

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 110792-U

Filed 12/19/11

NO. 4-11-0792

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: G.D., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v.)	No. 09JA110
LINDA DOSS,)	
Respondent-Appellant.)	Honorable
)	Thomas E. Little,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Because the evidence presented showed that (1) the respondent had not complied with her client-service plan such that her daughter could have been placed in her care in the near future and (2) termination of the respondent's parental rights was in the child's best interest, the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In November 2010, the State filed a petition to terminate the parental rights of respondent, Linda Doss, as to her daughter, G.D. (born August 24, 2009). Following an April 2011 fitness hearing, the trial court entered a written order, finding respondent unfit. Following a July 2011 best-interest hearing, the court terminated respondent's parental rights.

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

¶ 4

I. BACKGROUND

¶ 5

A. The Circumstances Surrounding the State's Motion To Terminate Respondent's Parental Rights

¶ 6

On September 8, 2009, the State filed a petition for adjudication of wardship, alleging, in pertinent part, that G.D. was a neglected minor under section 2-3(1) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1) (West 2008)). At a shelter-care hearing conducted the next day, the trial court found that an immediate and urgent necessity required G.D.'s placement in shelter care because respondent (1) was homeless and (2) had a history of prostitution, substance abuse, mental-health issues, and serious medical problems. Thereafter, the court appointed the Department of Children and Family Services (DCFS) as G.D.'s temporary guardian.

¶ 7

Following two continuances—which were agreed to by the parties—the trial court conducted a December 16, 2009, adjudicatory hearing. Thereafter, the court entered an order, adjudicating G.D. a neglected minor. The court based its finding on respondent's admission at the adjudicatory hearing that G.D. was neglected and the State's factual basis, which showed that (1) respondent was homeless and unemployed, (2) respondent had "extensive involvement" with Tennessee child protective services regarding her five other children, and (3) respondent had unresolved substance-abuse and mental-health issues. Following a January 2010 dispositional hearing, the court adjudicated G.D. a ward of the court and maintained DCFS as her guardian.

¶ 8

In November 2010, the State filed a motion to terminate respondent's parental rights as to G.D. pursuant to the Adoption Act (750 ILCS 50/1 through 24 (West 2010)). The State's motion alleged, in pertinent part, that respondent was an unfit parent in that she (1) failed

to make reasonable progress toward the return of her children within nine months after the adjudication of neglect (December 16, 2009, through September 16, 2010) (750 ILCS 50/1(D)(m)(ii) (West 2010)) and (2) was unable to discharge her parental responsibilities due to mental impairment, mental illness, or mental retardation supported by competent medical evidence (750 ILCS 50/1(D)(p) (West 2010)). (The trial court subsequently terminated the parental rights of Gary Love, G.D.'s biological father; however, he is not a party to this appeal.)

¶ 9 B. The Pertinent Evidence Presented at the Fitness Hearing

¶ 10 Kim Taylor testified that she had been respondent's DCFS caseworker since September 2009. Upon G.D.'s birth, DCFS received a call regarding respondent. Hospital staff told the responding DCFS investigator that they were concerned that respondent could not (1) provide for G.D.'s welfare, (2) comprehend her surroundings, or (3) provide information on the names or location of her five other children. After DCFS assumed temporary guardianship of G.D., respondent informed Taylor that she and Love had recently moved from Tennessee to live with Love's family, but she was homeless. Respondent told Taylor that she had a chronic history of substance abuse but could not recall the last time she had used illicit drugs.

¶ 11 Taylor implemented a client service-plan that required respondent to, in part, (1) complete a substance-abuse assessment and comply with recommendations, (2) attend parenting classes, and (3) maintain her visitation schedule with G.D. Respondent told Taylor that she did not understand her goals because she believed that G.D. had been removed from her care due solely to her lack of housing. Taylor explained that because respondent had cognitive issues that could affect her ability to comply with her client-service-plan, she received DCFS authorization to conduct a psychological evaluation on respondent.

¶ 12 In December 2009, Helen Appleton, a clinical psychologist, performed tests on respondent to assess her intellectual ability, adaptive functioning, and academic ability. Appleton concluded that respondent's test scores showed that she was mildly mentally retarded, which Appleton opined would cause respondent to have "great difficulty functioning as a parent." Appleton recommended that respondent (1) attend parenting classes with extensive repetition and "hands[-]on demonstration" and (2) receive drug treatment to address her drug use.

¶ 13 Appleton's primary concern regarding respondent was her inability to recognize changing situations and appropriately adapt to them. Appleton explained that respondent did well if she followed a script learned through repetition but noted that G.D.'s safety would be compromised if a situation deviated slightly from a familiar scenario. Appleton said that if G.D. looked sick, respondent would know to seek medical care. However, if G.D. (1) slept for prolonged periods, which could indicate a medical problem or (2) bumped her head but remained conscious, Appleton opined that respondent would not recognize that G.D. required medical care. Appleton recounted one exchange with respondent in which respondent believed that a thermometer measured a person's blood pressure.

