2013 IL App (4th) 130376-U

NOS. 4-13-0376, 4-13-0377, 4-13-0379, 4-13-0380 cons.

FILED
September 26, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-13-0376)	)	No. 11JA119
COURTNEY LEE,	)	
Respondent-Appellant.	)	
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In re: L.L., a Minor,	)	No. 11JA119
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-13-0377)	)	
DESMOND LEE,	)	
Respondent-Appellant.	)	
----------	)	
In re: K.L., a Minor,	)	No. 11JA118
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-13-0379)	)	
DESMOND LEE,	)	
Respondent-Appellant.	)	
----------	)	
In re: K.L., a Minor,	)	No. 11JA118
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-13-0380)	)	Honorable
COURTNEY LEE,	)	Thomas E. Little,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found respondent parents unfit and terminated their

parental rights.

¶ 2 Respondent parents, Courtney and Desmond Lee, appeal the orders finding them unfit parents of L.L. (born June 9, 2009) and K.L. (born July 8, 2010) and terminating their parental rights. Respondents contend the trial court's rulings are against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2011, the State filed juvenile petitions alleging L.L. and K.L. were neglected minors. The State alleged the children were neglected because they were not receiving the proper care necessary for their well-being (705 ILCS 405/2-3(1)(a) (West 2010)) and the children's environment was injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2010)). The State asserted respondents had mental-health issues, K.L. had been diagnosed with nonorganic failure to thrive, and, after K.L. returned home with her parents, she received the same diagnosis. The State further asserted Courtney admitted marijuana use and slept "most of the time," and Desmond, the main caretaker, missed numerous medical appointments and had not engaged in family services.

¶ 5 In January 2012, the trial court entered adjudicatory orders finding both children neglected on the ground the children suffered from a lack of support, education, and remedial care under section 2-3(1)(a) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(a) (West 2010)). The court based its decision on the fact K.L. had twice been diagnosed with nonorganic failure to thrive, Courtney admitted substance abuse, and both parents failed to take the children to medical appointments.

¶ 6 In December 2012, the State filed motions seeking a finding of unfitness and the

termination of respondents' parental rights to L.L. and K.L. The State made the following allegations of parental unfitness to both parents: (1) respondents failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) respondents failed to make reasonable efforts to correct the conditions that were the basis for L.L.'s and K.L.'s removal from them (750 ILCS 50/1(D)(m)(i) (West 2010)); and (3) respondents failed to make reasonable progress toward the children's return within nine months of the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 7 The fitness hearing was held in February 2013. At the hearing, the trial court specified the relevant nine-month period spanned January 18, 2012, through October 18, 2012.

¶ 8 Jennifer Zerfowski, a mental-health therapist at Lutheran Child and Family Services (LCFS), testified she was Courtney's therapist. Courtney was referred to Zerfowski on December 5, 2012. Her case was closed on February 4, 2013. Courtney attended two sessions. After she missed four appointments, her case was closed.

¶ 9 According to Zerfowski, Courtney had been referred to another therapist, Marsha Nolte, before her sessions with Zerfowski. That referral began in December 2011. The file indicated Courtney attended six counseling sessions with Nolte. Her case was closed with Nolte in July 2012 due to several missed appointments. Courtney did not attend counseling sessions between July 2012 and December 2012, when she began sessions with Zerfowski.

¶ 10 Melanie Phillips, a case aide at LCFS, testified she supervised the visits of respondents with L.L. and K.L. beginning in the spring of 2012. Early in those visits, Desmond would attend and participate; Courtney would not. Later, however, Courtney began attending every visit. Desmond had "good interaction" with the children and "good bonding."

¶ 11 Phillips testified neither parent stayed for an entire two-hour visit. Each time, respondents would leave approximately 30 minutes early to catch a bus. Respondents could have waited to catch a later bus. Phillips believed buses ran every 45 minutes. Respondents reported wanting to catch the earlier bus so they would not have to ride with high school students, who would have just gotten out of school. Apparently an attempt had been made to schedule the visits earlier to avoid that situation, but Phillips noted even though visits had been earlier in the morning, respondents still left early. Phillips could not remember the reason the respondents gave for leaving the morning visits early.

