2019 IL App (2d) 180818-U
No. 2-18-0818
Order filed February 28, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re K.H. and K.H., Minors	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
	)	Nos. 15-JA-400
	)	16-JA-222
	)	
(People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Kamel H.,	)	Francis M. Martinez,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Birkett and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding of father's parental unfitness, on ground that he failed to make reasonable progress toward reunification with children within nine-month period, was not against the manifest weight of the evidence; trial court's finding that it was in the best interests of children that father's parental rights be terminated was not against the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, Kamel H., appeals from an order of the trial court finding him unfit as a parent as defined in sections (D)(g), (D)(m)(i), and (D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(g), (D)(m)(i), (D)(m)(ii) (West 2018)) and terminating his parental rights to his minor children, K.H. and K.H. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 Hereinafter, the minor children will be identified by their individual case numbers: "K.H. (15-JA-400)" and "K.H. (16-JA-222)." K.H. (15-JA-400) is a male child, born on November 23, 2012; K.H. (16-JA-222), a female child, was born on May 10, 2016. Respondent is the legal father of K.H. (15-JA-400) and the biological father of K.H. (16-JA-222).

¶ 5 On June 17, 2016, respondent was arrested for aggravated battery of a DCFS investigator and incarcerated at the Winnebago County jail until November 15, 2016, when he was charged with first-degree murder, concealment of a homicidal death, and dismemberment of a human body in the death of an unrelated two-year-old boy, whose body was found dismembered in a Chicago park lagoon in 2015. At that time, respondent was transferred to jail in Cook County, where he awaits trial.

¶ 6 The State filed neglect petitions in the interests of K.H. (15-JA-400) and K.H. (16-JA-222) on October 28, 2015, and June 20, 2016 respectively. Count 2 of both petitions alleged that the minors were neglected and their environment was injurious to their welfare because their mother "has a substance abuse problem that prevents her from properly parenting, thereby placing the minor[s] at risk of harm, pursuant to 705 ILCS 405/2-3(1)(b)." Following parental stipulations to count 2 of the petitions, the minors were adjudicated neglected. In each case, the trial court dismissed counts 1 and 3-5 of the petitions "pursuant to the agreement that parents complete services based on all counts." Count 5 of the neglect petitions alleged that the minors were neglected in that:

> "[Their] environment is injurious to [their] welfare in that an unrelated minor was allowed to stay in the home of the parents, the unrelated minor went missing from the parents' home, the unrelated minor was not reported missing for several weeks, and the

unrelated minor's body parts were found in a park, thereby placing the minor[s] at risk of harm, pursuant to 705 ILCS 405/2-3(1)(b)."

¶ 7 Subsequent to the neglect adjudications, the trial court entered disposition orders finding that the minor's parents were unfit, unable or unwilling for some reason other than financial circumstances, alone, to care for, protect, train or discipline the minors. The Illinois Department of Children and Family Services (DCFS) was granted legal custody and guardianship, with the discretion to place the minors with a responsible relative or in traditional foster care. The minor's parents were ordered to comply with the requirements of DCFS and its contracting agencies.

¶ 8 Following various permanency review hearings, the trial court found that the minors' mother had made reasonable efforts but not reasonable progress toward the return of the minors and that respondent had not made reasonable efforts or progress toward their return. The court changed the goal to substitute care pending the court's determination on termination of parental rights. The State then filed motions asking the court to terminate the parental rights of both parents. With respect to respondent, the motion alleged that he was an unfit parent in that he failed to protect the children from conditions within their environment injurious to their welfare (count 1) and failed to make reasonable efforts (count 2) and reasonable progress (count 3) toward their return to him within any nine-month period after they were adjudicated neglected. See 750 ILCS 50/1(D)(g), (D)(m)(i), (D)(m)(ii) (West 2018). For K.H. (15-JA-400), counts 2 and 3 alleged three nine-month periods: July 15, 2016 to April 15, 2017; December 14, 2016 to September 14, 2017; and March 18, 2017 to December 18, 2017. For K.H. (16-JA-222), counts 2 and 3 alleged the latter two nine-month periods.

¶ 9 Unfitness Hearings

¶ 10 The unfitness hearings began on June 6, 2018, and continued periodically until their conclusion on September 14, 2018. Respondent was called as an adverse witness and also testified in his case-in-chief. In his initial testimony, respondent acknowledged that he was convicted of the aggravated battery charge for which he was incarcerated in Winnebago County from June 17, 2016, to November 17, 2016, when he was transferred to Cook County jail. Respondent confirmed that he remains in custody in Cook County on charges related to the murder, dismemberment, and concealment of an unrelated minor.

