

NOTICE

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NOS. 4-10-0644, 4-10-0645 cons. Filed 1/14/11

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

In re: Bn.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v. (No. 4-10-0644))	No. 09JA30
TARA McCLELLAN and MICHAEL COVEY,)	
Respondents-Appellants.)	
-----)	
In re: Ba.M. a Minor,)	No. 08JA92
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-10-0645))	Honorable
TARA McCLELLAN,)	Thomas E. Little,
Respondent-Appellant.)	Judge Presiding.

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

ORDER

Held: In this consolidated case, the court affirmed the trial court's fitness and best-interest findings as to two minors, where (1) parents of son failed to satisfactorily complete their client-service plan and showed no signs of being able to complete that plan in the near future and (2) mother of daughter failed to satisfactorily complete her client-service plan and showed no signs of being able to complete that plan in the near future.

In March 2010, the State filed separate petitions to terminate the parental rights of (1) respondents, Tara McClellan and Michael Covey, as to their son, Bn.M. (born March 3, 2009), in Macon County case No. 09-JA-30, and (2) respondent McClellan as to her daughter, Ba.M. (born February 15, 2008), in Macon

County case No. 08-JA-92. In January 2010, the trial court found McClellan and Covey unfit and later terminated (1) Covey's parental rights as to Bn.M. and (2) McClellan's parental rights as to both children.

In August 2010, (1) McClellan and Covey appealed in case No. 09-JA-30 (this court's case No. 4-10-0644) and (2) McClellan appealed in case No. 08-JA-92 (this court's case No. 4-10-0645). We have consolidated those appeals.

On appeal, (1) McClellan and Covey argue that the trial court erred by finding them unfit and terminating their parental rights as to Bn.M., and (2) McClellan argues that the court erred by finding her unfit and terminating her parental rights as to Ba.M. We disagree and affirm the court's judgment in both cases.

I. BACKGROUND

A. The State's Petitions

1. *The State's Petitions for Adjudication of Wardship*

In April 2008, the State filed a petition for adjudication of wardship, alleging that Ba.M. was (1) neglected (705 ILCS 405/2-3(1)(b) (West 2008)), (2) abused (705 ILCS 405/2-3(2)(ii) (West 2008)), and (3) dependant (705 ILCS 405/2-4(1)(b) (West 2008)), in that McClellan was unable to learn how to feed Ba.M. and had substance abuse, developmental, and mental-health issues. (The State also noted that Ba.M. had three potential fathers, adding that none of them were involved in Ba.M.'s life.) Follow-

ing a November 2008 hearing, the trial court adjudicated Ba.M. a ward of the court and appointed the Department of Children and Family Services (DCFS) as her guardian.

In March 2009, the State filed a petition for adjudication of wardship, alleging that Bn.M. was (1) neglected (705 ILCS 405/2-3(1)(b) (West 2008)), (2) abused (705 ILCS 405/2-3(2)(ii) (West 2008)), and (3) dependant (705 ILCS 405/2-4(1)(b) (West 2008)), in that McClellan had another child (Ba.M.) in DCFS custody due to her substance abuse, developmental, and mental-health issues. Following an adjudicatory hearing held shortly thereafter, the trial court adjudicated Bn.M. a ward of the court and appointed DCFS as his guardian.

2. The State's Petitions To Terminate Parental Rights

In March 2010, the State filed two petitions to terminate parental rights. The first petition (this court's case No. 4-10-0644) alleged that McClellan and Covey--who the court had determined was Bn.M.'s father--were unfit in that (1) they (a) failed to maintain a reasonable degree of interest, concern, or responsibility as to Bn.M.'s welfare (750 ILCS 50/1(D)(b) (West 2008)), (b) failed to protect Bn.M. from conditions within his environment injurious to his welfare (750 ILCS 50/1(D)(g) (West 2008)), (c) failed to make reasonable efforts to correct the conditions that were the basis for Bn.M.'s removal (750 ILCS 50/1(D)(m)(i) (West 2008)), and (d) failed to make reasonable

progress toward Bn.M.'s return within nine months after adjudication (750 ILCS 50/1(D)(m)(ii) (West 2008)); and (2) McClellan evidenced an inability to discharge parental responsibilities due to mental impairment, illness, or retardation (750 ILCS 50/1(D)(p) (West 2008)).

The second petition (this court's case No. 4-10-0645) alleged, in pertinent part, that McClellan was unfit in that she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to Ba.M.'s welfare (750 ILCS 50/1(D)(b) (West 2008)); (2) failed to protect Ba.M. from conditions injurious to her welfare (750 ILCS 50/1(D)(g) (West 2008)); (3) failed to make reasonable progress toward the return of Ba.M. within nine months after adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2008)); (4) failed to make reasonable progress toward the return of Ba.M. during any nine months after the end of the initial nine-month period following adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(iii) (West 2008)); and (5) evidenced an inability to discharge parental responsibilities due to mental impairment, illness, or retardation (750 ILCS 50/1(D)(p) (West 2008)).

