. She had been Jasmine's DCFS caseworker from October 2014 to May 2015. Rogers had observed three visitations and thought respondent had some trouble keeping all three children together in the same room. She also said

that respondent had difficulty in getting the children to sit down for meal time. She mentioned concern about nutrition but did not elaborate on the problems with respondent's choice of cuisine. Rogers believed that respondent had done all that DCFS had asked of her and made reasonable efforts towards correcting the underlying conditions of the children's removal, but not reasonable and substantial progress towards the goal of reunification. Rogers did not believe that respondent could provide an environment that is not injurious to the children if she were to have unsupervised visits, although she did not give further explanation as to how she arrived at this belief.

¶ 10 On cross-examination Rogers could not testify as to the insufficiency of the meals discussed above. Further, she admitted that keeping three kids in the same room at the same time is often difficult for many parents.

¶ 11 Respondent then testified that she had attended all required counseling and parenting classes. She discussed implementing the "what/then" approach to discipline taught in the parenting class with Jasmine during her visits. She provided a list of foods during the visits that went beyond apple sauce, including hot dogs, peanut butter and jelly sandwiches, lasagna, apples, bananas, as well as macaroni and cheese.

¶ 12 Following respondent's testimony, the trial court found "that reasonable efforts have been made by [respondent] *** but the Court finds that there has not been substantial progress ***." The trial court's written order reflected that finding and a goal of Jasmine's return home in twelve months remained in place.

¶ 13 The trial court held another permanency review hearing on March 1, 2016. Jaclyn Rogers testified at that hearing regarding her observations of respondent's visits with the children. She expressed concern that respondent had a new boyfriend, Steven P., at the home for one of the

visits which was not permitted. Rogers admitted that there was nothing about Steven P. to suggest he was in any way a danger respondent or her children, but thought respondent should consider family therapy as an appropriate forum to address the issue of her new boyfriend with the children. DCFS had not ordered any such therapy at time of Rogers' testimony. She also testified that respondent had moved to a new residence that existed on the second floor of a building. After expressing concern about the children's safety with the staircase, DCFS provided respondent with a gate to prevent the children from falling. That gate was not wide enough for the staircase opening, and a suitable replacement had not yet been offered.

¶ 14 Amanda Koltz-Slabaugh next testified on direct examination at the hearing. She reported that respondent has made sufficient meals since the last permanency hearing. Further, Koltz-Slabaugh testified that respondent was always available for visits, has attended all family meetings, and participated in all of her counseling sessions. Respondent had moved twice in the reporting period and Koltz-Slabaugh expressed concern that she was not notified of these moves in the proper manner. Respondent's first move, from Galena to Stockton, was relayed to Koltz-Slabaugh by an employee of the company hired to provide transportation of the children to respondent's home. The second move, between two Stockton addresses, was relayed to her by respondent a day or two before the move.

¶ 15 Koltz-Slabaugh continued to believe that respondent was not implementing her lessons from the parenting classes to real-life discipline of the children. She felt that respondent had difficulty keeping the children supervised at the same time, necessitating the introduction of the gate. Koltz-Slabaugh also had concerns with respondent's new boyfriend, Steven P. She testified that she had spoke with respondent about getting Steven P. to participate in the parenting classes.

¶ 16 On cross-examination Koltz-Slabaugh said that she had been present for five or six visits in the last reporting period. Her main concern, respondent's difficulty keeping track of all three children at once, was illustrated through the following exchange:

"Q: And have you observed then that [respondent] has had difficulty managing the children?

A: Yes.

Q: Okay and is that because they're not always in the same room together or is that just one factor of that?

A: That's one factor, yes.

Q: What are the other factors?

A: The other factors are the discipline, she doesn't follow through with that. *** I think she tries to keep them all in one room to make it easier which is my concern that I've addressed, that if the children were to return home, they do need to kind of have access to other rooms.

Q: So I thought you said one of the factors here was that the children weren't all in the same room; that you thought that was a negative?

A: No, I'm saying she tends to keep them in one room and one room only rather than letting them explore the rest of the house so I'm just saying for future if they were to return home I would, you know, I would expect them to have access to the house or at least to the safe portions of the house.

Q: Okay, so it is okay during a visitation then if she has two of the children in the room with her, the other child appropriately doing something in another room alone?

A: I think it depends. I believe Jasmine's old enough to be able to do things on her own. It is a little concern because she does have some delays that she may be doing something that could put her in harm. I think [Jasmine's two siblings] do need to be supervised at all times though.

