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2011 IL App (3d) 110188-U

Order filed July 6, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

<i>In re</i> D.J. and C.J.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-11-0188
Petitioner-Appellee,	)	Circuit Nos. 05-JA-50 and 07-JA-166
	)	
v.	)	
	)	
Sharon J.,	)	Honorable
	)	Mark E. Gilles,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Lytton and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's finding that the respondent failed to make reasonable progress toward the return home of her children and its subsequent ruling that termination of the respondent's parental rights was in the best interests of the children were not against the manifest weight of the evidence.

¶ 2 The trial court found the respondent, Sharon J., unfit to parent the minors, D.J. and C.J.

At the best interest hearing, the court determined that it was in the best interests of the children to

terminate the respondent's parental rights. The respondent appeals, arguing that: (1) the State failed to prove her unfitness by clear and convincing evidence; and (2) the trial court erred in finding that it was in the children's best interest to terminate her parental rights. We affirm.

¶ 3

#### FACTS

¶ 4 On May 23, 2005, D.J. was adjudicated neglected. The State's petition alleged that D.J. was in an environment injurious to her welfare because the respondent failed to take D.J.'s sibling to the doctor after receiving a referral for a cardiac condition. Additionally, D.J.'s sibling had an abnormal genital exam. The respondent indicated that she had dated an individual whom she thought might be a sex offender, but she was not sure, as she did not remember his name.

¶ 5 On October 1, 2007, the trial court adjudicated C.J. neglected. The petition alleged that the respondent was deemed unfit to parent her other children and she had not corrected the conditions that led to the original unfitness finding.

¶ 6 The State filed petitions to terminate the respondent's parental rights to D.J. and C.J. on July 6, 2010. The petitions alleged that the respondent had failed to make reasonable progress towards the return of her children during the nine-month period between June 25, 2009, and March 25, 2010. The State later amended its petition without objection to change the review period to July 2, 2008, through April 2, 2009.

¶ 7 At the hearing on the State's petition, the caseworker testified that the respondent was often not forthcoming with information pertaining to her employment. The respondent allegedly told the caseworker that she was working for National Directory Service in the summer of 2008. However, the caseworker discovered in July 2008 that the respondent was no longer employed there.

¶ 8 In August 2008, the caseworker learned that the respondent had moved to Wisconsin and had taken a job working for Allen Cleaning Service. However, the caseworker did not learn of the respondent's move and job change until almost one month after it had occurred. In March 2009, the respondent told the caseworker that she had been temporarily laid off by Allen Cleaning Service as a result of the facility flooding. Upon further investigation, the caseworker learned that the respondent had been permanently laid off and there were no issues of the facility flooding.

¶ 9 The caseworker also reported that she was concerned about the respondent's relationship choices. When the caseworker would inquire if the respondent was in a relationship, the respondent purportedly always replied in the negative. However, in October 2008, the respondent reported that she was considering a marriage proposal from a male friend. The respondent initially told the caseworker that there was nothing alarming in the man's background. However, while investigating the background of the man, the caseworker discovered that he had been charged twice with aggravated battery and had two other charges on his record. The respondent later admitted that she knew the man had a criminal background, but she thought she did not have to report it because the offenses were misdemeanors. The respondent later called off the wedding.

¶ 10 During the review period, the respondent was ordered to participate in counseling. However, she participated in minimal counseling during the time she lived in Wisconsin. The respondent testified that she would call her counselor approximately once a week, and when she was in Peoria to visit her children she would meet with the counselor. The caseworker noted that this counseling setup was unacceptable and urged the respondent to find a counselor in

Wisconsin. Nevertheless, the respondent did not attend weekly in-person counseling sessions while she resided in Wisconsin.

¶ 11 On February 9, 2011, the court found the respondent unfit to parent D.J. and C.J. The court noted that the respondent was "pointed time and time again to address [her] counseling and [she] did not." The court emphasized that "[c]ounseling was an utter necessity[,]" but yet it was not the respondent's priority. Therefore, it found that the State had proved that the respondent was unfit by clear and convincing evidence.

¶ 12 At the best interest hearing, the children's caseworker testified that D.J. and C.J. lived with separate foster families. More than one year before the hearing, visits between the respondent and D.J. had stopped because D.J. was having behavioral problems before and after the visits. At one point, D.J. had developed selective mutism and refused to speak after the visits. Once the visits were discontinued, D.J.'s selective mutism subsided, and her behavior improved. D.J.'s caseworker testified that she was thriving in her foster home and identified her foster parents as "mom" and "dad." Additionally, her foster parents were willing to adopt her.

¶ 13 The caseworker stated that C.J. had been placed with his paternal grandparents and he identified his paternal grandmother as his mother. The caseworker also testified that the respondent's visits with C.J. neither helped nor hurt him. She noted that the grandparents were willing to provide guardianship for C.J. if the respondent's parental rights were terminated.

¶ 14 After considering the statutory best interest factors and the evidence presented, the court noted that the permanency of the children was very important and that D.J. and C.J. both had "good permanency situation[s]" in their respective foster homes. As a result, it was in the best interests of the children to terminate the respondent's parental rights. The respondent appeals.

