2020 IL App (3d) 200088-U

Order filed July 7, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

In re D.K.-M.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
a Minor,	)	Will County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	Appeal Nos. 3-20-0088
Petitioner-Appellee,	)	3-20-0096
	)	Circuit No. 18-JA-60
v.	)	
	)	
Chadrell K., and Brittney K.-M.,	)	Honorable
	)	Paula A. Gomora,
Respondents-Appellants).	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Respondents forfeited their challenge to the admissibility of the State's evidence and plain error review is not appropriate because respondents invited the errors. Trial court did not err in finding respondents unfit and that it was in the minor's best interest that their parental rights be terminated.

¶ 2 The trial court found respondent parents Chadrell K. and Brittney K.-M. unfit and that it was in the best interests of their child, D.K.-M. that their parental rights be terminated. They both appealed. We affirm.

¶ 3 FACTS

¶ 4 The State filed juvenile petitions against respondents Chadrell K. and Brittney K.-M. in April 2018, alleging they subjected their daughter, D.K.-M., born April 4, 2018, to an injurious environment. The petition alleged that Brittney had another child removed from her care, that she was not compliant with her treatment for mental illness and that both parents lacked a stable residence. Chadrell and Brittney stipulated to the allegations. The court entered a shelter care order, appointed a court appointed special assistant (CASA) and granted the parents visitation twice a week for two hours. The court ordered a deoxyribonucleic acid (DNA) test in order to establish Chadrell's paternity.

¶ 5 A service plan dated July 24, 2018, required both parents to verify their monthly income, participate in a domestic violence evaluation, secure and retain adequate and appropriate housing, attend parenting class, participate in weekly individual therapy, take a psychological evaluation and undergo random drug and alcohol screenings.

¶ 6 An adjudicatory hearing took place on July 31, 2018, and the trial court found D.K.-M. neglected based on an injurious environment. The court found both parents had mental health issues and were not compliant with their treatment; they lived together in a homeless shelter; and Brittney suffered from schizophrenia. It noted that Brittney behaved too aggressively to complete the integrated assessment and Chadrell was unable to understand it. The court ordered psychological exams to be completed and found the parents had been inconsistent in their visitation. The court also found that DNA testing revealed Chadrell to be the father of D.K.-M.

¶ 7 At the dispositional hearing on August 30, 2018, the State submitted into evidence, without objection, a dispositional report, service plan and integrated assessment. The dispositional report dated August 16, 2018, included the service tasks for Chadrell and Brittney: undergo psychological and mental health evaluations and a domestic violence assessment, participate in parenting education classes and parenting coaching, secure and retain adequate and appropriate housing and income, and engage in individual counseling. In addition, Brittney was ordered to complete random drug screens. Brittney was also ordered to take her medication and become medication compliant. The integrated assessment, dated August 30, 2018, stated that because Chadrell had arrived late for the interview, little information was obtained, and a complete assessment needed to be conducted. Chadrell described his relationship with Brittney as "pretty good" but acknowledged that she would become physically violent with him at times. He had a criminal history and a history of alcohol abuse. The reporter assessed that Chadrell was inconsistent in his ability to meet D.K.-M.'s needs or nurture her development, and expressed concern regarding Chadrell's mental health issues and criminal history. He noted Chadrell was unemployed, homeless and lacking financial stability or support system. Further assessment of Chadrell's mental health functioning and history was needed.

¶ 8 Brittney was uncooperative during her assessment and a further assessment was needed. Brittney was homeless, unemployed and had a criminal history. She had been indicated twice before for environmental neglect regarding her older daughter. The reporter concluded that Brittney's ability to meet D.K.-M.'s needs was inconsistent and that she did not appear able to recognize the severity of the problems or take responsibility due to her mental health issues. She was unable to care for her own basic hygiene and daily living needs and lacked a support structure.

The trial court found Chadrell and Brittney unfit and that it was in the best interest of D.K.-M. to be made a ward of the court.

¶ 9 A service plan dated October 8, 2018, rated both parents as making unsatisfactory progress. A permanency report dated November 19, 2018, rated Chadrell's and Brittney's progress as unsatisfactory and their efforts as unreasonable. A permanency report dated April 29, 2019, indicated neither parent had made any progress on their service tasks. Following a permanency review hearing, the trial court found neither Chadrell nor Brittney had made reasonable progress or shown reasonable efforts.