Q: Okay, so [respondent] would need to be in the same room as [Jasmine's two siblings]?

A: [Yes].

Q: But that possibly Jasmine could be in a separate room doing something appropriate?

A: Yeah I'd just like her to be checked on.

Q: Checked on?

A: Yeah, monitored every now and then."

¶ 17 Koltz-Slabaugh testified that she was in the process of providing respondent with a parenting coach. At the time of her testimony, the person needed to secure a parenting coach for respondent was "on vacation" but Koltz-Slabaugh said she would "try to contact" the parenting coach the next day. She said that she planned to have the parenting coach present for each weekly two-hour visit between respondent and the children. She expressed no objection to respondent's new boyfriend and testified that family services were not available to address the issue of integrating Steven P. into the children's lives.

¶ 18 The trial court found that respondent was making "reasonable efforts" but wanted her to "work on making better progress." The trial court went on to describe respondent's efforts as "very good" and told encouraged her to continue with those efforts. The trial court's written order reflected that respondent had made reasonable efforts but not reasonable and substantial progress toward Jasmine's return home. A twelve-month reunification goal remained in place with the order.

¶ 19 On June 1, 2016, the trial court entered a *nunc pro tunc* permanency order finding that Jasmine's father had made reasonable progress towards a return to his home. Custody and guardianship of Jasmine was given to her father and DCFS was discharged from the case. On July 11, 2016, a petition for a temporary custody hearing was filed by the State alleging that Jasmine's father had improperly permitted respondent to have unsupervised visitation with Jasmine. On July 12, 2016, an order for temporary detention or shelter care was entered placing Jasmine back into shelter care. On August 8, 2016, an agreed modified order of disposition was entered adjudging Jasmine to be a ward of the court and finding respondent unable to care for Jasmine. The trial court's order reflected a goal of Jasmine's return home within twelve months.

¶ 20 The trial court conducted another permanency review hearing on February 8, 2017. Respondent testified at that hearing that she had a full-time job, obtained a driver's license, and was working towards her GED. Respondent testified that her mother, with whom she has a contentious relationship, telephoned during one of Jasmine's visits. Respondent made a negative comment in front of Jasmine about not wanting to talk to her mother. She testified that Amanda Koltz-Slabaugh advised her to either ignore the call or leave her phone off in the future. She also reported having ended her relationship with Steven P.

¶ 21 Koltz-Slabaugh then testified on direct examination in which she said that respondent was still making reasonable efforts but not reasonable and substantial progress. When asked what she would need to see from respondent to label her progress as substantial, Koltz-Slabaugh said:

> "Just the visits overall being better. I just want if there is any changes in visits such as them being shortened, I just want to make sure that [respondent] is aware because it's shortened, Jasmine should still get *** an after-school snack. It's an hour long drive both

> ways so it's pretty hard on Jasmine between after school, the visit, and then going back to the foster home. And just making sure that the conversations are and activities are appropriate. Jasmine did have nightmares because they had watched a Scooby-Doo movie *** which I had talked to [respondent] about and since then it hasn't been an issue but I just want to make sure all activities are appropriate as well."

When asked if respondent's progress was improving, Koltz-Slabaugh said "slightly".

¶ 22 On cross-examination, Koltz-Slabaugh admitted that the visits, overall, were going fine. She further testified that her concerns about respondent's ability to watch three children at once were no longer viable as only Jasmine would be present at the visits going forward.[1]

¶ 23 The trial court entered a written order finding respondent to have made reasonable efforts but not reasonable and substantial progress towards Jasmine's return home. A twelve-month reunification goal remained in place with the order.

¶ 24 On August 22, 2017, the parties appeared for another permanency review hearing and recommended the trial court enter an agreed order that respondent continues to make reasonable efforts but not reasonable and substantial progress towards a return home. The trial court agreed and the order was entered.

¶ 25 The final permanency review hearing took place on March 21, 2018. At that hearing, the state asked the trial court to change Jasmine's placement goal to substitute care pending determination of termination of respondent's parental rights. Koltz-Slabaugh then testified on direct examination. She agreed with the State's new stated goal because Jasmine, she felt, had

[1] Respondent's parental rights as to Jasmine's two siblings were terminated in a separate proceeding.

been going though the process for too long and needed permanency. She believed that she had not seen enough progress from respondent.