At some point, the trial court began treating these cases as if they were consolidated and scheduled a (1) June 2010 fitness hearing and (2) July 2010 best-interest hearing.

B. The Parental Fitness Hearing

At the June 2010 fitness hearing on the State's petition to terminate, Lynley Young, the parties' caseworker, testified that Covey was "not interested" in bringing Bn.M. into his home because (1) he wanted to keep Bn.M. and Ba.M. together and (2) his house was "very small and wouldn't be large enough for another child." (Covey had five other children with McClellan's sister.) Young also explained that she rated McClellan's service plan unsatisfactory because although McClellan was "completing" her parenting classes, that training did not "carry over into real life." Young added that after starting her service plan, McClellan was evicted from her apartment for "being under the influence of alcohol and disrupting the apartment building." Toward the end of her counseling sessions, McClellan missed some counseling and stopped taking her depression medication.

Young testified further that when McClellan visited the children, Young would have to intervene because McClellan focused almost exclusively on Bn.M. McClellan would become "obsessed with one task" and feeding Bn.M. "would consume the whole visit." Young concluded that McClellan would not be able to parent independently, adding that they had "been doing the same skills for two years[] and [that] there [had] been no improvement in [those] two years."

Kathy Shaw, McClellan's social worker, testified that although McClellan received a certificate for attending her

parenting class, she did not successfully complete the class. McClellan had difficulty keeping up with the course work. When Shaw compared the results of McClellan's entrance tests to her exit tests, Shaw concluded that McClellan did not make any progress with her parenting skills.

Delois Conner, one of the children's visitation supervisor, testified that McClellan was unable to get the children out of their car seats even after being shown how to do so. Connor added that McClellan was unable to control the children during visits, which caused her concern for the children's safety. Connor further explained that she was forced to show McClellan how to put diapers on the children but that McClellan could not comprehend her instructions. Connor opined that McClellan was "not at all" capable of caring for the children alone.

Linda Lanier, a clinical psychologist, testified that she interviewed McClellan and determined that McClellan was mildly retarded. Lanier concluded that McClellan (1) suffered from mild depression and lacked social-interaction skills and (2) tended to be self-absorbed and isolated, opining that it was unlikely that McClellan could successfully parent independently.

For his part, Covey testified that he would be willing to complete his psychological assessment. Covey explained that he elected not to participate in his required psychological

assessment because he knew McClellan wanted the children to stay together. Covey's theory was that completing the assessment would be unnecessary, given that he did not want the children to live apart.

On this evidence, the trial court found that the State had proved by clear and convincing evidence that McClellan and Covey were unfit for all the reasons alleged by the State, except that the State failed to show that McClellan did not maintain a reasonable degree of interest, concern, or responsibility as to Bn.M.'s welfare.

C. The Parental Termination Hearing

At the July 2010 parental termination hearing, Conner, one of the children's visitation caseworkers, testified that Bn.M. and Ba.M. had been placed in the same foster home and were doing very well. Connor added that Ba.M. had numerous medical issues, which the foster parents were addressing. Connor explained that the foster parents were very loving with the children and that the children were attached to them. Connor observed that McClellan failed to demonstrate any improvement in her parenting skills since the fitness hearing, concluding that it would be in the children's best interest to stay with their foster family.

Young, the parties' caseworker, testified regarding the children's relationship with their foster parents as follows:

"The foster [mother], she's a very good parent. She takes care of all of their needs; medical, physical. She's very affectionate. And [the foster father] is also although I've seen her more with the children because he works. But she is very affectionate. The children are very bonded to the foster parent. [Bn.M.] has been with the foster parent since birth and he's very attached. In fact, he has some separation anxiety when we have to pick him up because he's really bonded with her. She and [Ba.M.] are also very close and she's been a very big advocate for [Ba.M.'s] medical needs. She has some severe medical issues that they cannot diagnos[e] and she has pushed doctors *** to get a diagnosis. In fact, they are going to St. Louis for treatment."

Young opined that it would be in the children's best interest to remain in their foster home, adding that the foster parents were committed to adopting the children.

McClellan testified that she was on disability and did not have a job. McClellan explained that she wanted her children and was capable of taking care of them. McClellan acknowledged

that she did not have transportation and would rely on the "Aid Office" to take Ba.M. to her doctor appointments.

Covey testified that he was Bn.M.'s father, not Ba.M.'s. Covey stated that he believed that Bn.M. had bonded with him. He said that he believed McClellan could take care of the children and that he would be able to take care of Bn.M. for "maybe an hour a day and *** in the evening."

The trial court thereafter terminated the parties' parental rights as to both children as follows:

"All right. [The court has] considered the testimony of the witnesses. [The court has] reviewed the best[-]interest report ***. ***. [The court has] considered the best[-] interest factors set forth in the statute ***. [The court has] considered all of those factors. ***. Court finds [that] the State has prove[d] by a preponderance of evidence that it is in [Ba.M.'s] best interest to terminate the parental rights of *** McClellan *** and all whom it may concern."

The court later entered a written order terminating the parental rights of McClellan and Covey as to Bn.M. as well.

