2024 IL App (4th) 231556-U

NO. 4-23-1556

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 17, 2024
Carla Bender
4th District Appellate
Court, IL

In re R.J., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	No. 18JA381
v.	)	
Rachel L.,	)	Honorable
Respondent-Appellant).	)	Francis M. Martinez,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Cavanagh and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding (1) the trial court did not err in admitting certain service plans and (2) the unfitness and best interest determinations were not against the manifest weight of the evidence.

¶ 2 In November 2023, the State filed a motion to terminate the parental rights of respondent mother, Rachel L., to her daughter, R.J. (born December 2013). The trial court found respondent to be an unfit parent pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)) and it was in the child's best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, arguing (1) the trial court erred by admitting and considering "multi-level hearsay" and (2) the unfitness and best interest findings were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2018, the State filed a petition for adjudication of wardship, alleging R.J. (born December 2013) was a neglected minor whose environment was injurious to her welfare pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2018)). The State alleged (1) one of R.J.'s siblings suffered a femur fracture "not consistent with the explanation provided" and (2) R.J.'s sibling was not receiving proper education or medical care. An amended petition further alleged R.J.'s environment was injurious to her welfare in that respondent made R.J. and/or her siblings sit in a closet for extended periods as a punishment. R.J. was adjudicated neglected, and a dispositional order made R.J. a ward of the court and placed custody with the guardianship administrator of the Illinois Department of Children and Family Services (DCFS). (We note R.J.'s putative father was defaulted, and he is not a party to this appeal.)

¶ 6 In November 2023, the State filed a motion for termination of parental rights. The petition alleged respondent was unfit for failing to make reasonable progress during a nine-month period following the adjudication of neglect. The State alleged the nine-month periods as April 29, 2019, to January 29, 2020; January 9, 2020, to October 9, 2020; October 29, 2021, to July 29, 2022; July 29, 2022, to April 29, 2023; and December 27, 2022, to September 27, 2023 (collectively, the relevant time periods). (The original petition contained a scrivener's error in the dates, which was later resolved.)

¶ 7 A. Fitness Hearing

¶ 8 1. *The State's Evidence*

¶ 9 At the November 2023 fitness hearing, the State asked the trial court to take judicial notice of the neglect petition and amended neglect petition, the temporary custody order, the adjudicatory order, the dispositional order, and the permanency review orders filed during the

life of the case. The State also moved to admit the certified copy of the indicated packet, which was admitted without objection.

¶ 10 Elizabeth Tevis testified she was a supervisor at Camelot Care Centers and had been R.J.'s caseworker since May 2023. Tevis had reviewed the case history and all prior reports and packets. Based on Tevis's statements, the State moved to admit the integrated assessment and the service plans from the life of the case, which were admitted without objection. Based on the integrated assessment, respondent was required to cooperate with the agency, engage in visitation, and complete mental health and parenting services. Respondent remained in contact with the agency throughout the case, though at times her contact was minimal. Respondent completed a parenting capacity assessment and psychological assessment. Respondent completed a parenting class for abusive parents. When asked if she had concerns about respondent's application of the class, Tevis explained:

> "There have been throughout the life of the case several instances where mom's understanding of the children's needs were in question, as far as developmental, like where the children fell developmentally, what medication they did or did not need, as well as some conversations that she would have around the children, such as placing her emotions on the children as if it were their emotions."

Respondent successfully completed two other parenting programs. She was recommended for a parenting coach, and she engaged with parenting coaches beginning in January 2022, but there was not a consistent coach due to scheduling conflicts. By January 2023, respondent was not "fully participating" with the parenting coach, and respondent was discharged unsuccessfully in March 2023. When asked to engage with another parenting coach, respondent declined. When

asked to explain the agency's concerns despite respondent's participation in services, Tevis stated, "Again, it's just still her lack of understanding of what she believes the children need versus what professionals tell us what her children need." Specifically, R.J. had been diagnosed with attention-deficit/hyperactivity disorder and an unspecified learning disorder. After an Individual Education Program (IEP) meeting for R.J., where staff members explained how far behind R.J. was in school and the necessity of the IEP, respondent "still stated that she didn't see the child that everybody else was seeing and didn't feel that [R.J.] had those concerns."