¶ 26 On cross-examination Koltz-Slabaugh admitted that respondent has never had any issues with drugs or alcohol to her knowledge. She agreed that respondent had lived in a clean, suitable home for the last eight months. Respondent had held down a steady job and was still participating in the requisite counseling and parenting classes. Koltz-Slabaugh never assigned respondent a parenting coach, despite her earlier testimony that she would, because a two-year old psychological report on respondent led Koltz-Slabaugh to the assumption that a parenting coach would be ineffective.

¶ 27 Respondent's psychological report was conducted by Dr. Nicolas O'Riordan in June 2016. The report made three recommendations: "(1) Given that [respondent's] personality and parenting limitations are well entrenched and not at all open to change, it is recommended that alternative long term placement arrangements be found for her three children; (2) [Respondent] should only have continued supervised visitations if she is able to handle the visits appropriately and abide by directives regarding her paramour; and (3) [Respondent] would benefit from therapy focusing on life and vocational skills to help her become more independent and self-reliant." It should be noted that Dr. O'Riordan's 2016 report also mentions that "[p]arent coaching is starting with Parents with Promise, recommendations for this service is essential."

¶ 28 Koltz-Slabaugh admitted in her testimony that respondent has made some progress since the issuance of the June 2016 psychological report. She further acknowledged that respondent and Jasmine have a good relationship and their visits go very well.

¶ 29 The trial court agreed with the State's recommendation that substitute care pending determination of termination of respondent's parental rights was to be the new goal. The trial court said that:

> "So what I've seen in the last three and a half years, I've seen biological parents who have the best intentions, love their daughter but have shown an inability to parent because of a variety of things, whether it's physical, cognitive difficulties or whatever but we've hit the wall here and *** it's really unfair for Jasmine to not be moved forward in her life here. *** Now after three and a half years *** it is definitely in her best interests at this point in time that substitute care be the new goal."

The trial court's written order reflected that respondent had made reasonable efforts but not reasonable and substantial progress towards Jasmine's return home. The order also noted the trial court's new permanency goal of substitute care pending determination of termination of parental rights.

¶ 30 On April 18, 2018, the State filed a petition for termination of respondent's parental rights and power to consent to adoption. The petition alleged that respondent had failed to make reasonable progress toward the return home of Jasmine during the following time periods: (1) February 18, 2015, to November 18, 2015; (2) November 19, 2015, to August 19, 2016; (3) August 20, 2016, to May 20, 2017; and (4) May 21, 2017, to February 21, 2018.

¶ 31 On April 19, 2018, the trial court held a hearing on the State's petition regarding respondent's parental fitness. Koltz-Slabaugh testified in a manner consistent with her testimony at the prior permanency review hearings. The trial court made its findings regarding respondent's parental fitness:

> "All right, the Court finds that from the evidence that's been introduced here that *** [respondent] *** [is] found to be unfit pursuant to the statute and you can prepare the necessary order and we'll set it out to a best interest hearing."

The trial court's written order read that "[t]his Court finds the mother is an unfit person to have a child under 750 ILCS 50/1D(m)(ii) for failure to make reasonable progress toward the return of the child from 2/18/15 to 11/18/15, 11/19/15 to 8/19/16, 8/20/16 to 5/20/17, and 5/21/17 to 2/21/18."

¶ 32 On June 18, 2018, the trial court held a hearing in which it was found to be in the best interests of Jasmine that respondent's parental rights be terminated. This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Respondent raises two contentions in this appeal regarding the trial court's unfitness findings. First, respondent asserts that the trial court committed reversible error by failing to make sufficient findings of fact in connection with its determination of parental unfitness. Second, respondent contends that the trial court's finding respondent an unfit parent was against the manifest weight of the evidence. We find respondent's first assertion dispositive in this appeal.

¶ 35 A parent's right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of such right is a drastic measure. *In re B'Yata I.*, 2013 IL App 2d 130588 ¶ 28. Accordingly, the Juvenile Court Act of 1987 provides a two-stage process for involuntary termination of parental rights. 705 ILCS 405/2–29(2) (West 2016). Initially, the State must prove that the parent is unfit. 705 ILCS 405/2–29(2), (4) (West 2016); 750 ILCS 50/1(D) (West 2016); *In re B'Yata I.*, ¶ 28. If the court finds the parent unfit, the State must then

show that termination of parental rights would serve the child's best interests. 705 ILCS 405/2–29(2) (West 2016); *In re B'Yata I.*, ¶ 28.

