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2019 IL App (3d) 180371-U

Order filed April 23, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> C.M., A.M., G.M., V.M., and H.M.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Tazewell County, Illinois,
Minors)	
	)	Appeal Nos. 3-18-0371
	)	3-18-0372
	)	3-18-0373
(The People of the State of Illinois,	)	3-18-0374
	)	3-18-0375
	)	Circuit Nos. 17-JA-117
Petitioner-Appellee,	)	17-JA-118
	)	17-JA-119
v.	)	17-JA-120
	)	17-JA-121
Brittany M.,)	
	)	Honorable
	)	James A. Mack,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's determination that the respondent was unfit was not against the manifest weight of the evidence.

¶ 2 In May 2018, the trial court found that the respondent, Brittany M., was unfit to parent

her children C.M., A.M., G.M., V.M., and H.M. Brittany appeals.

¶ 3

FACTS

¶ 4

On October 9, 2017, the State filed a petition against Brittany and the minors' father, William M., alleging that C.M. and her siblings were neglected. The petition set forth three bases to support the allegation. First, the State alleged that the minors' stepmother, Jennifer S.-M., was found unfit in a different case due to drug issues, there had been no subsequent finding of fitness, she had not completed any services to restore her to minimal parenting, and she continued to use drugs in that she smoked marijuana and William admitted to smoking marijuana daily. Second, the State alleged that William and Jennifer tested positive for marijuana on June 8, 2017. Third, the State alleged that Jennifer was an unsupervised caretaker for her stepchildren. Jennifer had been previously indicated in November 2009 for substance abuse by neglect and November 2014 for substantial risk of physical injury/environment injurious to health and welfare by neglect. The State concluded in its petition that the minors were abused or neglected in that they were in an environment that was injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2016)).

¶ 5

On November 30, 2017, Brittany appeared before the trial court and was advised of the nature of the allegations, her rights in the proceedings, and the possible dispositions.

¶ 6

On January 4, 2018, Brittany filed her answer to the State's petition, stating that she lacked sufficient knowledge as to the allegations, but based upon information and belief subsequently learned, admitted the same.

¶ 7

On February 1, 2018, Arianna Haines, a child welfare specialist, filed her dispositional report focusing on William and Jennifer. She noted that C.M. was a three-year-old female, A.M. was a four-year-old male, V.M. was a seven-year-old female, G.M. was a nine-year-old female, and H.M. was a ten-year-old female. Haines also noted that the children resided with William

and Jennifer, but that Brittany had visitation with the children on weekends. Additionally, Haines noted that Brittany was the victim of domestic violence at the hands of her paramour in the presence of the minor children on January 7, 2018. Brittany's paramour was indicated by the Department of Children and Family Services (DCFS) for that incident. Haines's report indicates that Brittany was not a party to the case until her first appearance, at which time Haines had attempted to contact Brittany to set up opening paperwork with no success. Haines recommended that Brittany cooperate with her agency, execute all authorizations for releases requested by DCFS or designees, complete an integrated assessment, and follow all recommendations.

¶ 8 On April 12, 2018, William's parents, the paternal grandparents of the minor children, filed a petition for leave to intervene. The paternal grandparents stated, that on March 8, 2018, William executed an appointment of short-term guardian as to all of the minor children, naming the paternal grandparents as short-term guardians. The petition alleged that the minor children had lived in the paternal grandparents' home off and on throughout their lives.

¶ 9 On April 16, 2018, Haines filed a dispositional report and addendum focusing on Brittany. At that time, Brittany was residing in a three-bedroom home with her paramour, David, and his roommate. She had resided at that address for three months. Brittany stated that she met David about five years ago through "the strip club." At the time of the interview, they had been dating for about four months. Brittany denied any issues of domestic violence or drugs in her relationship with David. Brittany reported that she had a stable residence where the children visited, used effective discipline techniques, and completed a parenting class in 2015.

¶ 10 The report stated that Brittany previously dated Dwaine G. for two years. Brittany reported that there were domestic violence issues with Dwain, including incidents where the police were called. Brittany described the violence as "constant emotional, physically and

controlling.” Brittany reported that she ended her relationship with Dwain six months prior to the interview and lost her apartment on purpose because he would not move out.