¶ 11 Tevis explained respondent would bring up overnight visits and unsupervised visits with R.J. unprompted, causing R.J. a lot of confusion. Respondent was regular with her visits with R.J. and did progress to unsupervised visitation in July 2022. However, after October 2022, respondent was returned to supervised visitation due to escalating behaviors R.J. was having at school and in the foster home. After R.J. was returned to supervised visits, "[t]he majority of the behaviors did stop."

¶ 12 Tevis explained respondent was still required to complete "individual therapy successfully with her understanding why she's in therapy, *** and demonstrating what she's learned from individual therapy," as well as parenting coaching and a psychiatric assessment. Tevis stated the agency had concerns about respondent's mental health services. Though respondent had been in individual therapy since September 2019, the agency had concerns about "her lack of knowledge of things that she has learned, as well as her behavior not changing throughout all of those years in therapy." The agency referred respondent to a different therapist for individual therapy in April or May 2023 due to a lack of progress. The agency still had concerns about respondent's ability to parent R.J., particularly regarding her educational and behavioral needs. Respondent had expressed on several occasions "she feels that medication is

like giving kids cocaine, and that she does not feel her children need the medication," and the agency was concerned R.J. would not get the medication or educational support she needed if she were returned to respondent's care.

¶ 13 On cross-examination, Tevis acknowledged respondent's therapist stated respondent was making progress and "Camelot is the issue, not [respondent]." However, Tevis explained she disagreed with the therapist because professionals at Brightpoint and school personnel reported the same behavior for respondent, and respondent's "therapist was the only one that didn't have concerns." Tevis explained a parenting coach also felt respondent was doing well, leading to the return of two older children to respondent's care. However, after the older children were returned, the parenting coach started to see respondent struggling with parenting the children. Respondent began telling the parenting coach she did not need her and she did not need services.

¶ 14 Tevis also explained the differences between the children who were returned home and R.J. and her younger sibling, for whom respondent's parental rights were also terminated (see *In re J.J.*, 2023 IL App (4th) 230596-U):

> "The needs are different. The agency had concerns about her son [M.J.] returning home. But the agency was put in a situation where he was either to go home with his mom or go to residential because the foster home would not keep him based on behaviors. [M.J.] notably only allowed his mother to really parent him because of the relationship that they had. The relationship is not there with [R.J.], nor was it with her younger brother [(J.J.)], which was kind of the sole purpose in separating those children from the older two. They had a more established relationship with mom and seemed more eager to go home.

> That's not the case for [R.J.] There is a lack of bond there. [R.J.] on several occasions has talked about wanting to be adopted, wanting to stay in her foster home. She has notably throughout the case made comments about [respondent] not hugging her enough or telling her that she loves her, and feeling left out."

Tevis also noted R.J. was a "very big people pleaser" and would tell people different things based on what she thought they wanted to hear. She acknowledged R.J. has said on occasion she wants to be with respondent, but the "majority of the time she is reporting that she does not want to be there and she wants to be adopted." Tevis discussed how, although R.J. is nine years old chronologically, she is younger developmentally.

¶ 15 During examination by the guardian *ad litem* (GAL), Tevis discussed an incident where a Camelot staff member was told during a visit she could not sit on the furniture in respondent's house. R.J. was present during the incident and was "upset." R.J. later told her foster parent she was "very upset about [respondent] yelling at the Camelot staff." Afterwards, R.J. was more hesitant about going to visits.

¶ 16 2. *Respondent's Evidence*

¶ 17 Respondent testified. As to the incident with the Camelot staff member, respondent explained the staff member was argumentative with her and her son. She told the staff member she could not be disrespectful in her home, and she could not sit on the couch, but she could sit in a chair. The staff member chose to stand.

¶ 18 Respondent stated any time R.J. brought homework with her to visits, they would do her homework together. She valued education for her children and wanted to serve as an example to her children by getting her general education diploma. Respondent was still in

counseling and was not aware of any services the agency had asked her to complete in the last six months she had not completed. She did not recall being asked to complete a psychiatric evaluation.

¶ 19 3. *Trial Court's Decision*

¶ 20 The trial court took the matter under advisement. When the hearing reconvened in December 2023, the court found respondent unfit. The court acknowledged respondent had made reasonable efforts. However, "despite parenting education, parent coaching attempts, attempts at redirection, recommendations of experts, no progress was made primarily because [respondent] did not wish to take the advice of those experts." The court concluded respondent had not complied with the directives given and R.J. could not be returned in the near future.

