2013 IL App (4th) 130580-U

NO. 4-13-0580

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 13, 2013
Carla Bender
4th District Appellate
Court, IL

In re: A.J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 12JA41
FELICIA MANNS,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding that the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In March 2013, the State filed a petition to terminate the parental rights of respondent, Felicia Manns, as to her son, A.J. (born September 9, 2011). Following a May 2013 fitness hearing, the trial court found respondent unfit. In June 2013, following a best-interest hearing, the court entered a written order terminating respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Circumstances Preceding the State's Petition To Terminate Respondent's Parental Rights

¶ 6 In September 2011, A.J. was born prematurely at 25 weeks with cerebral palsy, microcephaly, chronic lung disease, and other severe medical conditions. For the first four months of his life, A.J. was hospitalized in a neonatal intensive care unit. During A.J.'s hospitalization, medical personnel determined that respondent should be monitored when she was with A.J. The Department of Children and Family Services (DCFS) opened an intact case in December 2011 or January 2012. Upon A.J.'s discharge from the hospital, he lived with respondent and respondent's mother, Janice Lawson. A babysitter monitored all of respondent's interactions with A.J. during that time.

¶ 7 On March 5, 2012, the babysitter called the police because respondent threatened her during a verbal dispute. The police went to Lawson's home and investigated but left without making any arrests. Later that day, respondent's behavior continued to escalate and Lawson took A.J. away from respondent because she feared for his safety. The next day, a DCFS worker went to Lawson's home to implement a safety plan for supervised visitation between respondent and A.J., but respondent stated that she refused to abide by the plan. On March 9, 2012, DCFS took A.J. into protective custody.

¶ 8 On March 12, 2012, the State filed a petition for adjudication of wardship pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 to 7.1 (West 2012)), alleging that A.J. was (1) neglected pursuant to section 2-3(1)(b) of the Act because (a) he was born with complex medical needs due to his premature birth, (b) respondent had severe developmental

disabilities and possible mental health issues, and (c) respondent attacked and was physically aggressive toward the caregivers who assisted respondent with her parenting (705 ILCS 405/2-3(1)(b) (West 2012)); (2) abused pursuant to section 2-3(2)(ii) of the Act because respondent created a substantial risk of physical injury to A.J. by other than accidental means, which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function, for the reasons set forth in the previous count (above) (705 ILCS 405/2-3(2)(ii) (West 2012)); and (3) dependent pursuant to section 2-4(1)(b) of the Act because he was without proper care due to respondent's severe developmental delays and mental-health issues that prevented her from independently parenting him (705 ILCS 405/2-4(1)(b) (West 2012)).

¶ 9 At a temporary custody hearing held the day that the State filed its petition, the parties stipulated that probable cause existed to find that A.J. was neglected, abused, and dependent. The court accepted the stipulation and entered an order placing A.J. in the temporary custody of DCFS pending an adjudicatory hearing.

¶ 10 At a May 2012 adjudicatory hearing, respondent admitted the State's allegation that A.J. was dependent pursuant to section 2-4(1)(b) of the Act. The trial court adjudicated A.J. dependent and proceeded immediately to a dispositional hearing, at which it found that it was in A.J.'s best interest to be made a ward of the court and continue in the custody of DCFS. The court ordered respondent to comply with the terms of the DCFS service plan or risk termination of her parental rights.

¶ 11 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 12 In March 2013, the State filed a petition to terminate respondent's parental rights

pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2012)). Specifically, the State alleged that respondent was an unfit parent in that she had (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to A.J.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) deserted A.J. for more than three months prior to the fitness hearing (750 ILCS 50/1(D)(c) (West 2012)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the removal of A.J. from her care (750 ILCS 50/1(D)(m)(i) (West 2012)); (4) failed to make reasonable progress toward the return of A.J. within nine months after the adjudication of neglect or abuse (May 9, 2012, to February 9, 2013) (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (5) evinced an inability to discharge her parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness, or mental retardation, as defined in section 1-116 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-116 (West 2012)) (750 ILCS 50/1(D)(p) (West 2012)).

¶ 13 C. Respondent's Fitness Hearing

¶ 14 The parties presented the following evidence at respondent's May 2013 fitness hearing.

¶ 15 1. *The State's Evidence*

¶ 16 Joey Henson, a child welfare specialist with Illinois MENTOR, testified that she was the original caseworker when A.J. went into foster care in early March 2012. Henson developed respondent's original service plan, which included the requirement that respondent attend all of A.J.'s medical appointments. When Henson became involved in the case, respondent was living at Virtue House in Decatur. That facility offered respondent education in

life skills, including the use of bus transportation. When A.J. moved from Decatur to a care facility in Peoria, Henson tried to arrange bus transportation for respondent to travel from Decatur to Peoria, but apparently to no avail. For a period thereafter, Henson personally drove respondent from Decatur to Peoria to see A.J. Although Henson testified that respondent's behavior was always appropriate during her visits with A.J. in Peoria, she did not complete her service plan and, in Henson's opinion, she would never be able to parent A.J. on her own.