¶ 11 Regarding compliance with DCFS service plans, respondent testified that he was never "presented" substance abuse or mental health assessments, domestic violence services, or individual counseling. He attempted to call his caseworker, Shirley Brown, but the "phones" would not allow the calls. He could receive and send mail and had "just recently" obtained DCFS's address. He sent Ms. Brown "maybe two or three" letters inquiring about the minors' development and growth, school or daycare, behavior and interests. He sent the mail "[p]robably maybe a year ago." Although he did not have an address for the minors, he tried sending them mail "[m]aybe once or twice." Respondent stated he did not send letters to the minors through his caseworker because "I've an issue with my caseworker and the gifts I would give my kids that she never give [*sic*] to them. So I had no reason to believe that she would give my kids the letters." With respect to sending gifts to the minors through family members, respondent first stated that he had not tried to pass anything along through family, then that he had but did not know if they had followed through on his requests.

¶ 12 DCFS caseworker Sherry Brown testified that she was assigned to the case in January 2016. She stated that respondent completed an integrated assessment early in November 2016, when he was incarcerated in Winnebago County. While he was in jail in both Winnebago and

Cook counties, she sent him three service plans, which recommended that, in addition to the integrated assessment, he complete a mental health assessment, a substance abuse assessment, a domestic violence assessment, and parenting classes. He completed only the integrated assessment. Ms. Brown also testified that two letters, sent in the summer of 2017, were the only contacts respondent initiated with her while he was incarcerated. In the letters, respondent asked about visitation with the minors. Ms. Brown explained to him in two letters and again when visiting him in the Cook County jail on or about November 16, 2017, that visitation was not allowed "due to a critical decision made by the supervisors that it was not appropriate due to the egregious nature of the charges that he was incarcerated for."

¶ 13 Ms. Brown further stated that respondent never asked for updates regarding the minors' development, growth, schooling, behaviors, or interests; rather, when she visited him in person, she initiated that conversation. To her knowledge, respondent did not send cards, letters, gifts, or support to the minors, nor did he have family members or friends bring gifts or necessities to them.

¶ 14 In his case-in-chief, respondent testified, *inter alia*, that he participated in an integrated assessment in November 2016. He did not think he received any service plans while in Winnebago County, but he did get "something" when he was in Cook County. While he was in custody, no one from DCFS came to see him about going over a service plan. He was never asked to participate in a child and family team meeting. Although he asked to have visitation with the minors, he was not permitted to visit with them during the entire time he was incarcerated, nor was he allowed to have telephone contact with them. He was never informed why he could not see them. Respondent also repeated his assertions that Ms. Brown did not give the minors the gifts he left for them in her office.

¶ 15 Ms. Brown was called for rebuttal following respondent's testimony. She stated that respondent attended the first administrative review in the case in April 2016, prior to completing the integrated assessment, and was given a service plan at that time, which they discussed. He was also sent service plans in response to his letters and when he was in Cook County. She and respondent discussed the service plan when she visited him in Cook County.

¶ 16 With respect to her alleged failure to deliver respondent's gifts to the minors, Ms. Brown explained that the episode occurred before respondent was incarcerated in Winnebago County. Respondent brought the gifts to her office during a two-week period of time when she was not scheduled to visit the minors. She then went on vacation, and when she returned, she was told respondent had come to the office and picked up the gifts. In addition, Ms. Brown testified that the decision not to allow visitation was based on the "no-contact order from the court," not upon any failure of respondent to comply with the service plans.

¶ 17 On September 14, 2018, the trial court determined that the State had proven by clear and convincing evidence that respondent was unfit to be the minors' parent pursuant to all three counts of the termination motions.

¶ 18 Best Interests Hearing

¶ 19 On October 4, 2018, a best interests hearing was held. Karen Christianson, a CASA volunteer, testified that the minors are her "CASA children." She has known K.H. (15-JA-400) since October 2015 and K.H. (16-JA-222) since July 2016. The minors currently live with their mother's aunt, who is their foster mother. K.H. (15-JA-400) and K.H. (16-JA-222) have lived in the foster home since the spring of 2016 and July 2016, respectively. Ms. Christianson found the home to be safe and appropriate and agreed that the foster parent provides for the minors' basic necessities. K.H. (15-JA-400), who previously struggled in and out of school due to a lack of

self confidence and the ability to express himself, has particularly benefited from the consistency and security of the foster home. K.H. (16-JA-222), who has been in this home since she was two months old, has developed normally and "maybe more quickly" than others her age. The minors attend church regularly with the foster parent and go to the recreation center for swimming and gym time.