¶ 12 According to Phillips, Desmond was the more involved parent. During the earlier visits, Courtney sat on the couch and directed the children from there. Desmond was more hands-on. Courtney, during the later visits in the fall of 2012 or "before Christmas," "was doing better."

¶ 13 Tara Wickline, the foster care caseworker at LCFS, testified she was the primary caseworker for the Lee family throughout the case. According to Wickline, service-plan goals for respondents were to address parenting and domestic-violence and mental-health issues. Respondents were recommended to attend individual counseling and attend all medical appointments due to the medical-neglect issues. Courtney also had the goal of addressing her anger.

¶ 14 Wickline testified respondents had been referred to Heritage Behavioral Health Center (Heritage) for substance-abuse and mental-health assessments. At the time of the referrals, respondents were already clients at Heritage. Desmond had a substance-abuse screen before the case opened. It was determined he did not need further treatment. Courtney, in

January 2012, completed her assessment but failed to make an appointment to get her initial treatment plan. Courtney was referred to Heritage again for a substance-abuse assessment in July 2012 and in January 2013. The initial treatment plan recommended treatment for marijuana addiction. Courtney, in the first five or six months, missed all of her drug screenings. Since the petition was filed, Courtney "dropped *** consistently and negatively."

¶ 15 Regarding parenting, Wickline testified Desmond had been very consistent at the beginning. In the fall of 2012, however, Wickline received a letter indicating the parenting instructor had not heard from Desmond and the instructor planned to reengage him. Courtney attended only 3 of the 11 parenting classes. Courtney was unsuccessfully discharged from the parenting program.

¶ 16 According to Wickline, Desmond did not participate in individual counseling or domestic-violence services. Courtney began individual counseling but was twice unsuccessfully discharged. A domestic-violence altercation occurred at respondents' residence in the summer of 2012.

¶ 17 Wickline testified Desmond was consistent in obtaining mental-health services during the case. Courtney was consistent in the beginning. However, she lost access to her medical card when her children entered DCFS's care and had difficulty getting her prescribed medication. LCFS gave Courtney three or four different medical-assistance numbers, but Courtney continued to have difficulty obtaining her medicines. Courtney was not on her medication but needed to be.

¶ 18 Respondents were both eager to attend the children's medical appointments at the beginning of the case. LCFS stopped allowing respondents to attend those appointments after

Courtney became "volatile and verbally abusive" toward a foster parent.

¶ 19 Wickline testified Courtney, during her mental-health assessment, stated she had been diagnosed with intermittent explosive disorder. When Courtney was not on her medication she would have "a very volatile anger outburst."

¶ 20 Wickline opined the children could not be returned home within six months, stating they had "a ways" to go. Respondents were both rated unsatisfactory on the service plans.

¶ 21 On cross-examination, Wickline, having been shown a certificate for the completion of the parenting classes, testified Desmond completed the parenting classes.

¶ 22 Regarding Courtney's medication, Wickline explained Courtney was dropped from mental-health treatment at Heritage. Courtney had individual counseling set up for her, but she could not get her medication from counseling. Courtney could get her medication prescribed for her, but she could not pay for it through the medical card. LCFS then provided her with three or four "different numbers" of community resources to assist with the medications. Courtney stated "a couple of them had paid for some of them," but Courtney reported she could not find the resources to pay for one of the medications. "It was a larger amount."

¶ 23 Wickline testified Desmond's parenting was rated satisfactory and he was compliant with mental health. Regarding the medical appointments, Wickline rated Desmond unsatisfactory. When K.L. got sick, Desmond was provided a time when he could go but Desmond decided not to visit K.L. Desmond stated he could not "see his daughter like that."