¶ 36 With respect to the first stage of the termination process, section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) lists various grounds under which a parent may be found unfit. *In re B'Yata I.*, ¶ 28. The State has the burden of proving a parent's unfitness by clear and convincing evidence. 705 ILCS 405/2–29(2), (4) (West 2016); *In re B'Yata I.*, ¶ 28. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *Id.* As such, a trial court's determination of a parent's unfitness will not be reversed unless it is contrary to the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence if a review of the record clearly demonstrates that the proper result is the one opposite that reached by the trial court. *Id.*

¶ 37 Respondent asserts that the trial court failed to make any specific findings of fact to support its determination that she was an unfit parent. Respondent argues that, when a trial court fails to make findings of fact, there is no basis for the reviewing court to determine whether the trial court's finding of unfitness is against the manifest weight of the evidence.

¶ 38 In *In re G. W.*, 357 Ill. App. 3d 1058 (2005), this court admonished trial courts to set forth a factual basis for a finding of unfitness. In that case, the respondent mother challenged the trial court's finding that she was an unfit parent. This court emphasized that, to determine whether a trial court's finding of unfitness is against the manifest weight of the evidence, the appellate court must be able to review both the evidence presented and the trial court's findings of fact. *In re G. W.*, 357 Ill. App. 3d at 1060. This court then stated:

> "[T]he trial court in this case has failed to enter findings of fact. After hearing the testimony of more than 10 witnesses over a period of approximately nine months, the

> trial court made no findings of fact in either its oral statement at the end of the fitness hearing or in its written order. While we grant great deference to the trial court's findings of fact, our review is made more difficult when no such findings are made and only a blanket finding of 'proven' is pronounced. We cannot review or defer to something that was never made; therefore, we admonish trial courts to pay particular attention to making findings of fact so that meaningful review of the ultimate curtailment of parental rights is given." *In re G. W.*, 357 Ill. App. 3d at 1060.

While specific findings of fact are preferable, the ruling in *In re G. W.* does not stand for the proposition that the lack of such findings requires reversal in every case. *In re Richard H.*, 376 Ill. App. 3d 162, 166 (2007). The court's review is not impeded by a lack of factual findings when the evidence is overwhelming and undisputed. *Id*.

¶ 39 Turning to the facts of the present case, we agree with respondent that the trial court did not set out a factual basis to support its finding that respondent is unfit to parent Jasmine. The trial court limited its findings of unfitness to stating "that from the evidence that's been introduced here that *** [respondent] *** [is] found to be unfit pursuant to the statute." The trial court's written order just identifies the nine-month date ranges that were alleged in the State's petition to terminate respondent's parental rights. We conclude that trial court's failure to set forth a factual basis prevents this court from conducting a meaningful review of the unfitness finding in this case.

¶ 40 The standard for determining whether reasonable progress has occurred is an objective one. *In re B.W.* 309 Ill. App. 3d 493, 499 (1999). Reasonable progress may be found when the trial court, based upon the evidence, can conclude the parent's progress is sufficiently demonstrable and is of such a quality the child can be returned to the parent in the near future.

Id. At a minimum, reasonable progress requires a measurable or demonstrable movement toward the goal of reunification. *Id*.

¶ 41 In the present case, the trial court's failure to make factual findings leave us unable to determine whether the ultimate finding of respondent's parental unfitness was against the manifest weight of the evidence. The evidence presented and detailed above is in no way overwhelming and undisputed. Although the trial court did specify the time periods upon which it was relying in its written order finding respondent unfit, it did not identify the conduct forming the basis for its determination that respondent failed to make reasonable progress towards Jasmine's return. "Proceedings such as this can result in the permanent and irrevocable termination of a parent's right to raise his or her child. As such, we strongly encourage trial courts to set forth findings of fact in support of any determination that a parent is unfit." *In re B'Yata I.*, ¶ 42.

¶ 42 We retain jurisdiction over this appeal and enter a limited remand, strictly for the entry of the express factual basis supporting the trial court's finding of unfitness, not for the taking of evidence or for additional argument. Consistent with the policy requiring expeditious resolution of matters involving minors (see Ill. S.Ct. R. 311 (eff. July 1, 2018); *In re B'Yata I.*, ¶ 41; *In re D.F.*, 208 Ill. 2d 223, 231 (2003)), the trial court shall transmit its factual basis to the clerk of this court within 28 days of this decision. We express no opinion regarding the ultimate outcome of this appeal.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, this cause is remanded to the circuit court of Jo Daviess County for further proceedings consistent with this disposition.

¶ 45 Remanded.