¶ 17 Tara Beckman, a child welfare specialist with Illinois MENTOR, testified that she became A.J.'s caseworker in June 2012 and became the family caseworker in October 2012. At the time of the hearing, she continued to work with the family. Beckman testified that A.J. was born prematurely at 25 weeks and had been diagnosed with cerebral palsy, chronic lung disease, microcephaly, and seizures. Because A.J.'s brain was not growing at the rate of the rest of his body, he suffered from "pretty severe developmental delays." A.J.'s cerebral palsy will cause him to be wheelchair-bound due to lack of muscle strength. Beckman estimated that these conditions would last the rest of A.J.'s life. At the time of the hearing, A.J. was dependent upon an artificial oxygen supply and a pulmonary vest for breathing, a pulse oximeter to monitor the level of oxygen in his blood, and an abdominal gastronomy tube for feeding. He was under the care of (1) a pediatric pulmonologist; (2) a neurologist; (3) an ear, nose, and throat specialist; (4) a developmental specialist; (5) a geneticist; and (6) developmental and physical therapists.

¶ 18 Between June 2012—when Beckman took over A.J.'s case—and the time of the hearing, respondent had not attended any of A.J.'s medical appointments as required by her DCFS service plan. Respondent told Beckman that she could not attend the appointments, which often took place in Peoria due to the specialized nature of A.J.'s medical needs, because she

lacked transportation. Beckman offered to give respondent gas cards that would cover the cost of fuel from Decatur to Peoria, but respondent did not take advantage of that offer because she did not have a driver's license, and she did not know of anyone who could drive her to Peoria.

¶ 19 Between March 2013 and the time of the hearing, respondent attended three training sessions at Illinois MENTOR in which Stacey Morrissey, a nurse, trained her how to use A.J.'s medical equipment. Morrissey reported to Beckman that respondent "did very well." However, Beckman testified that, based on the lack of time respondent had spent with A.J. and her ignorance of his daily routines and normal behaviors, respondent would not be able to tell if A.J. was in distress.

¶ 20 Respondent reported to Beckman that she had not completed the parenting class that DCFS assigned as part of her service plan. Although respondent participated in a psychological evaluation with Dr. Lanier, she failed to participate in a psychiatric assessment. According to Beckman, Heritage Behavioral Health Center (Heritage) in Decatur offered such psychiatric assessments on a walk-in basis during set times of the week.

¶ 21 Beckman testified that respondent was hesitant and uncomfortable dealing with A.J.'s medical needs, such as feeding. Although Beckman believed that respondent "definitely loves and cares about her son and wants the best for him," she did not think that respondent would be able to successfully parent A.J. at the time of the hearing or even nine months from then.

¶ 22 Dr. Linda Lanier, a licensed clinical psychologist, testified that she completed a psychological evaluation of respondent in August 2012. That evaluation included a clinical interview and a series of standardized psychological tests. Based on her psychological

evaluation, Lanier diagnosed respondent with "borderline intellectual functioning," which meant that respondent's intelligence quotient was "somewhere in the 70s." Lanier determined that respondent was undergoing stress and showing symptoms of anxiety disorder, which caused Lanier to diagnose her with "adjustment disorder with mixed anxiety and depressed mood." Lanier also observed "features of a borderline personality disorder and features of a dependent personality disorder."

¶ 23 Lanier testified that respondent's borderline personality features would (1) lead to "intensity and blowups," (2) cause her difficulty maintaining relationships, and (3) distract her from parenting. Further, respondent's dependent personality disorder, a consequence of her low cognitive functioning, would lead to dependence upon others to assist her with basic aspects of parenting. When combined with respondent's borderline personality features, dependence upon others would be problematic. Lanier added that personality disorders are chronic and difficult to treat. Lanier opined that, even without symptoms of anxiety and depression, respondent's cognitive deficits alone "would prevent independent parenting." On the State's motion and without objection, the trial court took judicial notice of Lanier's psychological evaluation report, originally filed with the court in October 2012.

¶ 24 Theresa Dennis, a licensed clinical professional counselor for Illinois MENTOR, testified that between September 2012 and February 2013, she drove from Peoria to Decatur to attend counseling sessions with respondent. In February 2013, Dennis discharged respondent from counseling "due to no-shows." Dennis also testified that she personally brought respondent to Heritage to assist her in receiving psychiatric services there, but respondent did not subsequently follow through with those services. Dennis' final counseling report indicated that

(1) Dennis and respondent struggled with stability, (2) hostility existed between Dennis and respondent, and (3) respondent was disappointed in her relationships and with the support and services that she received.