¶ 24 On redirect examination, Wickline described K.L.'s illness. Just after K.L. entered DCFS care, she was hospitalized for methicillin-resistant Staphylococcus aureus (MRSA) and a collapsed lung. After she healed, the parents could not understand why K.L.

could not be returned to them. During the conversations with respondents on what was needed to protect K.L. in the future, Desmond was receptive, but Courtney was combative. When she entered DCFS care, K.L. was "very, very, very, not nourished." After being in DCFS care, K.L. doubled her weight in two months.

¶ 25 The State rested.

¶ 26 Respondents called Jason Portis, a case manager at Heritage, to testify. He was involved in requesting referrals. He requested the July 2012 and January 2013 referrals for Courtney about which Wickline testified. Portis testified he did not receive referrals, but he asked about them. Portis had not seen a referral related to Courtney.

¶ 27 Portis testified he assisted Courtney in her efforts to get her medications. The medications were too expensive for Courtney. Resources were limited. Portis was limited to five hours per year in working with Courtney. Portis took Courtney to a doctor's appointment and they tried to find the cheapest versions of the medications to help her.

¶ 28 On cross-examination, Portis testified he could not speak to whether Heritage received the initial referrals. He was "speaking more on for her what she could have gotten a couple of weeks ago when I called and requested a referral be sent."

¶ 29 Desmond testified he was told he needed to attend domestic-violence classes. He was also told to contact Wickline or the individual who taught the classes. Desmond spoke with the instructor, "Jim" from LCFS, and was told there was not a referral. Over four months, no referral letter had been sent. The instructor told Desmond he would contact him if he received the referral. Desmond tried another time, but the instructor told him he had not received the referral. Desmond further testified he called Wickline multiple times. Wickline did not inform Desmond

he needed to attend the domestic-violence classes.

¶ 30 On cross-examination, Desmond testified he called Wickline about the matter but did not leave a message. Desmond did not speak to her on the issue.

¶ 31 Courtney next testified. Courtney attempted to explain why she did not return to Heritage after her assessment. Courtney was told by "Stacie" she needed to participate in outpatient drug treatment for eight weeks and Stacie said Courtney did not have the medical benefits to pay for it. Stacie said either Courtney or DCFS had to pay for the treatment. Courtney further testified to the following:

> "The second time she, when I had talked to her about putting in a referral, she had said that they would pay for it, but I have called Heritage to see and I had signed a referral. The lady at the front desk, she had told me, she has told me [Wickline] wanted me to sign a piece of paper for my referral and I signed it and then I called for three weeks and they kept telling me that it never got there. They transferred me to like three different people and they said they had never got [*sic*] it."

¶ 32 Courtney also explained the argument at K.L.'s medical appointment. Courtney stated she and the foster mother were talking. At some point, the foster mother changed K.L.'s diaper. The foster mother said K.L. had diaper rash. Courtney stated she only told the foster mother the hospital said K.L.'s diaper needed to be changed more often due to her sensitive skin. Courtney stated she did not say the things she was accused of saying. Courtney admitted being upset with the doctor, but denied "cuss[ing] out the doctor." Courtney did use a curse word, but

she wanted to know what was wrong with K.L. Courtney said she had been taking her to the doctor's office and to the hospital and telling everyone about K.L.'s hands and feet turning blue, but no one wanted to believe her statements that K.L. was sick.

¶ 33 The State called Wickline in rebuttal. Wickline testified she documented her referrals. Wickline stated Desmond was initially referred on December 2, 2011. After six months, referrals become invalid. He was referred again when he showed he was interested in attending the classes.

¶ 34 Wickline testified regarding the referral process for domestic-violence: "I refer them. We give information of why he is being referred. It goes to the clinical staffing person and then it goes to the actual therapist." No formal letter was sent. Instead, "the service provider and [Wickline] would sit down prior." Each new case would be staffed. According to Wickline, "Then, they are officially open at that point and they are given contact information, both parents and the service providers are given contact information about those sites." The referrals occurred at the child and family team meetings, which took place approximately every three months. Desmond attended each of these meetings. The referral would not have been made at that meeting, but Desmond would have been told about it at the meeting. Desmond was referred to Jim Strauss with LCFS.

