2020 IL App (1st) 191822-U

No. 1-19-1822

Order filed April 28, 2020.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re J.T., a Minor,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 2016 JA 868
v.	)	
	)	
JANET T.,	)	The Honorable
	)	Patrick T. Murphy,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not violate respondent's right to due process by prejudging her case.

¶ 2 Respondent, Janet T., appeals from the circuit court's order terminating her parental rights after finding her unfit to care for her child. On appeal, respondent contends she's entitled

to a new termination hearing because the trial judge prejudged her case, thus denying her due process right to an impartial factfinder. We affirm.[1]

¶ 3 BACKGROUND

¶ 4 Respondent does not challenge the findings at the bifurcated termination hearing that she was unfit to care for her child or that it was in her child's best interests to be appointed a guardian with the right to consent to adoption. Accordingly, we offer only those facts necessary to dispose of the claims on appeal, and we address those facts relating to the trial court's alleged prejudice more fully in our analysis section.

¶ 5 Respondent, who suffers from substantial cognitive delays and epilepsy, came to the attention of DCFS when medical personnel contacted the agency just after J.T. was born on September 13, 2016.[2] Medical personnel reported that respondent was unaware she had just given birth to the child, and a contemporaneous psychiatric report revealed that she did not understand her pregnancy; in fact, she had been carrying around a cloth for the past several years, referring to it as her baby while talking to it and trying to feed it. Nursing notes revealed that after J.T. was born, respondent essentially stated she was not his mother and asked the nurse to "have him." Respondent also did not understand what the umbilical cord was and reported a history of domestic violence. J.T. remained in the hospital for more than two weeks after he was ready for discharge because respondent did not pick him up. She had not responded to calls by the hospital to take her son.

[1]Having examined the record and the briefs, this court is of the opinion that this case presents no novel legal issues or complicated factual matters, and the parties' briefs adequately relay their respective contentions. Thus, pursuant to Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), as amended, this case is taken under consideration without oral argument.

[2]During the course of the proceedings, respondent also gave birth to a baby girl in February 2018, and the baby was placed in a relative foster home.

¶ 6 Respondent's home that she shared with her mother had portions that were about to cave in, a leak in the roof, and it reeked of cat urine as there were kittens all over the home. In short, it was filthy and uninhabitable. Respondent did not then have a crib, baby clothes, diapers, or food for her son.

¶ 7 Further evidence culled from the State's expert psychologist, Dr. Michelle L. Thompson-Iyamah, and evaluations revealed that respondent had an extremely low IQ of 53 (falling below the first percentile rank), was functioning at a second-grade level, and having seizures with no assurance of obtaining medical care. Dr. Iyamah testified that individuals with respondent's IQ score had extreme deficits in reasoning, decision-making, and understanding complexities, all of which were needed to parent a child. Due to respondent's intellectual delay, she was unlikely to benefit from DCFS services, according to Dr. Iyamah, and there was never a time when DCFS believed she could parent without supervision. In addition, although respondent consistently had supervised visits with J.T. while he was in DCFS's care and custody, she failed to maintain contact with her social worker at various points, did not show up for certain appointments, or participate in the parenting assessment. Respondent had never been employed, and instead, received social security benefits. In short, according to the evidence, not only was respondent unable to parent her child, she was in need of her own legal guardian. During the course of the proceedings, respondent's mother passed away from cancer.

¶ 8 On the State's petition, the court found J.T. was neglected based on an injurious environment, he lacked the necessary care, and respondent was unable to care for him due to her mental deficits. See 705 ILCS 405/2-3(1)(a), (b) (West 2016); 705 ILCS 405/2-4(1)(b) (West 2016). He was subsequently made a ward of the court. Following an evidentiary hearing reflecting many of the above-stated facts, the court found respondent unfit because she failed to

maintain a reasonable degree of interest, concern or responsibility for the child's welfare, failed to make reasonable efforts to correct the conditions which were the basis for the removal of her child within a specified period, and was unable to discharge her parental responsibilities because of her mental impairment, mental illness, intellectual disability, or developmental disability. See 750 ILCS 50/1 D(b), (m), (p) (West 2016); 705 ILCS 405/2-29 (West 2016). In so ruling, the court noted that it had reviewed the documents in the case, and heard the testimony of four witnesses, and it was clear that no services could enable respondent to gain parenting ability. The trial court stated, "And it may sound cruel but she couldn't take care of a goldfish. And the goldfish would die very quickly. And to believe that she could ever parent the child is beyond all comprehension."