¶ 25 2. *Respondent's Evidence*

¶ 26 Respondent testified that she had taken "at least 40" parenting classes at the Young Men's Christian Association (YMCA), beginning before A.J.'s birth, but that "due to lack of communication," DCFS was not made aware of her participation in those classes. Respondent admitted that although she was able to handle A.J.'s oxygen, pulmonary vest, and nebulizer, she had difficulty with his abdominal gastronomy tube due to "hesitation of worrying of messing up on him." Respondent purchased a car and was "working on getting [her] driver's license" so that she could get A.J. to his medical appointments. Respondent further testified that she was taking classes at the Dove Center twice per month to learn "independent living and working on saving money and stuff like that." She opined that she would be ready to take care of A.J. within five to six months.

¶ 27 On cross-examination by the State, respondent testified that she had not completed her parenting classes because "it's like take them whenever you want to. It's not really a six, nine months or waiting list parenting classes. You can just go. It's not really a completion parenting class."

¶ 28 3. *The Trial Court's Fitness Finding*

¶ 29 Following the presentation of evidence and argument, the trial court found by clear and convincing evidence that respondent was unfit because she (1) failed to make reasonable progress toward the return of A.J. within nine months after the adjudication of neglect

or abuse (May 9, 2012, to February 9, 2013); (2) deserted A.J. for more than three months prior to the May 9, 2013, unfitness hearing; (3) failed to make reasonable efforts to correct the conditions that were the basis for the removal of A.J. from her; (4) failed to maintain a reasonable degree of interest, concern, or responsibility as to A.J.'s welfare; and (5) evinced an inability to discharge her parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness, or mental retardation.

¶ 30 D. The Best-Interest Hearing

¶ 31 The parties presented the following evidence at the June 2013 best-interest hearing.

¶ 32 1. *The State's Evidence*

¶ 33 Beckman testified that due to A.J.'s severe and complex medical issues, he requires 24-hour supervision. At the time of the hearing, A.J. was stable and living in a specialized foster home managed by parents who were willing to adopt him and provide permanency. Those foster parents are licensed to provide medical foster care and they were specifically trained on all of A.J.'s medical equipment. The foster mother is retired and licensed to drive. A.J. had been in that placement since June 2012. Prior to that placement, A.J. was living with his maternal grandmother, but she had difficulty securing day care, sufficient nursing services, and "she was not able to actually care for him."

¶ 34 Beckman further testified that A.J. was "very bonded" with his foster parents. In the months leading up to the hearing, the foster mother supervised monthly, two-hour visits between respondent and A.J. Beckman asserted that, although it was difficult to assess

respondent's relationship with A.J. due to their infrequent interactions, respondent was able to comfort A.J. and a bond existed between them. However, respondent continued to show hesitation and uncertainty when handling A.J.'s medical equipment. The foster parents told Beckman that they were willing to maintain telephone communication, text message communication, and occasional visits between respondent and A.J. if respondent's parental rights were terminated. Beckman believed it was in A.J.'s best interest to remain with his foster parents.

¶ 35 Following Beckman's testimony, on the State's motion and without objection, the trial court agreed to consider (1) Beckman's written best-interest hearing report, (2) Lanier's testimony from the May 2013 fitness hearing, and (3) Lanier's October 2012 report, which the court took judicial notice of at the fitness hearing.

¶ 36 2. *Respondent's Evidence*

¶ 37 Norah Jones, A.J.'s paternal grandmother, testified that she thought it was in A.J.'s best interest to stay with respondent, although she acknowledged that respondent could not care for A.J. by herself. Jones was willing to either help respondent take care of A.J. or, if the trial court terminated respondent's parental rights, serve as a placement for A.J. On cross-examination, Jones testified that she does not have a driver's license and she does not know how far away she lives from respondent.

¶ 38 Respondent testified that she would be getting a place of her own in October 2013. She contacted a transportation service that could assist her with bringing A.J. from Decatur to Peoria for medical appointments. Respondent testified that her friends, Quintaria Gauze and Kesha Ray, offered to help take care of A.J. Gauze, a certified nursing assistant, has

received training in some of the medical equipment that A.J. uses. On cross-examination, respondent testified that Gauze and Ray live two hours away from her. On re-direct, however, respondent testified that Gauze and Ray live 20 or 30 minutes away.

¶ 39 3. *The Trial Court's Best-Interest Finding*

¶ 40 After considering the evidence and counsels' arguments, the trial court terminated respondent's parental rights as to A.J. In doing so, the court noted that A.J.'s foster parents were particularly well-equipped to provide stability to A.J. and handle his complex medical needs.