¶ 10 The State filed its petition to terminate Chadrell's and Brittney's parental rights on June 4, 2019. The bases for the termination were the parents' failure to maintain a reasonable degree of interest, concern or responsibility as to D.K.-M.'s welfare (750 ILCS 50/1D(b) (West 2018)), to make reasonable efforts to correct the conditions that lead to the minor's removal for the nine-month time period between July 31, 2018, and April 30, 2019 (*Id.* § 1D(m)(i)), and to make reasonable progress toward the return of D.K.-M. within nine months after the neglect adjudication, being July 31, 2018, through April 30, 2019. (*Id.* § 1D(m)(ii)).

¶ 11 A hearing on the termination petition took place on January 28, 2020. Denise Beal, the caseworker since February 1, 2019, testified. She had reviewed the file from July 31, 2018, to April 30, 2019. The parents were inconsistent in their visitation. They completed two-thirds of their mental health assessments and had not engaged in any other services. Beal identified the State's exhibit 3 as a service plan dated April 11, 2019. It was entered into evidence without objection. Both parents were rated unsatisfactory with their service tasks. An October 8, 2018, service plan report was identified by Beal and entered into evidence as State's exhibit No. 4 without objection. Both parents were rated unsatisfactory in completing their service tasks. The

trial court found the parents unfit for failing to maintain a reasonable degree of interest, concern or responsibility as to D.K.-M.'s welfare; failing to make reasonable efforts to correct the conditions that were the basis for the removal of D.K.-M. during the time period of July 31, 2018, through April 30, 2019, and failing to make reasonable progress toward D.K.-M.'s return home within nine months after the neglect adjudication, being July 31, 2018, through April 30, 2019.

¶ 12 A best interest hearing immediately followed. Beal again testified. D.K.-M. had been in traditional foster care with the same family since her removal. Beal visited the foster home monthly. It was a three-bedroom house, with two pets and no other children. The foster parents provided for D.K.-M.'s needs. She suffered from an eye condition and the foster parents were attentive in caring for it. They took D.K-M. to all her medical appointments. Both foster parents worked outside the home and D.K.-M. began attending day care after the foster mother returned to work following family leave. Beal described the foster parents as nurturing. They played with, fed, read to, and established a loving bond with D.K.-M. They wished to adopt her. In Beal's opinion, it was in D.K.-M.'s best interest to be adopted by her foster parents. The trial court found that it was in the best interests of D.K.-M. to terminate Chadrell's and Brittney's parental rights. They each appealed and this court consolidated their cases.

¶ 13 ANALYSIS

¶ 14 Chadrell and Brittney raise three issues on appeal: whether the trial court based its unfitness finding on improper evidence, whether the unfitness finding was against the manifest weight of the evidence, and whether the trial court erred in finding that it was in D.K.-M.'s best interest that Chadrell's and Brittney's parental rights be terminated.

¶ 15 We begin with Chadrell and Brittney's challenge to the trial court's evidentiary rulings. They argue the trial court erred in admitting State's exhibits No. 3 and No. 4, the service plans,

without a proper foundation and in allowing the caseworker to testify regarding the service plans about which she lacked firsthand knowledge. We note that neither exhibit is included in the record but both service plans that constitute the exhibits are part of the record.

¶ 16 Business records are admissible as exceptions to the hearsay rule where "the document was made in the regular course of the business of the *** agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter." 705 ILCS 405/2-18(4)(a) (West 2018). The documents may also be admitted through certification. *Id.* DCFS service plans are admissible as business records when a proper foundation is laid. *In re Kenneth J.*, 352 Ill. App. 3d 967, 983 (2004). This court reviews the admission of evidence for an abuse of discretion. *In re J.Y.*, 2011 IL App (3d) 100727, ¶ 13.

¶ 17 Chadrell and Brittney argue that *In re M.H.*, 2020 IL App (3d) 190731, controls and establishes that the admission of service plans and the caseworker's testimony regarding them were improperly admitted. In that case, this court found that where the State fails to present information regarding the production of the service plans and the caseworker does not testify to a familiarity with the procedures for creating the service plans, they are not admissible. *Id.* ¶ 18. The State submits that Chadrell and Brittney have waived any challenge to the admission of the service plans and Beal's testimony by forfeiting the issue, and as invited error. We agree with the State.

¶ 18 Beal, the caseworker, testified that both exhibits No. 3 and No. 4 were true and accurate copies of the April 11, 2019, and October 8, 2018, service plans, and the State sought their admission. The following colloquy then took place regarding the admission of the exhibit No. 3.

"THE COURT: Any objection?

[BRITTNEY'S COUNSEL]: No objection.

[CHADRELL'S COUNSEL]: No objection.

THE COURT: Admitted."

A similar dialogue ensued regarding exhibit No. 4.