¶ 9 The best interests hearing followed showing that J.T. was placed with a stable foster mother who had cared for J.T. since October 2016, about a month after he was born. It was noted that J.T. was in the early evaluation stages for autism, and his foster mother met his special needs of obtaining services three times per week. She testified that she wished to adopt J.T. because she loved him, and she was willing to maintain supervised visitation with respondent. Respondent was not present at the unfitness hearing or the best interests hearing, even though her counsel had notified her.

¶ 10 Based on the foregoing, the court terminated respondent's rights to her child and held it was in the child's best interests to appoint a guardian with the right to consent to adoption. Following the termination of her parental rights, respondent filed the present appeal.

¶ 11 ANALYSIS

¶ 12 Although parents have a fundamental due process right to the care, custody and control of their children, that right is subject to termination. *In re M.H.*, 196 Ill. 2d 356, 362-63 (2001). The

involuntary termination of parental rights involves a two-step process, wherein the State must first prove by clear and convincing evidence that the parent is "unfit," and if found unfit, the court must next consider whether it's in the child's best interests to terminate parental rights. 750 ILCS 50/1(D) (West 2016)); *In re J.B.*, 2014 IL App (1st) 140773, ¶ 49. If a single alleged ground for unfitness is proven, a parent's rights may be terminated, and this obviates the need to consider other unfitness grounds. *Id*.; *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). At the best interests stage, the State must prove by a preponderance of the evidence that termination is in the child's best interests. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). We will not disturb an unfitness or best interests finding unless it's contrary to the manifest weight of the evidence and the record clearly demonstrates that the opposite result was proper. *J.B.*, 2014 IL App (1st) 140773, ¶ 49; *T.A.*, 359 Ill. App. 3d at 961. We thus defer to the trial court's factual findings and credibility assessments, and will not reweigh the evidence anew on appeal. *J.B.*, 2014 IL App (1st) 140773, ¶ 49.

¶ 13 As set forth, respondent does not necessarily challenge the unfitness or best interests findings. Rather, respondent now argues the trial judge displayed unfair prejudice and a lack of partiality against her in conducting the bifurcated unfitness and best interests hearing that culminated in terminating her parental rights. She maintains the court thereby denied her due process.

¶ 14 An individual's right to an unbiased, open-minded trier of fact who renders judgment after trial, not before, is rooted in the constitutional guaranty of due process of law. *People v. Johnson*, 199 Ill. App. 3d 798, 806 (1990). Thus, prejudgment is the very antithesis of a fair trial. *Id*. Nonetheless, a trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *Eychaner v. Gross*, 202 Ill. 2d

228, 280 (2002). Thus, to show prejudice in this case, respondent would need to demonstrate that the judge's comments displayed a deep-seated favoritism or antagonism that would make fair judgment impossible. *Id*. *In re Estate of McHenry*, 2016 IL App (3d) 140913, ¶ 147. Not every comment or unguarded expression by a trial judge will support a claim of prejudice. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 29. As such, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. *Eychaner*, 202 Ill. 2d at 280.

¶ 15 Respondent points to various comments delineated below in support of her claim of judicial bias. In one instance, for example, the defense objected that the State's expert, Dr. Iyamah, was not also trained or certified in parenting assessments. Dr. Iyamah had performed a psychological evaluation of respondent; included within that evaluation was the parenting assessment. Dr. Iyamah testified, however, that due to respondent's low IQ, respondent could not even participate in the requisite parenting assessment, and certainly could not parent. When the State asked to supplement the record to establish Dr. Iyamah's expertise as to that assessment, the trial court refused, finding such a request superfluous:

> "Let's move on. We are fighting – you're shooting mosquitos with A-bombs. So Let's just move on. The doctor who's had years of experience has testified.
>
> And this is no criticism of the doctor who knows what she is testifying to. Your grandmother could testify that a person with an IQ of 50 probably would be incapable of parenting an infant. But maybe an 18 year old [*sic*] but not an infant."