¶ 35 Wickline testified Courtney was referred to Heritage. The procedures regarding Heritage were different. The referral was sent through a gatekeeper at DCFS. The gatekeeper then approved it and forwarded it. Wickline received a confirmation from the gatekeeper showing it was sent. When the gatekeeper approved the referral, DCFS agreed to pay for it.

¶ 36 On cross-examination, Wickline testified Strauss would have known Desmond

had been referred to him. At the last staffing, Strauss indicated he had not heard from Desmond. Wickline stated Desmond was told several times at the family team meetings to contact Strauss.

¶ 37 In March 2013, the trial court entered an order finding both parents unfit on the grounds alleged in the motions to terminate their parental rights. In support, the court found Wickline's testimony credible. The court emphasized Wickline's opinion the children could not be returned home within the next six months as the parents had a "long way to go."

¶ 38 In April 2013, the best-interests hearing was held. Wickline testified both children were "doing really well" in their foster home. The foster home was not a relative placement. It was a potential adoptive placement. The children had been in this foster home since December 2011. Wickline recommended parental rights be terminated and the children's goal be changed to adoption. Wickline opined, if respondents started on services that day, they would not be ready for the children to return home in six or seven months.

¶ 39 On cross-examination, Wickline testified Desmond continued to receive mental-health treatment at Heritage and had not missed any appointments. He completed his parenting classes. Wickline stated, despite such progress, Desmond had failed to attend individual counseling on domestic-violence issues for an entire year. Wickline stated, although Desmond completed parenting classes, he failed to show appropriate parenting skills during visits. Wickline testified domestic-violence classes take 17 weeks to complete.

¶ 40 Wickline testified K.L. was thriving. L.L. exhibited some negative behaviors. L.L. would get upset very easily and "bang his head." In the few months before her testimony, L.L.'s behaviors had subsided. His behaviors no longer occurred daily, dwindling to maybe once a week or once every two weeks. L.L.'s day care and preschool noticed a change in L.L.'s

behavior after visitation was decreased.

¶ 41 According to Wickline, the children were well bonded with Desmond. Because Courtney "was kind of up and down with her visitation schedule until the unfitness hearing," it was hard to gauge the bond she shared with her children. Courtney attended "maybe" four consecutive months of visitation, and the visits occurred once each month.

¶ 42 Wickline testified K.L. was "very bonded to both of" her foster parents. L.L. tended to be more bonded toward his foster father. The children called them "mom" and "dad." L.L.'s and K.L.'s educational needs were being met in the foster home. In addition, during the first four to five months after the children were removed from respondents' care, K.L. "was fairly sick." K.L. spent some time in the hospital. During this time, her foster mother took medical leave from work and stayed by her bedside. The foster mother reduced her workload from full-time to part-time to be with the children.

¶ 43 On cross-examination, Wickline testified, because respondents were still married, they would not be able to return the children home safely if one parent corrected the conditions leading to DCFS involvement and the other had not. Both parents must correct those conditions to allow a child to be returned home.

¶ 44 Courtney testified on her own behalf. Courtney testified she attempted to correct the conditions since the last hearing. Courtney attended individual counseling sessions and contacted Wickline about the drug and alcohol assessment. Courtney testified if the trial court found it in her children's best interests to return home, she would complete the services in a timely manner.

¶ 45 The trial court granted the State's motions to terminate respondents' parental rights

to L.L. and K.L.

¶ 46 The consolidated appeals followed.