¶ 21 B. Best Interest Hearing

¶ 22 The trial court proceeded to the best interest hearing. The court took judicial notice of the best interest report. The best interest report stated R.J. resided in a traditional foster home and she was "very attached" to her foster mother. The foster mother provided R.J. with "love, affection, and guidance" and was willing to provide permanency through adoption. Her needs were being met in the foster home, including her educational and medical needs. R.J.'s "grades, handwriting, and spelling" had greatly improved since being placed with the foster mother. She had expressed her wish to stay in the home with the foster mother. The State asked the court to consider the evidence presented at the fitness hearing and presented no further evidence.

¶ 23 Respondent presented a series of photos to the trial court showing respondent and R.J. Respondent then testified. She was adamant R.J. had always said she would like to come home and live with respondent. R.J. was always excited when she arrived for visits. She would

give “everybody a hug,” and she was eager to “do things with her brother.” R.J. would stall for time at the end of visits. Respondent was affectionate with R.J. at visits, and R.J. would tell her about school and horseback riding.

¶ 24 On cross-examination, the GAL asked respondent about an incident where she gave R.J. a cell phone. Respondent agreed she had not asked the caseworker for permission, but she did not believe she needed permission to give R.J. a cell phone. Respondent stated the staff member supervising the visit saw her give R.J. the cell phone and did not comment. Tevis later confronted her through e-mail about the cell phone. During visits, R.J. would use respondent’s cell phone to search for videos they could dance to together.

¶ 25 The GAL offered into evidence R.J.’s IEP. Tevis was recalled to discuss the IEP and the incident in which respondent gave R.J. a cell phone. Tevis explained the staff member present at the visit was not aware of whether R.J. was allowed to have a cell phone, but Tevis informed her afterwards the cell phone was not appropriate. The cell phone contained the Life360 application, which allowed location tracking for the cell phone. Tevis explained the cell phone was an inappropriate gift and the safety concern related to the cell phone and the Life360 application in an e-mail to respondent and her attorney. A copy of the e-mail to respondent and a copy of an e-mail to DCFS legal and the GAL, which included a screenshot of the applications on the cell phone, were admitted over respondent’s objection.

¶ 26 The GAL also called the foster mother, Laveda J. R.J. had lived with Laveda for about a year and a half. Laveda was seeing to R.J.’s unique needs by taking her to psychiatrist’s appointments, keeping up with her IEP, going to parent-teacher conferences, taking her to equestrian practice, and being available when her therapist visits. Laveda had two biological sons and another foster child in the home. R.J. visits Laveda’s extended family and has support from

their "church family." R.J. did not feel comfortable calling Laveda "mom," so she called Laveda "honey." Since residing with Laveda, R.J. had gone from a kindergarten level to a third-grade level, which involved multiple IEPs. Leveda was willing to maintain a relationship with R.J.'s siblings and respondent "down the road" with "appropriate behavior."

¶ 27 The trial court found it was in the best interest of R.J. to terminate respondent's parental rights.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, respondent argues (1) the trial court violated her due process rights by admitting and relying on hearsay for its unfitness finding, (2) the unfitness finding was against the manifest weight of the evidence, and (3) the best interest finding was against the manifest weight of the evidence.

¶ 31 A. Fitness Hearing

¶ 32 The Juvenile Court Act and the Adoption Act govern how the State may terminate parental rights. *In re D.F.*, 201 Ill. 2d 476, 494, 777 N.E.2d 930, 940 (2002). Together, the statutes outline two necessary steps the State must take before terminating a person's parental rights. The State must first show the parent is an "unfit person," and then it must show terminating parental rights serves the best interest of the child. *D.F.*, 201 Ill. 2d at 494-95 (citing the Adoption Act (750 ILCS 50/1(D) (West 1998)) and the Juvenile Court Act (705 ILCS 405/2-29(2) (West 1998)).

¶ 33 " '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) (quoting *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004)). The Adoption Act

provides several grounds on which a trial court may find a parent unfit. Here, the court determined respondent was unfit because she failed to make reasonable progress towards the return of R.J. during any of the relevant time periods.

¶ 34 1. *Hearsay*

¶ 35 Respondent first argues she was denied due process where the trial court relied "exclusively on multi-level hearsay" in making its unfitness finding. Specifically, respondent contends the court erred by admitting multi-level hearsay in the DCFS service plans and then using this hearsay to justify its decision. The State argues respondent has forfeited and/or waived any claim pertaining to the admission of hearsay and she, in effect, invited the error by using the service plans in her case-in-chief. While respondent disagrees, she maintains, if this court finds forfeiture, we should review the claim for plain error.