In fact, the defense did not dispute Dr. Iyamah's expertise in psychology, and Dr. Iyamah testified that she had conducted hundreds of parenting assessments in her career. Dr. Iyamah also testified that in evaluating respondent, she had relied on an earlier report by a neuropsychologist,

an integrated assessment, and an interview with respondent's caseworker, in addition to an in-person meeting with respondent where she observed respondent with J.T. When the State then responded that it wished to establish its case by clear and convincing evidence, the judge said, "[i]t is beyond clear and convincing evidence. Would you --would anybody in this courtroom want a very seriously developmentally delayed person raising an infant? Come on. At some point common sense kicks in. Let's move on." Dr. Iyamah's testimony continued as to her evaluation and respondent's low IQ.

¶ 16 Later again, the defense objected to allowing Dr. Iyamah to testify that the alleged unfitness ground, P, was satisfied, and the court agreed that such a statutory finding was ultimately within the province of the judge. When the State contested that evidentiary issue, the court said Dr. Iyamah had testified very clearly that due to respondent's mental incapacity, she could not parent, and it was beyond a reasonable doubt. The judge added,

> "Forty years ago this woman [respondent] would be [in] [D]ixon or Lincoln's facility for the re[t]tar[d]ed. She wouldn't even be in the community. Now we can keep people like this in the community. But to say that anyone can pretend that she is capable *** of parenting at such a low IQ is -- the doctor testified to it; she is the expert. She testified to it. But anybody out in the street, you know, come on. Let's move on."

The State was then allowed to proceed in its case.

¶ 17 Following Dr. Iyamah's testimony, the trial court attempted to make a ruling on the alleged unfitness ground, P, that respondent was unable to discharge her parental responsibilities because of her mental impairment, mental illness, intellectual disability, or developmental disability. The judge found the mental deficit alone enough to find respondent unfit. However, at the parties urging and after some back and forth, the court continued to hear the State's evidence

on the additional alleged grounds for unfitness before delivering any ruling. The court warned the prosecutor,

> "You know, it's like you are beating a dead horse. This woman unfortunately, *** [God] created her in such a way that her IQ is exceedingly limited. She probably could not take care of a pet. And we are talking about a human being here, and we are spending hours trying to determine that this poor woman -- You know, you've made Ground P. You made it *** -- not by reasonable doubt, beyond that. *** Put your other witnesses on. But move it. You know there are other cases. To spend hours and hours and hours on a case of a poor woman that cannot parent, cannot take care of a goldfish."

The DCFS caseworker and his supervisor then testified for the State, as did a supervisor for respondent's service plans. The State rested, and the defense did not present any live testimony, but argued its case extensively.

¶ 18 Notably, respondent did not object at any time to the trial court's comments or via a posttrial motion, thus forfeiting her constitutional due process claim. See *In re J.V.*, 2018 IL App (1st) 171766, ¶ 193 (noting, in civil cases, constitutional issues not presented to the trial court are forfeited and cannot be raised for the first time on appeal); *In re William H.*, 407 Ill. App. 3d 858, 869-70 (2011) (even in child custody cases, a party must object at trial and file a written posttrial motion to preserve an alleged error for review). Respondent nevertheless maintains this is a matter of plain error.

¶ 19 While the plain error doctrine is most commonly applied to criminal proceedings, a parent's right to raise her biological child is a fundamental liberty interest, and rulings affecting that right may be reviewed for plain error. *In re Matter of Chance H.*, 2019 IL App (1st) 180053, ¶ 47. Nonetheless, in a case like the present, the plain error rule usually only concerns a

prejudicial error that was so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process. *In re M.S.*, 2018 IL App (1st) 172659, ¶ 27; see also *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 377 (1990) (same).

¶ 20 Here, while the trial judge's comments certainly lacked sensitivity and were not befitting of the professionalism we expect from the judiciary, we cannot say they amounted to error, let alone plain error. See *People v. Boston*, 2016 IL App (1st) 133497, ¶ 56 (noting, absent a showing of error, there can be no plain error). Contrary to the respondent's contention otherwise, the court did not "prejudge" the case. Rather, the court heard evidence from four of the prosecution's witnesses and reviewed the accompanying exhibits before concluding that the State had met its burden by clear and convincing evidence on all three unfitness grounds. See 750 ILCS 50/1 D(b), (m), (p) (West 2016). The court's comments merely reflect that the State could have rested its case based on the single unfitness ground, established by Dr. Iyamah's expert testimony and report, that respondent's mental disability prevented her from parenting. See 750 ILCS 50/1D(p) (West 2016) (requiring the State to offer competent evidence from a clinical psychologist that the respondent's mental impairment, mental illness, intellectual disability, or developmental disability prevents her from discharging her parental responsibilities beyond a reasonable time period). Indeed, Dr. Iyamah noted that due to respondent's intellectual delay, she was unlikely to benefit from DCFS services. Again, if a single alleged ground for unfitness is supported by clear and convincing evidence, a parent's rights may be terminated, and this obviates the need to consider other unfitness grounds. *J.B.*, 2014 IL App (1st) 140773, ¶ 49; *M.J.*, 314 Ill. App. 3d at 655.