¶ 11 The report stated that Brittany was employed by Elliot’s where she was a stripper. Though she had been a dancer for six years, she had only worked at Elliot’s for about six months. She worked from 8 p.m. to 1 a.m. on Sundays and Tuesdays and from 9 p.m. to 2 a.m. on Thursdays and Saturdays. When Brittany worked, the minor children were with William.

¶ 12 Brittany reported, that in 2010, she admitted herself to the hospital for inpatient treatment for depression. She stated that she consumed alcohol four days a week and would consume five to seven drinks. Brittany also stated that she would occasionally smoke marijuana. Haines’s report indicated that Brittany was moderately cooperative with her agency. Brittany was referred to counseling services, domestic violence services, and parenting classes. The report stated that Brittany completed the integrated assessment. It was also recommended that Brittany continue to cooperate with the agency, report any changes in contract information or household composition, sign all necessary releases, keep all appointments, participate and successfully complete individual counseling and outpatient substance abuse treatment, successfully complete two random drug screens per month, successfully complete a parenting class, and successfully complete domestic violence services.

¶ 13 The addendum noted that the minor children were residing with their paternal grandparents. The minor children had weekend visitation with Brittany. Brittany was referred to the women’s domestic violence group and individual counseling through Haines’s agency. Brittany was discharged from the women’s domestic violence group due to lack of attendance—she failed to attend any groups. According to Haines, Brittany was awaiting assignment for individual counseling. The addendum stated that Brittany was minimally cooperative and that

she needed to fully engage in services.

¶ 14 On April 26, 2018, Haines filed an additional dispositional report addendum informing the trial court that G.M. reported to the guardian *ad litem* (GAL) that Brittany was selling drugs out of her home. G.M. reported that she witnessed Brittany selling something in a small square plastic bag to people out of the home.

¶ 15 On May 24, 2018, the trial court held the adjudicatory and dispositional hearings. Brittany waived the factual basis for the petition for neglect. The court found the petition had been proved by a preponderance of the evidence based on her answer and the petition. The court entered an adjudicatory order finding that the minors were neglected in that were in an environment that was injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2016)).

¶ 16 The court then proceeded to the dispositional hearing. Haines testified that she called DCFS after receiving information that Brittany was involved in a domestic violence incident in January 2018. Haines believed that Brittany's paramour, Dwain, pulled a knife and was swinging it around after an argument while the minor children were present. Brittany called the police during the incident and ended the relationship with Dwain. Haines believed both Brittany and Dwain were indicated in the incident, but Dwain was the perpetrator.

¶ 17 Haines testified that she had not been to Brittany's house and did not have much contact with her. Brittany started visiting with the minor children about two weeks prior. Previously, Brittany was visiting the minor children with the paternal grandmother's supervision. However, after Brittany and the paternal grandmother were not communicating well, Haines decided to move the visits to the office. Haines also testified regarding G.M.'s report to the GAL that she was suspicious Brittany was selling drugs. The investigator told Haines that the report was going to be determined as unfounded, but there was no formal decision at the time of the hearing.

¶ 18 Haines testified that she told Brittany she was supposed to be providing drug drops two times per month and Brittany had not complied and did not offer any explanation. However, as part of DCFS's investigation, it asked Brittany to perform a single drug drop. Brittany complied and the drug drop was negative. Respondent admitted in the integrated assessment that she consumed five to seven drinks four days per week. In addition, the investigator from the January 2018 domestic violence incident reported that Brittany appeared "out of it" and had concerns about Brittany's use of substances. Haines testified that Brittany reported that she had a "day job," but did not disclose where she was working. Haines indicated that the minor children were doing well in their placement and the older children, G.M. and H.M., expressed that they did not want to visit with Brittany. Haines opined that guardianship should be placed with DCFS.