¶ 36 Issues not raised in the trial court are forfeited on appeal. *In re Z.J.*, 2020 IL App (2d) 190824, ¶ 50, 168 N.E.3d 210. Here, respondent did not object to the admission of the service plans. Respondent argues she did not know which instances of the alleged hearsay the State would rely on, and thus she did not have the opportunity to object to the specific instances of hearsay. However, the service plans as a whole were admitted into evidence, and the court could consider any part of them. It is irrelevant what information in the exhibits the State elected to highlight before the court. Respondent's opportunity to object to the alleged hearsay in the service plans would have been to object to the admission of the service plans themselves. As respondent did not object to the admission of the service plans, she has forfeited her argument on appeal.

¶ 37 Even assuming, *arguendo*, we were to consider respondent's claim under the plain-error doctrine, we would find no error. Under the plain-error doctrine, "[n]onpreserved

errors may be reviewed on appeal if the evidence is closely balanced or where the errors are of such a magnitude that the [respondent] was denied a fair and impartial trial." *People v. Cox*, 377 Ill. App. 3d 690, 703, 879 N.E.2d 459, 473 (2007) (citing *People v. Nieves*, 192 Ill. 2d 487, 502-03, 737 N.E.2d 150, 158 (2000)). The first step of plain-error review is determining whether any error occurred. *People v. Walker*, 232 Ill. 2d 113, 124, 902 N.E.2d 691, 697 (2009).

¶ 38 Section 4-18(4)(a) of the Juvenile Court Act (705 ILCS 405/2-18(4)(a) (West 2022)) provides service plans and DCFS investigative records are admissible. In fact, respondent does not argue the exhibits themselves were not admissible, but rather, the hearsay contained within the exhibits was inadmissible. However, as this court has previously observed, "respondent 'overlooks the fact the statute itself provides the lack of knowledge of the maker of the documents at issue is a matter of weight rather than admissibility.' " *In re D.D.*, 2022 IL App (4th) 220257, ¶ 42, 215 N.E.3d 302 (quoting *In re J.J.*, 2022 IL App (4th) 220131-U, ¶ 34); see 705 ILCS 405/2-18(4)(a) (West 2022) ("All other circumstances of the making of the memorandum, record, photograph or x-ray, including lack of personal knowledge of the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility."). The language of the statute "necessarily indicates the document will contain additional levels of hearsay." (Internal quotation marks omitted.) *D.D.*, 2022 IL App (4th) 220257, ¶ 42. As the service plans were admissible, the trial court did not err in considering their contents as directed by the plain language of the statute. As there was no error, there can be no plain error. See *Walker*, 232 Ill. 2d at 124.

¶ 39 Respondent attempts to evade the plain language of the statute and plain error altogether by arguing the statute itself violates due process. "Generally, constitutional issues not presented to the trial court are deemed waived and may not be raised for the first time on

appeal." *In re O.R.*, 328 Ill. App. 3d 955, 959, 767 N.E.2d 872, 875 (2002). Respondent's extensive argument on the admissibility of hearsay in *federal* proceedings does little to persuade us this waiver should be forgiven. See *O.R.*, 328 Ill. App. 3d at 959 ("[T]he waiver rule is a limitation on the parties and not the court ***."); see also *People v. Bass*, 2021 IL 125434, ¶ 30, 182 N.E.3d 714 (holding cases should be decided on nonconstitutional grounds whenever possible and reviewing courts must avoid reaching constitutional issues unless necessary to decide a case) (citing *In re E.H.*, 224 Ill. 2d 172, 178, 863 N.E.2d 231, 234 (2006). As such, we decline to consider whether the plain language of the statute is unconstitutional.

¶ 40 2. *Unfitness Finding*

¶ 41 This court pays " 'great deference' " to a trial court's fitness finding " 'because of [that court's] superior opportunity to observe the witnesses and evaluate their credibility.' " *A.L.*, 409 Ill. App. 3d at 500 (quoting *Jordan V.*, 347 Ill. App. 3d at 1067). We "will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *A.L.*, 409 Ill. App. 3d at 500.

¶ 42 Although the trial court found respondent was unfit for failure to make progress during each of the relevant time periods, "sufficient evidence of one statutory ground *** [is] enough to support a [court's] finding that someone [is] an unfit person." (Internal quotation marks omitted.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 83, 19 N.E.3d 227. We focus on respondent's failure to make reasonable progress during the final relevant nine-month period of December 27, 2022, to September 27, 2023.