¶ 19 Because the service plans were admitted with an express "no objection," we find Chadrell and Brittney have forfeited the issue on appeal. See *Calabrese v. Benitez*, 2015 IL App (3d) 130827, ¶ 18 (finding defendant affirmatively abandoned objection raised in motion *in limine* by stating "no objection" to admission of evidence); *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 52 (finding father forfeited any argument his medical records were improperly admitted where counsel stated "no objection" at the time the documents were offered); *Stricklin v. Becan*, 293 Ill. App. 3d 886, 889 (1997) (finding plaintiff's claim that affidavit was improperly admitted waived where counsel indicated "no objection" when it was admitted).

¶ 20 Chadrell and Brittney request this court review the issue under the plain error doctrine. The doctrine allows review of unpreserved errors when (1) the evidence is closely balanced and the error threatens to tip the scales of justice against the respondent, or (2) the error was so serious that it affected the fairness of the trial and challenged the integrity of the justice system. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The parents point to this court's decision in *M.H.*, as support that this court should employ plain error review. See *M.H.*, 2020 IL App (3d) 190731, ¶ 15 (citing *In re L.B.*, 2015 IL App (3d) 150023, ¶ 11) (finding because termination of parental rights affects fundamental rights, second-prong plain error review appropriate).

¶ 21 *M.H.* does not aid Brittney and Chadrell. In that case, the parents objected to the lack of foundation for both the service plans on which the caseworker's testimony relied and to her testimony. *Id.* ¶ 7. The plans were admitted at a subsequent hearing over the parents' objection. *Id.* ¶ 11. In contrast here, counsel for both parents affirmatively accepted admission of the service plans and Beal's testimony, thus inviting the error. See *Fleming v. Moswin*, 2012 IL App (1st)

103475-B, ¶ 92 ("when a party 'procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, she cannot contest the admission on appeal' ") (quoting *People v. Bush*, 214 Ill. 2d 318, 332 (2005)); *Charles W.*, 2014 IL App (1st) 131281, ¶ 52 (where counsel has no objection to the admission of records, respondent forfeited any argument that they were improperly admitted). Accordingly, we find Chadrell and Brittney have forfeited these issues on appeal by failing to preserve the alleged errors in the trial court and plain error review is precluded by the parents' invited error.

¶ 22 We next consider Chadrell and Brittney's argument that the court erred in finding them unfit. Chadrell maintains that he made reasonable progress and reasonable efforts and he expressed concern for D.K.-M.'s welfare. Brittney maintains that the evidence does not support the court's finding that she was unfit.

¶ 23 A parent may be found unfit under the following grounds: failing to maintain a reasonable degree of interest, concern or responsibility for the child's welfare; failing to make reasonable efforts to correct the conditions warranting the child's removal; and failing to make reasonable progress toward the return home of the child. 750 ILCS 50/1D(b), (m)(i), (m)(ii) (West 2018). When the State alleges more than one ground of unfitness, a finding that the State has proved any allegation is sufficient to sustain an unfitness finding. *In re D.H.*, 323 Ill. App. 3d 1, 9 (2001). It is the State's burden to prove parental unfitness by clear and convincing evidence. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. This court will not reverse a trial court's finding of unfitness unless it was against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001).

¶ 24 Under the first unfitness ground, a parent may be unfit for failing to maintain a reasonable degree of interest, concern or responsibility for the welfare of the child. 750 ILCS 50/1D(b) (West 2018). Any one of the three elements may form a basis for unfitness. *B'yata I.*, 2014 IL App (2d)

130558-B, ¶ 31. To determine unfitness under this ground, the court looks at the efforts by the parent to visit and maintain contact with the child. *Id.* Other factors include whether the parent inquired about the child's welfare or whether he or she completed the service plans. *Id.* The court focuses on the efforts of the parent, not whether he or she succeeded, examining "the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *Id.* Circumstances may include difficulty in obtaining transportation, poverty, conduct by others that hindered visitation, and the need to resolve the parent's own life issues and not because of indifference to the child. *In re Adoption of Syck*, 138 Ill. 2d 255, 278-79 (1990). Where it is impractical for the parent to visit, he or she may express interest, concern or responsibility by calling the child or sending letters or gifts. *Id.* at 279. The parent's interest, concern or responsibility must be objectively reasonable. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31.