¶ 14 In her January 2010 written evaluation, which was admitted into evidence without objection, Appleton opined, as follows:

"[Respondent] has not obtained the basic skills necessary for independent living where she only has to care for herself. [Respondent] would likely have significant difficulty with the added tasks of caring for an infant. *** [Respondent's] low intellectual functioning likely limits her ability to use good judgment in

recognizing and meeting [G.D.'s] needs. [Respondent's] low intelligence may also limit her capacity for problem solving, communication, and responding to any special needs that [G.D.] may have. [Respondent's] history indicates difficulty putting the needs of her children before her own needs. [Respondent] may have difficulties providing sufficient supervision and a safe environment. [Respondent] appears to be unaware of her deficits."

¶ 15 Appleton acknowledged that (1) improvement is virtually nonexistent if a person fails to demonstrate the ability to protect a child despite repeated instruction over the course of a year and (2) respondent was "highly motivated" to accomplish whatever task she could to regain custody of G.D.

¶ 16 After receiving Appleton's written evaluation, Taylor discussed the findings and conclusions with respondent. Respondent argued with Taylor and claimed that Appleton's conclusions were false. Based on Appleton's evaluation, Taylor implemented respondent's client-service-plan goals (1) one at a time, instead of all at once as they were normally accomplished and (2) at a markedly slower pace. Taylor also scheduled respondent to see Debra Defrates, a DCFS contractor, to provide respondent individualized parenting instruction tailored to her specific needs instead of receiving that instruction in a group setting. Taylor noted that her efforts failed because respondent (1) continued to state that she did not understand why she was implementing such an approach, despite Taylor's numerous explanations; (2) argued that Appleton's evaluation should not be considered; and (3) claimed that she was capable of parenting G.D.

¶ 17 Taylor acknowledged that although assigned tasks can improve through repetition, respondent had to be continually reminded of basic parenting skills from week to week and month to month. Taylor rated respondent's overall performance on completing her client-service-plan goals on her initial 6-month client-service plan and three subsequent plans, which ended in March 2011, as unsatisfactory. Taylor added that she did not anticipate any positive change within the next six months, noting that as time progressed, respondent's increasingly difficult demeanor eventually led to respondent being escorted from the DCFS facility because she threatened Taylor's life. Taylor concluded that based on her observations, respondent had failed to make reasonable progress toward the return of G.D. to her care, custody, and control.

¶ 18 Defrates testified that from December 2009 she instructed respondent twice a week on an individualized basis toward improving her basic parenting skills. Defrates noted that despite her efforts over the past 16 months, (1) basic safety issues occurred at virtually every session and (2) respondent was neither able to retain the information provided nor exercise sound judgment regarding G.D.'s care. Defrates opined that she could not envision respondent in the near future taking care of G.D. without a responsible adult being present 24 hours a day.

¶ 19 In December 2010, DCFS contracted with Cynthia Wadsworth, a licensed clinical social worker with 18 years' experience, to provide supportive services to assist respondent in coping with G.D.'s foster-care placement. Wadsworth testified that respondent was angry and in pain due to the removal of G.D. from her care. Wadsworth noted that despite her efforts to assist respondent in understanding the reasons for G.D.'s removal, she was unsuccessful and respondent's anger remained directed at DCFS. Based on her testing results and personal observations, Wadsworth could not foresee any time in the near future when respondent would be capable of

solely caring for the child.

¶ 20 Respondent testified that she believed that G.D. had been removed from her care because she did not have a stable residence. Respondent noted that she (1) had been attending substance-abuse counseling and narcotics anonymous; (2) had not tested positive for drugs for two years; (3) learned how to cook, do her laundry, and tell time; (4) supervises G.D. when she eats but does not like to take food away from her because G.D. gets upset; (5) has attended every parenting skills session with Defrates; (6) attended every scheduled visitation with G.D.; and (7) was seeing a tutor weekly to obtain her general educational development certificate.

¶ 21 Respondent stated that her medical conditions, which consisted of (1) suffering from seizures and (2) being human immunodeficiency virus and hepatitis C positive, would not prevent her from being an effective parent. Respondent explained that when G.D. gets upset or misbehaves, she picks G.D. up, gives her a cracker, and tells her, "No." Respondent noted that she had taken protective measures to remove dangerous conditions from her apartment.

¶ 22 C. The Trial Court's Fitness Finding

¶ 23 In May 2011, the trial court entered a written order, finding respondent unfit in that she (1) failed to make reasonable progress toward the return of her children within nine months after the adjudication of neglect (December 24, 2009, through September 24, 2010) and (2) was unable to discharge her parental responsibilities due to mental impairment, mental illness, or mental retardation supported by competent medical evidence.