¶ 43 "[R]easonable progress is an objective standard," measuring whether "the progress being made by a parent to comply with directives given for the return of the child is

sufficiently demonstrable and of such a quality that the [trial] court, in the *near future*, will be able to order the child returned to parental custody." (Emphasis in original and internal quotation marks omitted.) *F.P.*, 2014 IL App (4th) 140360, ¶ 88. The record shows R.J. was removed from respondent's care where her environment was injurious to her welfare, and respondent was not arguably making progress towards R.J.'s return. "[T]here [is] a significant difference between going through the motions, checking off the boxes, and mechanically doing what is asked of the parent and actually changing the circumstances that brought the children into care." *In re Ta. T.*, 2021 IL App (4th) 200658, ¶ 56, 187 N.E.3d 763. "The point of requiring parents to attend classes and engage in services *** is so parents *apply* what they learn *** such that the court can be confident that the children will be safe in their care." (Emphasis in original.) *Ta. T.*, 2021 IL App (4th) 200658, ¶ 56. Although respondent had completed many of the services asked of her, caseworkers saw a lack of ability to implement the lessons when applied to R.J. The agency was attempting to shift respondent to a new therapist with a different provider due to a lack of progress, despite years of individual counseling. In January 2023, respondent was not "fully participating" with the parenting coach and was unsuccessfully discharged from parenting coaching in March 2023. Respondent had told the parenting coach she did not need coaching and she did not need services. Further, there was a clear lack of understanding when it came to R.J.'s educational and medical needs. Respondent had repeatedly equated giving her children medication to giving them cocaine. She did not understand or see the need for the IEP. The agency was concerned if R.J. was returned to respondent's care, she would not receive her medication and the IEP would lapse. Based on respondent's lack of understanding of R.J.'s needs, the environment with respondent would still be injurious to R.J.'s welfare. The trial court was no closer to returning R.J. to respondent's care by the end of the nine-month period than

when the child was removed from respondent's care. See *F.P.*, 2014 IL App (4th) 140360, ¶ 88. The court's finding of unfitness was not against the manifest weight of the evidence.

¶ 44 Respondent argues the return of R.J.'s older siblings demonstrated respondent made reasonable progress in those cases. However, respondent presents no authority, and our research reveals none, for her argument that a parent who has regained custody of one child should be presumed fit to gain custody of all her children. This is so because the evidence relevant to the question before the trial court was whether respondent had made reasonable progress toward correcting the fact R.J.'s environment was injurious to R.J.'s welfare, not *any child's* welfare. DCFS's determination, for whatever reason they deemed appropriate, to return two other children to respondent's care is irrelevant to her progress in providing for R.J.'s needs.

¶ 45 B. Best Interest Finding

¶ 46 After a parent is found unfit, "the focus shifts to the child." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The issue ceases to be "whether parental rights can be terminated" and becomes "whether, in light of the child's needs, parental rights should be terminated." (Emphases omitted.) *D.T.*, 212 Ill. 2d at 364. The trial court will consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)). See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include: the child's physical safety and welfare; the development of the child's identity; the child's familial, cultural, and religious background and ties; the child's sense of attachments, including where the child feels loved, attached, and valued; the child's sense of security, familiarity, and continuity of affection; the child's wishes and long-term goals; the child's community ties; the child's need for permanence; and the uniqueness of every family and each child. 705 ILCS 405/1-3(4.05) (West 2022). We will not overturn a court's best interest finding

unless it is against the manifest weight of the evidence. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009).

¶ 47 Here, R.J. had been in care for five years and in her current placement for 18 months. Laveda provided R.J. with "love, affection, and guidance" and was willing to provide permanency through adoption. R.J. had repeatedly expressed a wish to stay with Laveda. Her needs were being met in the foster home, including her educational and medical needs. R.J. had significantly improved in school. Conversely, respondent had been opposed to the medication prescribed to R.J. and did not see the need for the IEP. As the trial court stated, "[A]fter all these years [respondent] still doesn't understand the complexities of her daughter, and simply insists on parenting against the considered opinions of experts that are involved in this case." The court's best interest determination was not against the manifest weight of the evidence, as the opposite conclusion was not clearly evident. See *T.A.*, 359 Ill. App. 3d at 960.

¶ 48 III. CONCLUSION

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

¶ 50 Affirmed.