¶ 25 In finding D.K.-M.'s parents unfit under this first ground, the trial court stated that it relied on the caseworker's testimony. A review of Beal's testimony establishes that both parents were inconsistent in visiting D.K.-M., missing approximately 50% of the possible visits. Chadrell and Brittney were provided bus passes so they could attend visitation and they were apparently able to navigate the local public transportation system to some degree but still failed to show up. Chadrell made monthly calls to check on D.K.-M. Brittney did not have a phone and made no contact. They did not send letters or otherwise try to stay in contact with D.K.-M. and inquire about her welfare. They sent her a stuffed animal. They did not attend her medical appointments or well-child exams. Chadrell attempted to acquire housing in Wisconsin despite admonitions from the caseworker that it would be problematic to his case if he moved. We acknowledge both Chadrell and Brittney labor under difficult circumstances. However, they have failed to demonstrate a reasonable degree of

interest, concern or responsibility for D.K.-M.'s welfare. We find the evidence supports the trial court's unfitness finding on this ground.

¶ 26 The second and third grounds for unfitness were Chadrell's and Brittney's failure to make reasonable efforts to correct the conditions that resulted in D.K.-M.'s removal from their care and their failure to make reasonable progress toward her return home.

¶ 27 Reasonable efforts focus on the amount of effort that is reasonable for the parent and are based on a subjective standard. *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000). "[R]easonable efforts relate to the much narrower goal of correcting the conditions that were the basis for the removal of the child from the parent." *Id.* Reasonable progress is an objective standard and focuses on the "amount of progress toward the goal of reunification one can reasonably expect from the parent under the circumstances." *Id.* at 564. The parent's reasonable progress toward the child's return home is considered and requires "measurable or demonstrable movement toward the goal of reunification." *Id.* at 565.

¶ 28 In finding both Chadrell and Brittney unfit under the reasonable efforts and reasonable progress grounds, the court stated it relied on exhibits No. 3 and No. 4 and Beal's testimony. The service plans reveal the following. Exhibit No. 4, the service plan dated October 8, 2018, indicated that D.K.-M. was brought into care because Brittney had a history of mental illness with violence, another child had been removed from her care, and she was not compliant with her medication. Chadrell had issues with alcohol. During the applicable time period, Chadrell and Brittney lost their social security disability income because they failed to complete the paperwork. They were "stranded" in Wisconsin during the month of September with no means to return to Illinois. They remained homeless and without income. Chadrell and Brittney began individual counseling in October 2018. They each attended two sessions of individual therapy which consisted of the mental

health assessment and did not complete the assessment or return for additional therapy. Their appointments for a psychological evaluation had to be rescheduled because Chadrell and Brittney were in Wisconsin. Both parents were rated unsatisfactory for failing to make substantial progress in services.

¶ 29 Exhibit No. 3, the April 11, 2019, service plan stated the following. Visitation was reduced because Chadrell and Brittney were inconsistent in attending. Neither parent complied with the drug drop requirement due to their unstable housing and the caseworker's inability to contact them. They did not complete a mental health assessment, psychological or domestic violence evaluation, or parenting class. They failed to provide proof of income or obtain housing and did not comply with the drug drop requirements. They were both arrested in February in Wisconsin for disorderly conduct. Brittney was also charged with assault of a police officer. Chadrell showed improvement during visitation for the last two months of the relevant time period. Chadrell and Brittney both failed to make reasonable progress on their service tasks.

¶ 30 Beal's testimony presented the following. Both Chadrell and Brittney were inconsistent in their visitation. In July 2018, they attended six out of eight visits, in August 2018, they attended three out of eight visits; they did not visit at all in September 2018; in October, November and December, they visited two out of eight times. No information was provided for the months of January through March. In April 2019, they visited once and then Brittney was incarcerated. Both parents partially completed their mental health assessment but did not complete it or continue with individual therapy. Neither participated in a psychological examination during the relevant time period. Chadrell, however, completed an evaluation in October 2019, which revealed a diagnosis of schizophrenia. Neither Chadrell nor Brittney attended parenting classes, worked with a parenting coach, or participated in domestic violence classes. They remained homeless, although

Chadrell asked for assistance in filling out paperwork for housing in Wisconsin. Chadrell and Brittney had no income but they were attempting to have their SSDI benefits reinstated.

¶ 31 The service plans and Beal's testimony demonstrate that Chadrell and Brittney failed to make reasonable efforts or reasonable progress even considering their respective mental health issues. They did not complete any service tasks and were no closer to having D.K.-M. return home than when she was removed from their care. Nor had they taken any steps to correct the conditions that resulted in D.K.-M.'s removal. They remained homeless and without income. Their mental illnesses were untreated. They had criminal histories, although their homelessness and mental illness accounted, in part, for their criminal issues, including their arrest during the relevant time period and Brittney's subsequent incarceration. Visitation began on a twice-a-week schedule, which was later reduced because Chadrell and Brittney were inconsistent in attending. Chadrell and Brittney missed approximately 50% of their visits with D.K.-M. When they did visit, Brittney was detached and Chadrell did not focus on D.K.-M., although he improved his visitation skills during the last two months of the relevant time period. Visitation remained supervised throughout the pendency of the proceedings indicating their parenting skills continued to be inadequate.