¶ 47 II. ANALYSIS

¶ 48 A. Fitness Determination

¶ 49 A person is found an unfit parent if the State proves one or more of the grounds listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). The State must prove parental unfitness by clear and convincing evidence. *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011). The trial court views witnesses and their demeanor at a fitness hearing, so the court's decisions as to parental fitness are entitled to great deference. *Id.* We will not disturb a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 50 Respondents were found unfit on three grounds listed in section 1(D): (1) respondents failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) respondents failed to make reasonable efforts to correct the conditions that were the basis for L.L.'s and K.L.'s removal from them (750 ILCS 50/1(D)(m)(i) (West 2010)); and (3) respondents failed to make reasonable progress toward K.L.'s and L.L.'s return within nine months of the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 51 We begin with respondents' argument the trial court erroneously found them unfit for failing to make reasonable progress toward the return of K.L. and L.L. within nine months of the adjudications of neglect. Respondents maintain their progress was reasonable. They

emphasize they visited with their children and participated in services. Respondents further point to Desmond's successful completion of parenting classes and the mental-health goal, as well as to Courtney's participation in some parenting classes and counseling appointments. They contend the trial court's order was against the manifest weight of the evidence.

¶ 52 Reasonable progress is judged according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a finding progress is reasonable, there must be, at a minimum, measurable or demonstrable movement toward the objective of returning the children to the parents' custody. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). The benchmark for this determination includes the parents' compliance with court directives and service plans in light of the condition giving rise to the children's removal and other conditions that later become known and would prevent the court from returning custody to the parents. *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001). Progress is reasonable when a trial court can conclude it will be able to return the children to parental custody in the near future because the parents will have fully complied with the court's directives. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 53 We find the trial court's decision is not against the manifest weight of the evidence. Courtney had shown no progress in her services. She did not participate in substance-abuse treatment or individual counseling. Her visits with the children were inconsistent, and she repeatedly left those visits early. Desmond, while he completed the parenting classes and attended each visitation, left his visits early as a matter of convenience. Desmond failed to attend individual counseling and domestic-violence classes, which is particularly troubling given the

record shows a domestic-violence incident occurred during this nine-month period. Respondents could no longer attend medical appointments due to Courtney's behavior, but, when efforts were made to permit Desmond to visit K.L. while she was sick, Desmond refused to go. In addition, Wickline's testimony indicates respondents did not fully understand why, once K.L. was healthy, the children could not be returned to them. The children were removed due to medical neglect, and the record fails to establish the parents have progressed reasonably toward preventing or addressing similar problems. The trial court properly concluded the children could not be safely returned to respondents in the near future.

¶ 54 Because we have found the trial court did not err by finding respondents unfit parents on a ground enumerated in section 1(D) (see 750 ILCS 50/1(D)(m)(ii) (West 2010)), we need not address the other fitness findings. Only one statutory ground need be proved to established parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006).

¶ 55 B. Best-Interests Finding

¶ 56 After a trial court has found a parent unfit, it shifts its focus to the interests of the child. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At this stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Before a court may terminate a parent's parental rights, it must find the State proved by a preponderance of the evidence it is in the child's best interests those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. This court will not disturb a decision terminating parental rights unless the decision is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d at 961, 835 N.E.2d at

914.

¶ 57 Respondents argue the trial court's order is against the manifest weight of the evidence. Respondents contend the record shows they are bonded with K.L. and L.L. They argue Courtney was complying with services and Desmond had done what was asked of him. Respondents contend the children should grow up with them.

¶ 58 The trial court's conclusion is not against the manifest weight of the evidence. K.L. failed to thrive in the care of her parents. L.L.'s behavioral problems decreased as respondents' interaction with him decreased. Respondents, while focusing their efforts on completing services after the fitness hearing, remain "a long way" from being able to provide a safe home for their children. The children deserve permanency. Respondents have not shown they can provide that permanency at any time in the near future.

¶ 59 In contrast, K.L.'s health improved dramatically in the care of her foster parents. The children's bond with the foster parents is strong. We find no error in the trial court's determination the children's best interest lies in the termination of respondents' parental rights.

¶ 60 III. CONCLUSION

¶ 61 We affirm the trial court's judgment.

¶ 62 Affirmed.