¶ 20 Both minors appear to have loving relationships with the foster mother. They also have a "really good sibling relationship," as well as relationships with the extended family. Ms. Christianson testified that the foster parent was willing to adopt the minors and would continue to allow contact between them and their mother if the parents' rights were terminated. She opined that it was in the best interests of the minors to terminate their parents' rights.

¶ 21 DCFS also filed a report detailing the minors' life in the foster home and recommending that the parents' rights be terminated.

¶ 22 Following the presentation of evidence and arguments at the best interests hearing, the trial court determined that the State had proven by a preponderance of the evidence that it was in the best interests of the minors to terminate respondent's and the mother's parental rights. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 To support a judgment of termination of a mother's or father's parental rights, there must first be a showing of parental unfitness based upon clear and convincing evidence, and a subsequent showing that the best interests of the child are served by severing parental rights based upon a preponderance of the evidence. *In re C. W.*, 199 Ill. 2d 198, 210 (2002); *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45.

¶ 25 A. Unfitness

¶ 26 Although section 1(D) of the Adoption Act sets forth numerous, discrete grounds under which a parent may be deemed "unfit," "any one ground, properly proven, is sufficient to enter a finding of unfitness and support a subsequent termination of parental rights." (Internal quotation marks omitted.) *In re C.W.*, 199 Ill. 2d 198, 210, 217 (2002); see 750 ILCS 50/1(D) (West 2018) (providing that the "grounds of unfitness are any one or more of the following" enumerated grounds). "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings and we will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. For this reason, the trial court's finding of unfitness is entitled to great deference, and we will not disturb its finding unless it is against the manifest weight of the evidence. *In re D.F.*, 332 Ill. App. 3d 112, 124 (2002). The trial court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001).

¶ 27 Here, the trial court determined the State had proven respondent's unfitness by clear and convincing evidence on multiple statutory grounds. Count 3 of the State's termination motion alleged that respondent was unfit for failing to make reasonable progress toward the return of the minors. See 750 ILCS 50/1(D)(m)(ii) (West 2018). We agree with the trial court that this ground was proven by clear and convincing evidence.

¶ 28 Section 1(D)(m)(ii) of the Adoption Act provides that a parent is unfit for failing "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication [of neglect]." 750 ILCS 50-1(D)(m)(ii) (West 2018). "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.'" *A.S.*, 2014 IL App (3d) 140060, ¶ 17 (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.'" *A.S.*, 2014 IL App (3d) 140060, ¶ 17 (quoting *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001)). "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." *A.S.*, 2014 IL App (3d) 140060, ¶ 17. Courts must only consider evidence occurring during the nine-month period stated in section 1(D)(m) of the Adoption Act. *Id*. ¶ 35; see 750 ILCS 50/1(D)(m) (West 2018).

¶ 29 Respondent argues that the court erred in finding that he failed to make reasonable progress because he was incarcerated throughout the relevant nine-month periods following the adjudication of neglect. As noted above, however, reasonable progress "is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066–67 (2006). The parent's personal circumstances are irrelevant to the objective standard, even if those circumstances may have impeded or prevented the parent from making reasonable progress. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89 (the respondent failed to make reasonable progress where her imprisonment prevented the child from being returned to her in the near future). Minimally, reasonable progress is determined by measurable or demonstrable

movement toward the goal of returning the child to the parent's custody (*Daphnie E.*, 368 Ill. App. 3d at 1067) and that determination must include "proper regard for the best interests of the child." (Internal quotation marks omitted.) *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. A parent's "incarceration can impede progress toward the goal of reunification," and "[t]ime spent in prison is included in the nine-month period during which reasonable progress must be made." *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 21. The benchmark for measuring reasonable progress is compliance with the parent's service plans and other related court orders so that the court can conclude that it will be able to reunite the parent and the child *in the near future*. *Id.*