¶ 32 We acknowledge both Chadrell and Brittney had multiple hurdles in sustaining their daily existence and in working to remain in D.K.-M.'s life. We consider the reasonableness of their efforts and progress in light of their circumstances, including their untreated mental illness. Nevertheless, despite their circumstances, Brittney and Chadrell were able to navigate back and forth from Illinois to Wisconsin yet they did not display any initiative to regularly see their daughter or otherwise maintain contact. However, during the relevant nine-month period, Brittney made no progress on any service tasks and Chadrell made minimal attempts to inquire about D.K.-M. and improved in his skills during visitation but made no other progress. Although they both

acknowledged their mental illness, neither Chadrell nor Brittney sought treatment or took medication to treat it despite knowing it was required to regain custody of their daughter. We find the trial court did not err in finding Chadrell and Brittney unfit for failing to make reasonable efforts and reasonable progress.

¶ 33 The last issue is whether the trial court erred when it found it was in the best interest of D.K.-M. to terminate the parental rights of Chadrell and Brittney. Chadrell argues the trial court's finding was not supported by the evidence, that the court failed to hear testimony from the foster parents, and that the court failed to consider all the statutory factors. Brittney does not present an argument on this issue.

¶ 34 When determining whether a child's best interests would be served by terminating her parents' rights, the trial court considers the following factors: (a) the child's physical safety and welfare, including food, shelter, health, and clothing; (b) development of the child's identity; (c) the background and ties of the child, including familial, cultural and religious; (d) the child's sense of attachment; (e) the wishes and long-term goals of the child; (f) the community ties of the child, including church, school and friends; (g) the child's need for permanence, including stability and continuity of relationships with parental figures, siblings and other relatives; (h) the uniqueness of every child and family; (i) risks attendant to substitute care; and (j) the preferences of the people available to care for the child. 705 ILCS 405/1-3(4.05) (West 2018).

¶ 35 At the best interest stage, the parent's interest in maintaining the parent-child relationship yields to the child's interest in a stable and loving home. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State must prove by a preponderance of the evidence that it is in the child's best interest to terminate the rights of his or her parent. *In re B.B.*, 386 Ill. App. 3d 686, 699 (2008). We will not reverse a trial court's determination regarding the child's best interest unless it was against the

manifest weight of the evidence. *In re M.C.*, 2018 IL App (4th) 180144, ¶ 35. The length and nature of the child's relationship with her caregivers and the effect a change of placement would have on her well-being are also factors the court may consider. *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19.

¶ 36 We first address Chadrell's challenge to the lack of testimony from the foster parents. There is no requirement that the foster parents must testify at the best interest hearing. *In re K.P.*, 2020 IL App (3d) 190709, ¶¶ 44-45 (finding State established it was in child's best interest that parental rights be terminated despite lack of testimony from caseworker or child's caregivers); *In re R.L.*, 352 Ill. App. 3d 985, 994-95 (2004) (court finding termination of parental rights in child's best interest where only testimony at best interest hearing came from caseworker). But see *In re Yolaine J.*, 274 Ill. App. 3d 208, 216 (1995) (finding lack of testimony from foster parents raised questions about stability of foster home but affirming best interest finding). We similarly reject his claim that the trial court failed to account for all the best interest factors. The court is not required to explicitly reference each best interest factor. See *In re M.W.*, 2019 IL App (1st) 191002, ¶ 61 (citing *Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19).

¶ 37 We turn now to the court's best interest finding. The service plans and Beal's testimony established that the foster parents were providing for D.K.-M.'s physical safety and welfare. She lived with them and two pets in a three-bedroom house in a safe, stable and nurturing environment. The foster parents hugged and kissed her. D.K.-M. was bonded with her foster parents, happy and comfortable. The foster parents took her to her medical appointments and were ensuring that she was treated for an eye condition. D.K.-M. was a part of the foster parents' extended families. D.K.-M. attended day care after her foster mother returned to work after family leave and was well adjusted to the routine. She was developmentally on target. D.K.-M. had been in the same foster

home since the initial placement shortly after her birth and they wanted to adopt her. We find the trial court did not err when it found it was in D.K.-M.'s best interest that Chadrell's and Brittney's parental rights be terminated.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 40 Affirmed.