This appeal followed.

II. ANALYSIS

A. Case No. 4-10-0644

In case No. 4-10-0644, McClellan and Covey argue that the trial court erred by (1) finding them unfit and (2) terminating their parental rights as to Bn.M. We address their contentions in turn.

1. *The Trial Court's Fitness Findings*

McClellan and Covey contend that the trial court erred by finding them unfit as to Bn.M. Specifically, McClellan and Covey assert that they made "reasonable" progress because they attended and completed most of the requirements under their respective client-service plans. We disagree.

a. The Standard of Review

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. *In re D.F.*, 201 Ill. 2d 476, 498-99, 777 N.E.2d 930, 942-43 (2002). We will not reverse a trial court's finding of parental unfitness unless it was contrary to the manifest weight of the evidence, meaning that the correctness of the opposite conclusion is clearly evident from a review of the record. *D.F.*, 201 Ill. 2d at 498, 777 N.E.2d at 942.

b. The Pertinent Portion of the Adoption Act

Section 1(D)(m)(ii) of the Adoption Act provides, in

pertinent part, as follows:

"The grounds of unfitness are any *** of the following ***:

* * *

(m) Failure by a parent ***
(ii) to make reasonable progress
toward the return of the child to
the parent within [nine] months
after an adjudication of neglected
or abused minor *** or dependent
minor[.]" 750 ILCS 50/1(D) (m) (ii)
(West 2008).

Reasonable progress "is an objective review of the steps the parent has taken toward the goal of reunification." *In re B.S.*, 317 Ill. App. 3d 650, 658, 740 N.E.2d 404, 411 (2000), *overruled on other grounds by In re R.C.*, 195 Ill. 2d 291, 304, 745 N.E.2d 1233, 1241 (2001).

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D) (m) of the [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." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

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 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 D.S., 313 Ill. App. 3d 1020, 1025, 730 N.E.2d 637, 641 (2000);
In re B.W., 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207
(1999); *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478,
482 (1999).

c. The Evidence Presented in This Case
and the Court's Fitness Determination

In this case, the State presented evidence that Covey was "not interested" in bringing Bn.M. into his home for multiple reasons. First, Covey wanted to keep Bn.M. and Ba.M. together. Second, Covey's house was "very small and wouldn't be large enough for another child" because he had five other children with McClellan's sister. The State also showed that although Covey claimed to be willing to complete his psychological assessment, he had elected not to do so.

As for McClellan, her client service plan was rated unsatisfactory because although McClellan had completed her parenting classes, she was not implementing the skills she was taught. Indeed, after starting her client service plan, McClellan (1) was evicted from her apartment for "being under the influence of alcohol and disrupting the apartment building," (2) had difficulty keeping up with the course work, and (3) did not make any progress in her attempts to learn how to successfully (a) remove Bn.M. from his car seat or (b) change Bn.M.'s diaper.

Given this evidence, we agree with the trial court that McClellan and Covey did not make reasonable progress because it

does not appear that either parent was going to be able to care for Bn.M. in the *near future*. Accordingly, we conclude that the court's fitness findings were not contrary to the manifest weight of the evidence.

Because we have concluded that the trial court's finding that McClellan and Covey failed to make reasonable progress toward the return of Bn.M. during the nine-month period following its adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2006)) was not contrary to the manifest weight of the evidence, we need not consider the court's other findings of 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).

2. *The Trial Court's Decision To Terminate
the Parties' Parental Rights*

McClellan and Covey next contend that the trial court erred by terminating their parental rights as to Bn.M. McClellan and Covey assert that the court erred because the court "should have focused on the positives instead of the negatives when it made its best-interest findings." We disagree.

a. *The Best-Interest Proceedings and
the Standard of Review*

At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a prepon-

derance 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).

"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.

b. The Best-Interest Proceedings in This Case

At the time of the best-interest hearing, Bn.M. had been living with Ba.M. in the same foster home. The evidence showed that (1) Bn.M. had been living with his foster family since shortly after he was born, (2) the foster parents had provided him a loving environment, (3) Bn.M. had bonded with his foster family, and (4) the foster family had expressed interest in adopting Bn.M. Meanwhile, McClellan and Covey were not going to be in a position to resume their parental responsibilities as

to Bn.M. in the near future. Accordingly, we conclude that the trial court's finding that it was in Bn.M.'s best interest to terminate the parental rights of McClellan and Covey was not against the manifest weight of the evidence.

B. Case No. 4-10-0645

As in case No. 4-10-0644, McClellan argues in case No. 4-10-0645 that the trial court erred by (1) finding her unfit and (2) terminating her parental rights as to Ba.M. Because we have concluded that the trial court's findings that (1) she was unfit as to Bn.M. and (2) it was in Bn.M.'s best interest to terminate her parental rights was not erroneous, which was based on the same evidence presented regarding Ba.M., we likewise conclude that the court's findings with regard to Ba.M. were not contrary to the manifest weight of the evidence.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment as to both appeals.

Case No. 4-10-0644: affirmed.

Case No. 4-10-0645: affirmed.