¶ 30 Given respondent's incarceration for murder and his pending trial, it is not clear to us that the trial court would have been able to return the minors to respondent's custody in the near future. See *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89 ("For a judgment to be against the manifest weight of the evidence, an opposite conclusion must be clearly evident."). Moreover, the evidence showed that DCFS sent respondent three service plans, beginning in April 2016, before he was incarcerated in Winnebago County. He fulfilled only one of the service plans' requirements, the completion of an integrated assessment. Moreover, he did not comply with a June 12, 2017, order directing him to "participate in the men's residential drug treatment program; a mental health assessment; an anger management program; and a parenting program/class." Considering the evidence in light of the case law and with regard to the minors' best interests, the trial court's finding that respondent was parentally unfit, on the ground that he failed to make reasonable progress toward reunification with children within a relevant nine-month period, was not against the manifest weight of the evidence.

¶ 31 Respondent contends that the trial court's finding is inconsistent with this court's opinion in *In re Keyon R.*, 2017 IL App (2d) 160657. The decision in *Keyon R.*, however, has limited applicability, as this court recently explained:

> "In *Keyon R.*, we reversed a finding that the incarcerated respondent was unfit where DCFS refused to provide him with an integrated assessment or a service plan. [Citation omitted.] We held that using the respondent's lack of compliance with nonexistent services to terminate his parental rights was paradoxical. [Citation omitted.] In contrast, respondent in the instant case was assessed for services and was provided with a service plan." *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 22 (the respondent, although incarcerated, failed to make reasonable progress toward reunification).

¶ 32 In this case, as in *Nevaeh R.*, respondent was assessed for services and provided with a service plan; services were not "consciously and intentionally withheld," as they were in *Keyon R.* 2017 IL App (2d) 160657, ¶ 30. Accordingly, we follow *Nevaeh R.*, not *Keyon R.*

¶ 33 We conclude that the trial court did not err in determining that respondent was unfit under section 1(D)(m)(ii).

¶ 34 B. Best Interests

¶ 35 The focus shifts to the child after a finding of parental unfitness. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). 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. *Id.*

¶ 1 In making a best interests determination, section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1–3(4.05) (West 2018)) requires a trial court to consider certain factors within "the context of the child's age and developmental needs"; these include: (1) the physical safety and welfare of the child, including food, shelter, health and clothing; (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 where the child actually feels love, attachment, and a sense of being valued ***; the child's sense of security and familiarity; continuity of affection for the child; and the least disruptive placement alternative for the child; (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, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. *In re D.T.*, 212 Ill. 2d 347, 354 (2004) (proceeding for termination of parental rights). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 27.

¶ 36 The trial court's finding with respect to best interests lies within its sound discretion, especially when it considers the credibility of testimony presented at the best interests hearing, and its determination will not be disturbed on appeal unless it is against the manifest weight of the evidence or the court has abused its discretion. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.* (citing *In re Arthur H.*, 212 Ill.2d 441, 464 (2004)). A court abuses its discretion where its findings are arbitrary or fanciful (*Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)), or where no reasonable person would agree with its position (*In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)).

¶ 37 In determining that the State had shown by a preponderance of the evidence that it was in the minors' best interest to terminate respondent's parental rights, the trial court found the minors to be well integrated into the foster home. Their foster mother, who is a relative, provides for them "very well." The minors and the foster mother are bonded, and the minors regard her as a mother figure. Permanency is available. The court further noted that, due to his incarceration for "a very serious charge of first degree murder," respondent's prognosis is "dim." "It would be speculation to try to predict if he will be even available to have an ability to parent."

¶ 38 Respondent asserts that the trial court's best-interests finding was against the manifest weight of the evidence because "[t]here is no emergency on the facts of this case"—respondent is awaiting trial and the minors are well cared for by their mother's aunt. Respondent asks us to ignore such statutory considerations as the development of the children's identity, their sense of security, and their need for permanence. See 705 ILCS 405/1–3(4.05) (West 2018). Although currently awaiting trial, respondent's criminal history and incarceration raise "the inference he will continue to be unavailable and inadequate as a parent." (Internal quotation marks omitted.) *In re M.C.*, 2018 IL App (4th) 180144, ¶ 31. It is apparent that respondent's "interest in maintaining the parent-child relationship must yield to [the minors'] interest in a stable, loving home life." *In re D.*, 212 Ill. 2d 347, 364 (2004).

¶ 39 Considering the evidence and the minors' best interests, the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.