¶ 19 William testified that he had primary custody of the minor children since 2015 because his relationship with Brittany ended. After Brittany took the minor children, he went to court. Brittany appeared at the first court date, but then failed to appear to the following two. Due to Brittany's failure to appear, William was able to obtain an order requiring Brittany to have supervised visits with the minor children. Brittany had supervised visits at McDonald's every Sunday for an hour. William testified, that Brittany might have had drug issues at the time he was seeking supervised visitation, but he did not have much contact with her. In 2017, Brittany was dating, Kenneth L., a known drug user. William testified that he was aware Brittany was using drugs at that time. He stated that he was hesitant to talk about Brittany's drug use because he had the same issue with spice. William stated that he would smoke spice with Brittany and Kenneth on occasion. However, that same year, he began giving Brittany unsupervised visits with the minors despite his knowledge of her drug use.

¶ 20 William also testified that Brittany did not have stable housing. He stated, that when used

to bring the children for visits, she was living in a camper, which was not fit for children. She was living with Kenneth at the time. William also testified regarding the domestic violence incident with Dwain. He stated that G.M. and H.M. reported that Brittany and Dwain were arguing and Dwain started waving a knife around. The children indicated that they were scared and William picked them up. The children did not report any drug usage to him.

¶ 21 The GAL reported to the trial court that she interviewed the minors. A.M. reported that he felt safe with William and Jennifer. V.M. stated that her preference was to live with William. H.M. reported that she did not want to see Brittany because of “the past.” H.M. told the GAL that Brittany threatened to kill her boyfriend during Christmas and that Brittany did drugs. H.M. stated Brittany used spice and pot. H.M. also stated that she did not feel safe with Brittany and she only stayed overnight with her because she was forced. H.M. wanted to stay with her father with whom she felt safe. G.M. stated that she wanted to move in with William. G.M. reported seeing people come in and out of Brittany’s house where she was selling drugs. G.M. described the fight at Christmas and that the police came to their house twice.

¶ 22 The State asked the trial court to find Brittany unfit because she could not provide minimal parenting. The State argued that she had a history of an unstable living environment and that she was involved in a domestic violence incident with the children present. The State argued that Brittany was a drug user and noted that the domestic violence investigator believed that she was under the influence of a substance and she refused to cooperate with drug drops for Haines. The State also cited William’s testimony regarding Brittany’s drug use.

¶ 23 Brittany argued that the State had not proved her unfit. She asserted, *inter alia*, that her previous living situation did not prove that she had unstable housing at the time of the hearing. Further, the allegation from one of the minor children that she was selling drugs out of her home

was unfounded and her drug drop completed close to that allegation was negative. Also, no basis existed to find her unfit for domestic violence as she was no longer with Dwain.

¶ 24 The GAL argued that it was in the best interests of the minors for the trial court to make them wards of the court. The GAL asserted that Brittany and William both had unresolved substance-abuse issues. The GAL argued that Brittany needed help with domestic violence. The GAL noted that the domestic violence incident in January was not a one-time incident as reflected in the integrated assessment. Brittany reported that she had been in a two-year relationship with Dwain that involved constant emotional and physical violence. The GAL stated, that though the report of selling drugs may have been unfounded, she believed the children's reports that they saw drugs in the house.

¶ 25 The trial court determined that Brittany was unfit. The court stated, in relevant part:

“Well, as we sit here, I guess I could have been more inclined to side with mom if [she] had testified and I could have heard more about the things that are out there from [her] which I didn't.”

I think it is in the best interest of the children that they be made wards of the Court. I'm going to adjudicate them neglected. I think it's clear that both parents have drug issues. I'm not going to base it on the absence of drops. I just don't know. And I don't think you can throw these kids back into a situation where it's just not known. The last thing that I heard about was an order for supervised visitation. It was then allowed to have unsupervised visitation, but the last order of the Court was supervised.”

¶ 26 The paternal grandparents withdrew their petition for leave to intervene on the basis that

the minor children were in relative foster placement and the petition was unnecessary.

¶ 27 Brittany appeals.

¶ 28 ANALYSIS

¶ 29 On appeal, Brittany argues that the trial court’s determination that she was unfit was against the manifest weight of the evidence. The State argues the court’s decision was proper.