¶ 21 The court essentially stated it was respondent's mental disability that precluded respondent from satisfying the alternate unfitness grounds of making progress in parenting or

correcting the conditions that brought the child into the system. In that sense, the court's comments were directed more at the State than respondent, a fact respondent acknowledges in her brief. Respondent does not challenge the underlying legal rulings that led to many of the comments, like the court's refusal to permit the State to present evidence of Dr. Iyamah's parenting assessment certification/training or that it's within the trial court's province to rule on statutory matters. Notably, the court also went on to permit the State to present evidence on the other alleged unfitness grounds.

¶ 22 The comments, while overly blunt, simply reflected a stark reality that respondent, who was functioning at a second-grade level and in need of her own legal guardian, could not adequately care for her child. Notably, respondent was not present at the hearings and so was immune from the insensitive remarks. The comments were grounded in the court's observations of respondent over three years and basic common sense. Indeed, a trial judge may consider the evidence presented at trial in the light of his own observations and experience in life. *McHenry*, 2016 IL App (3d) 140913, ¶ 148. The comments thus did not display a deep-seated favoritism or antagonism. See *Eychaner*, 202 Ill. 2d at 280; *McHenry*, 2016 IL App (3d) 140913, ¶ 147. And, even assuming some hostility towards respondent or the State for the presentation of the case, that was still insufficient to establish bias or partiality. See *Eychaner*, 202 Ill. 2d at 280. Respondent thus failed to fulfill her burden of establishing prejudice. See *McHenry*, 2016 IL App (3d) 140913, ¶ 147.

¶ 23 The cases on which respondent relies are legally distinguishable, insofar as they are criminal and do not address the matter of plain error, and also factually distinguishable. In one, the judge stated he would disbelieve a defense witness before she testified, thus demonstrating a preconceived attitude. See *People v. Ojeda*, 110 Ill. App. 2d 480, 485 (1969). In another, the

court commented repeatedly and sarcastically about the Chinese defendant's need for a translator, addressed the defense counsel inappropriately, and did not let one of the defense's witnesses fully testify. See *People v. Phuong*, 287 Ill. App. 3d 988, 995 (1997). As set forth, the judge in this case permitted respondent to fully engage in presenting her case. He made his comments only after the State's key witness, Dr. Iyamah, opined on respondent's mental disability, or in response to squabbles over evidentiary matters that respondent does not now contest.

¶ 24 Moreover, respondent, who offered scant contrary evidence and does not even challenge the unfitness or best interests findings on appeal, cannot establish that the outcome of the trial would have been any different. See *Gillespie*, 135 Ill. 2d at 378, 381 (applying harmless error). In support of her contrary claim, respondent points to one of the two exhibits she entered into evidence, the observational notes from an outside agency showing she had warm and caring interactions with her son and was able to do things like change his diaper during their weekly, two-hour supervised visits (from December 2016 to May 2018). However, these notes do not contradict the competent evidence and expert testimony showing she was unable to care for her own affairs or those of her son due to her intellectual limitations and unable to fulfill DCFS requirements. A two-hour period of supervision is vastly different from independent parenting. In addition, there was no indication that it would be feasible for respondent to parent with the aid of a guardian or other family member. A DCFS service plan stated that no relatives of respondent were available to meet J.T.'s special needs.

¶ 25 Likewise, the evidence showed that since his birth, J.T. had been placed in a loving home with a foster mother who was able to meet his special needs and wished to adopt him. See *In re M.R.*, 2020 IL App (1st) 191716, ¶ 27 (noting, the parent's interest in maintaining the parent-

child relationship must yield to the child's interest in a stable, loving home life). This was not a close case, and in the absence of prejudice, the plain error rule does not apply. See *J.V.*, 2018 IL App (1st) 171766, ¶ 198. Respondent forfeited her constitutional claim.

¶ 26 CONCLUSION

¶ 27 For the reasons stated, we affirm the decision of the trial court.

¶ 28 Affirmed.