¶ 41 This appeal followed.

¶ 42 II. THE TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 43 Respondent argues that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We address respondent's arguments in turn.

¶ 44 A. The Trial Court's Fitness Finding

¶ 45 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 46 Section 1(D)(m)(ii) of the Adoption Act provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

* * *

(m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act[.]" 750 ILCS 50/1(m)(ii) (West 2012).

¶ 47 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent."

¶ 48 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

" 'Reasonable progress' *** exists when the [trial] court *** can

> conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent ***." (Emphases in original.)

The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004); *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 49 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id.*

¶ 50 2. *Respondent's Claim That the Trial Court's Fitness Finding Was Against the Manifest Weight of the Evidence*

¶ 51 Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. Specifically, respondent contends that the court erred by finding that she

(1) failed to make reasonable progress toward the return of A.J. within nine months after adjudication of neglect or abuse; (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to A.J.'s welfare; (3) failed to make reasonable efforts to correct the conditions that were the basis for the removal of A.J. from respondent; and (4) was unable to discharge her parental responsibilities due to mental disability. We disagree.

¶ 52 In this case, in May 2012, respondent admitted the State's allegation that A.J. was without proper care because of respondent's mental disability. Based on that admission, the trial court adjudicated A.J. dependent. DCFS then developed a service plan for respondent that required her to, among other goals, complete a psychiatric assessment and attend scheduled therapy sessions. In the year between the court's adjudication of dependency and the fitness hearing, respondent failed to complete a psychiatric assessment or attend her scheduled therapy sessions.

¶ 53 Although respondent argues that her lack of transportation provides an excuse for her failure to complete the elements of her service plan relating to her mental health, the evidence showed that respondent (1) learned how to use bus transportation and (2) could have completed a psychiatric assessment and attended her therapy sessions without leaving Decatur. Given A.J.'s complex medical needs, respondent's intellectual disabilities and her mental illnesses were the primary obstacles preventing her from adequately parenting A.J. In light of respondent's failure to abide by the requirements of her service plan relating to her mental health, the trial court's finding that respondent failed to make reasonable progress toward A.J.'s return was not against the manifest weight of the evidence.

¶ 54 Having so concluded, we need not consider the trial court's other findings of

parental fitness against respondent. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental fitness).

¶ 55 B. The Trial Court's Best-Interest Finding

¶ 56 1. *The Standard of Review*

¶ 57 At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 58 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 59 2. *Respondent's Claim That the Trial Court's Best-Interest Finding Was Against the Manifest Weight of the Evidence*

¶ 60 Respondent next argues that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondent argues that the court "should have focused on the positives instead of the negatives when it made its best-interest finding."

¶ 61 In this case, the trial court acknowledged that respondent, "to the best of her ability[,] attempted to make plans for what she believes is the best interests of the child." None

of the evidence presented at the best-interest hearing called into question whether respondent loved or cared about A.J. Her mental and intellectual shortcomings are no fault of her own. However, A.J. requires a level of care that respondent is simply unable to provide, even if she received assistance from friends. Given the evidence of A.J.'s complex medical needs, respondent's severe mental and intellectual limitations, and the foster parents' unique ability to care for and provide stability to A.J., we conclude that the evidence was more than sufficient to support the court's decision to terminate respondent's parental rights. Accordingly, we disagree that the facts clearly demonstrated that the court should have reached the opposite result.

¶ 62 C. The Trial Court's Consideration of Lanier's Report

¶ 63 Finally, respondent argues that the trial court committed reversible error by considering Lanier's report at the best-interest hearing. Specifically, respondent contends that the court violated section 2-18(6) of the Act, which provides as follows:

> "In any hearing under this Act, the court may take judicial notice of prior sworn testimony or evidence admitted in prior proceedings involving the same minor if (a) the parties were either represented by counsel at such prior proceedings or the right to counsel was knowingly waived and (b) the taking of judicial notice would not result in admitting hearsay evidence at a hearing where it would otherwise be prohibited." 705 ILCS 405/2-18(6) (West 2012).

¶ 64 Although respondent was clearly represented by counsel at the fitness hearing, she argues that the court erred by taking judicial notice of Lanier's report because it constituted

hearsay evidence. However, this court has previously held that "[i]t is incumbent upon the party opposing the taking of judicial notice to make such an objection." *In re A.T.*, 197 Ill. App. 3d 821, 834, 555 N.E.2d 402, 411 (1990). Because respondent failed to object to the court taking judicial notice of Lanier's report, that claim is forfeited and we decline to consider it.

¶ 65 III. CONCLUSION

¶ 66 For the reasons stated, we affirm the trial court's judgment.

¶ 67 Affirmed.