¶ 30 The State must prove by clear and convincing evidence that the parent is “unfit” as defined in section 1(D) of the Adoption Act. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). A trial court’s fitness determination will only be reversed if the court’s findings of fact were against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is against the manifest weight of the evidence when an opposite conclusion is clearly evident. *In re A.W.*, 231 Ill. 2d 92, 102 (2008). A reviewing court will not overturn a court’s findings merely because it would have reached a different result. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23. The trial court’s determination is given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004).

¶ 31 Brittany specifically takes issue with (1) the trial court’s statement “I just don’t know” when it explained its fitness determination; (2) the trial court’s comment about her decision not to testify; and (3) William’s testimony, as she argues it was contradictory and lacked credibility.

¶ 32 First, the court stated that it was not going to make its fitness determination on the absence of drug drops because he “just [didn’t] know.” Brittany argues that this means the State’s evidence of her drug use was not clear and convincing and that the court’s decision was against the manifest weight of the evidence. The State argues that this statement, in context, shows that the court *did* find the evidence clear and convincing that Brittany had drug issues because the statement “it’s clear both parents have drug issues” preceded this statement.

¶ 33 We find that the court’s statement “I just don’t know” was superfluous. Viewing the record as a whole, the court found and stated that the evidence clearly supported a finding of unfitness based on Brittany’s drug use. There was ample evidence to support a finding of unfitness. The evidence presented showed that: (1) Brittany smoked marijuana on occasion; (2) the investigator from the domestic violence incident reported that Brittany “appeared out of it” and had concerns regarding possible substance abuse; (3) one of the minor children reported to the GAL that respondent used drugs (spice and marijuana); (4) Brittany reported to Haines that she consumed five to seven alcoholic beverages four days a week; (5) one of the minor children reported to the GAL that Brittany was selling drugs out of her home, although DCFS planned to issue an unfounded determination; (6) Brittany failed to complete any of the drug drops requested by Haines; (7) Brittany used drugs with William; (8) Brittany had a history of choosing partners with domestic violence and drug issues; (9) Brittany lived in a three-bedroom home with David and his roommate; and (10) Brittany failed to complete the majority of the services and any of the drug drops required by Haines. In totality, we cannot say that a different conclusion is clearly apparent based on the record before us. *A.W.*, 231 Ill. 2d at 102.

¶ 34 Second, we address Brittany’s argument that the trial court improperly shifted the burden to her to prove that she was fit by clear and convincing evidence when it stated, “I guess I could have been more inclined to side with mom if [she] had testified and I could have heard more about the things that are out there from [her] which I didn’t.” The State argues that this comment was merely the court’s summation that the evidence presented by the State showed that Brittany was unfit and that there was no favorable evidence presented on her behalf.

¶ 35 We reiterate that the State has the burden to prove the respondent unfit in such proceedings. See *Tiffany M.*, 353 Ill. App. 3d at 889. Therefore, the trial court’s comment about

Brittany's decision to not testify when explaining its fitness determination was erroneous. Nonetheless, we can affirm the court's fitness determination on any basis in the record, and for the reasons already explained, the record was sufficient in this case to support the court's fitness determination. See *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002)

¶ 36 Last, Brittany takes issue with William's testimony. She points to specific excerpts where he stated that he had concerns over her drug use, but stated that he did not have contact with her, then stated he used drugs with her and Kenneth in the past, and admitted to his own drug issues. Additionally, although the court ordered Brittany to have supervised visits with the minor children, William allowed her to have unsupervised visits before DCFS's involvement, despite knowing of her drug problems. The State argues that it was the trial court's task to assess William's credibility. We agree with the State. As previously stated, trial courts determinations in such cases are given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility. See *Jordan V.*, 347 Ill. App. 3d at 1067. It was the trial court's determination to assess William's credibility and give weight to his testimony. However, even without William's testimony, there was sufficient evidence of record for the trial court to find Brittany unfit in this case. *Supra* ¶ 33.

¶ 37 For the foregoing reasons, we affirm the trial court's fitness determination.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court of Tazewell County is affirmed.

¶ 40 Affirmed.