¶ 24 D. The Evidence Presented at the Best-Interest Hearing

¶ 25 At the July 2011 best-interest hearing, Taylor testified that DCFS had placed G.D. with foster-parents in September 2009—which was shortly after her birth—and that G.D. was

"doing very well" in her foster-family placement. Taylor added that G.D.'s foster family was an adoptive resource. Taylor described that G.D.'s interaction with the three other children living in the foster home was typical in that G.D. played and laughed with her foster-siblings. Based on her observations, Taylor stated that G.D. had a greater bond with her foster parents than with respondent in that G.D. would (1) routinely be near either foster parent or (2) look for her foster parents if she could not see them. Taylor explained that in the past four months, she observed that G.D. hesitated to walk toward respondent and instead, would often cry and run away. Taylor noticed that when G.D. would resist, respondent appeared frustrated and would raise her voice in an attempt to get G.D. to comply with her demands. Taylor opined that it would be in G.D.'s best interest to be adopted by "the only family she has ever known, which is the foster home that she is currently placed in." Taylor doubted that any likelihood existed that G.D. would be quickly reunited with respondent. Taylor noted that (1) respondent stopped visiting with G.D. in April 2011 and (2) she later learned that respondent had returned to Tennessee. Taylor noted that respondent did not inform her of her departure.

¶ 26 Respondent recounted that she had held a birthday party at her apartment for G.D.'s first birthday. Respondent stated that she believed she could provide a physically safe environment for G.D. because she had been receiving social security benefits, public financial assistance, and public housing, which consisted of a two-bedroom apartment. Respondent acknowledged that although she could not remember when she left Illinois, she returned from Tennessee on June 25, 2011.

¶ 27 E. The Trial Court's Best-Interest Finding

¶ 28 After considering the evidence and counsel's arguments, the trial court terminated

respondent's parental rights as to G.D.

¶ 29 This appeal followed.

¶ 30 II. TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 31 A. The Trial Court's Fitness Finding

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

¶ 33 Section 1(D)(p) 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:

* * *

(p) Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation *** and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a rea-

sonable time period. ***." 750 ILCS 50/1(D)(p)
(West 2010).

¶ 34 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."

¶ 35 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, 1067-68, 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).

¶ 36 "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.*

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

¶ 38 Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. In particular, respondent contends that Appleton's evaluation neither supports nor meets the statutory requirements necessary to find her unfit pursuant to section 1(D)(p) of the Adoption Act. We disagree.

¶ 39 In this case, the trial court based its fitness finding on the testimony of Appleton and Wadsworth regarding the doubtful prospects of respondent successfully providing G.D. with nurturing care in a safe environment. In this regard, the record shows that each of these experienced, licensed medical professionals concluded that respondent could not independently

parent G.D. because of respondent's mental impairment. In addition, Wadsworth testified that she could not envision a scenario in the near future in which respondent would be independently capable of providing care for G.D. without risking G.D.'s safety. Given this evidence, and the aforementioned statutory requirements of section 1(D)(p) of the Adoption Act, we reject any notion that the opposite finding than that made by the court in this case was clearly evident.

¶ 40 Accordingly, we conclude that the court's finding that respondent was unfit due to her mental impairment was not against the manifest weight of the evidence.

¶ 41 Because we have concluded that the trial court's finding that respondent was unable to discharge her parental responsibilities due to mental impairment, mental illness, or mental retardation was supported by competent medical evidence and was not contrary to the manifest weight of the evidence, we need not consider the court's other findings as to parental unfitness. 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 unfitness).

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

¶ 43 1. *The Standard of Review*

¶ 44 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).

¶ 45 "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. *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

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

¶ 47 Respondent next argues that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondent contends that the court erred by considering evidence presented at respondent's April 2011 fitness hearing to find that it was in G.D.'s best interest to terminate respondent's parental rights. We disagree.

¶ 48 In this case, the trial court based its decision to terminate respondent's parental rights on the fact that she was safe and happy in her foster home, as follows:

"Here the evidence is clear and undisputed that [G.D.] has been in *** foster placement since, approximately, one week after [her] birth, that's where she had been. [G.D.] has a very close bond to the foster parents. [G.D.] has three other children in the *** residence that she has bonded with well.

So [the court finds] that to be very important factor in [the court's] analysis of what's in [G.D.'s] best interest ***. [The court] also [has] to look to the factor regarding the physical safety and welfare of the child. [The Guardian *ad litem*] has suggested and

has referred back to the order that [the court] entered *** when [the court] heard evidence with respects to the issue of fitness."

Thereafter the court summarized the testimony it considered at respondent's July 2011 best-interest hearing that was provided by Taylor, Defrates, Appleton, and Wadsworth at respondent's April 2011 fitness hearing.

¶ 49 As we have determined in the past, we reject respondent's contention that the trial court erred by considering evidence presented at respondent's April 2011 fitness hearing at respondent's July 2011 best-interest hearing. See *Jay H.*, 395 Ill. App. 3d at 1069-70, 918 N.E.2d at 289-90 (where this court concluded that all evidence helpful (in the trial court's judgment) in determining the best interest of the child may be admitted and may be relied upon to the extent of its probative value, even though that evidence would not be admissible in a proceeding where the formal rules of evidence applied). In addition, to the extent that respondent contends that the trial court's best-interest finding was against the manifest weight of the evidence, we similarly reject that contention.

¶ 50

III. CONCLUSION

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

¶ 52 Affirmed.