## ANALYSIS

¶ 15

¶ 16 The respondent first challenges whether the State proved her unfit to parent D.J. and C.J. by clear and convincing evidence.

¶ 17 A trial court will find a mother unfit when she fails to make reasonable progress towards the return of her children. 750 ILCS 50/1(D)(m)(ii) (West 2008). The burden is on the State to prove by clear and convincing evidence that the mother failed to make reasonable progress "within 9 months after an adjudication of neglected or abused minor" or "any 9-month period after the end of the initial 9-month period." 750 ILCS 50/1(D)(m)(ii), (D)(m)(iii) (West 2008).

¶ 18 We review a trial court's unfitness determination under the manifest weight of the evidence standard. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *In re D.F.*, 201 Ill. 2d 476 (2002).

¶ 19 In the present case, the respondent argues that she was substantially engaged in and making progress on her court-ordered services between June 25, 2009, and March 25, 2010. She specifically alleges that she maintained employment throughout the nine-month period, completed domestic violence and parenting classes, visited with her children, and had no issues of criminality. Further, she contends that the State's dishonesty accusations are unfounded and, at most, she was only dilatory in updating her caseworker.

¶ 20 We initially note that the respondent cites the incorrect review period in her brief. This period was amended to July 2, 2008, to April 2, 2009, without objection. Consequently, we find

that some of the progress cited by the respondent did not occur in the relevant period and was not considered by the trial court.

¶ 21 Our review of the record indicates that the respondent is correct in arguing that she was making progress; however, this progress was not reasonable when viewed in light of the situation that gave rise to the wardship. See *In re C.N.*, 196 Ill. 2d 181 (2001). The trial court properly recognized that counseling was a major part of the respondent's service plan. We note that the caseworker's reports at the start of this case denote that the respondent was disinterested, refused to accept responsibility, and was unable to care for her children. The later reports indicate that the respondent had benefited from the counseling sessions as she began taking responsibility and showing more interest in her children. Nevertheless, the respondent did not fully engage in her required counseling between July 2, 2008, and April 2, 2009. The respondent chose to phone in the majority of her counseling appointments during this period instead of seeking a local counselor in Wisconsin as instructed by her caseworker.

¶ 22 Furthermore, the respondent was not forthcoming with her caseworker in notifying her of changes in her job, address, and relationship status. The respondent's failure to notify her caseworker of changes in her relationship status is particularly concerning, as D.J. was deemed neglected in part due to the respondent's prior relationship with a possible sex offender. As a result, we find that the trial court's unfitness decision was not against the manifest weight of the evidence. The State proved by clear and convincing evidence that the respondent did not cooperate with her caseworker and failed to fully comply with her service plan during the review period.

¶ 23 Next, the respondent argues that the trial court erred in finding that it was in the best interests of the children to terminate her parental rights.

¶ 24 At the termination of parental rights stage, we focus our analysis on the best interests of the children. See *In re D.T.*, 212 Ill. 2d 347 (2004). For a trial court to terminate a parent's rights, the State must prove, by a preponderance of the evidence, that termination is in the best interest of the children. *Id.* In making this decision, a trial court is statutorily required to consider 10 best interest factors. 705 ILCS 405/1–3(4.05) (West 2008). The statutory factors include: (1) the children's physical safety and welfare; (2) the development of the children's identity; (3) the children's familial, cultural and religious background; (4) the children's sense of attachment, including love, security, familiarity, continuity of relationships with parent figures, and the least disruptive placement alternative for the child; (5) the children's wishes and goals; (6) the children's community ties; (7) the children's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the children. 705 ILCS 405/1–3(4.05) (West 2008).

¶ 25 When called to review a trial court's determination that a child's best interest favors termination of a parent's rights, we apply a manifest weight of the evidence standard. *Syck*, 138 Ill. 2d 255. We give great deference to the trial court's determination because it was in the best position to evaluate the credibility of the witnesses. *Id.* We will not substitute our judgment for that of the trial court on issues of "the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *D.F.*, 201 Ill. 2d at 499.

¶ 26 The respondent argues that the termination of her parental rights was not in the best interests of her children. In support, the respondent states that she has completed her services,

her home is well kept and appropriately furnished and does not pose any safety hazards, and she has had no criminality. Additionally, she contends that she interacts properly with the children, and shows them love and affection.

¶ 27 The respondent's arguments incorrectly focus on her progress instead of the best interests of the children. See *D. T.*, 212 Ill. 2d 347. In the present case, we find that the court correctly determined the best interests of the children favored terminating the respondent's parental rights. We note that the children were placed with foster families who met all of their needs and provided them with a sense of stability and permanency. Furthermore, the testimony of the caseworker verified that D.J. was thriving in her foster home and the cessation of the respondent's visits quelled her behavior problems. The caseworker also noted that C.J. was doing well in his foster home and only showed indifference when visiting with the respondent. The record indicates that both children were attached and thriving in their foster homes and to move them at this point may do more harm than good. We also note that both children were placed with families that were willing to adopt or provide guardianship. Therefore, we find that the trial court's ruling that it was in the best interests of the children to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons the judgment of the circuit court of Peoria County is affirmed.

¶ 30 Affirmed.