

NOTICE
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NO. 4-10-0718

Filed 1/31/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: D.B., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 09JA31
GROVER BENNETT,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

Held: The trial court's finding that the Department of Children and Family Services (DCFS) made reasonable efforts in respondent's case is not against the manifest weight of the evidence, considering that even though DCFS sent correspondence to him, knowing he was illiterate, he had access to the administrative staff in the prison, where he was incarcerated, and the record does not reflect that he ever asked anyone there to read the correspondence to him or that he ever telephoned DCFS.

Respondent, Grover Bennett, appeals from an order in which the trial court terminated his parental rights to his daughter, D.B. Specifically, respondent challenges the court's finding that DCFS made reasonable efforts in his case. Because we conclude that the finding is not against the manifest weight of the evidence, we affirm the trial court's judgment.

I. BACKGROUND

A. The Birth of D.B. and the Resulting Prosecution of Respondent

Respondent and Steven Watterson were coworkers at Rantoul Products, and

they developed a friendship with one another. They became good enough friends that Watterson invited respondent to move in with him; his wife, Georgia; and their daughter, P.W., since respondent, who was divorced, had no home of his own.

While living with the Wattersons, respondent began having sexual contact with P.W. when she was about 11 years old and he was in his early thirties. She became pregnant by him, and in October 2008, at age 17, she gave birth to D.B.

A hot-line call came into DCFS in December 2008, alleging that for a considerable period of time, respondent had been having a sexual relationship with P.W. The State charged respondent with aggravated criminal sexual abuse, and while he was in the county jail, awaiting trial on this charge, P.W. brought D.B. over twice a week for a visit.

In March 2009, after respondent was convicted of the charge, the trial court sentenced him to probation, and one of the conditions of probation was that he have no further contact with either P.W. or D.B. He violated that condition. In April 2009, he was arrested for staying at the Wattersons' home, and as a result, the court revoked probation and resentedenced him to six years' imprisonment on the underlying charge. His scheduled mandatory supervised release is November 29, 2011.

B. The Adjudication of Neglect and the Dispositional Order Making D.B. a Ward of the Court

In June 2009, the trial court adjudicated D.B. to be neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)) in that she was in an environment injurious to her welfare. The court deemed the environment to be injurious in that after respondent was convicted of sexually abusing P.W., he returned to the home of P.W. and D.B., thereby violating a condition of probation.

In July 2009, the court followed up with a dispositional order finding D.B. to be neglected and making her a ward of the court.

C. The "Home and Background Report"

1. *Respondent's Perspective on His Relationship With P.W.*

On July 21, 2009, DCFS prepared a "Home and Background Report." According to the report, respondent began sexually abusing P.W. when she was 11 years old. P.W. told him to stop, but he did not stop, and she "told every adult in her life that she was being abused." Respondent stated that his relationship with P.W. was "okay until she got pregnant." He did not consider the relationship to be "abusive or problematic." He viewed the relationship as "consensual."

2. *Respondent's Illiteracy*

The report states that although in 1988 respondent received a diploma from Harrisburg High School in Harrisburg, Illinois, he cannot read and he has difficulty writing. Because of a learning disability and behavioral problems, he underwent special education throughout his years in school.

D. The Permanency Orders

On October 27, 2009, the trial court entered a permanency order that set a goal of "return home." On April 6, 2010, the court entered another permanency order, which set a goal of "return home to respondent mother." Both of those orders began by reciting that the court had considered "whether reasonable efforts had been made by all parties to achieve that goal."

E. Termination of Parental Rights

On April 1, 2010, the State filed a motion for a finding that both parents were

unfit and for the termination of their parental rights to D.B. (P.W. is not a party to this appeal.) The motion alleged that respondent was unfit in that (1) he had failed to maintain a reasonable degree of interest, concern, or responsibility as to D.B.'s welfare (see 750 ILCS 50/1(D)(b) (West 2008)) and (2) he had failed to make reasonable progress toward the return of D.B. within the initial nine months after the adjudication of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2008)).

In a fitness hearing on July 28, 2010, Assistant State's Attorney Lawrence Solava called the trial court's attention to a request for admission of facts which the State had served on respondent on June 14, 2010. Because respondent had not responded to this request for admission, Solava requested the court to deem the facts in that document to be admitted. Respondent's attorney, Cherie Kesler, stated that she had no objection. Therefore, the court declared the facts to be admitted.

Among those facts were the following: (1) respondent had not signed and returned the releases that his caseworker had mailed to him so that he could engage in services, (2) the caseworker had sent correspondence to respondent asking him to engage in services, (3) respondent had not contacted his caseworker to engage in services, and (4) the caseworker could not visit respondent in prison, because he had not put her on his visitation list.

On the basis of these and other facts, including respondent's conviction of aggravated criminal sexual abuse of a victim 13 to 16 years old and his forbidden contact with P.W. while he was on mandatory supervised release, the trial court found that the State had proved respondent's unfitness, on both grounds, by clear and convincing evidence. See 750 ILCS 50/1(D)(b), (D)(m)(ii) (West 2008). In the adjudicatory order entered on July

29, 2010, the court stated:

"[Respondent] committed the offense of aggravated criminal sexual abuse against [P.W.] the respondent mother, who was then 16 years old. The respondent minor was conceived in this way. After violating probation by having prohibited contact with the respondent minor and the mother, Mr. Bennett was incarcerated in the Department of Corrections for 6 years commencing June 2, 2009. Since adjudication, Mr. Bennett has not kept contact or corresponded with the assigned caseworker although the caseworker has tried to correspond with him. He has not signed releases for enrollment in services. He has done nothing to cooperate with the provision of even minimal services."

On September 9, 2010, after a best-interest hearing, the trial court entered an order finding that "DCFS ha[d] made reasonable efforts" and finding that it would be in D.B.'s best interest to terminate respondent's parental rights. Accordingly, the court terminated his parental rights to D.B. The court noted that the mother had previously surrendered her parental rights. The court ordered DCFS to continue being D.B.'s guardian and changed the permanency goal to adoption.

This appeal followed.

II. ANALYSIS

A. Our Subject-Matter Jurisdiction

Respondent argues the trial court erred by finding, in its permanency orders

of October 27, 2009, and April 6, 2010, that "the Department had made reasonable efforts" to achieve the permanency goals stated in those orders. The State responds that because those orders were not final orders, they are not appealable and we lack subject-matter jurisdiction to review any of the findings therein. See *In re C.B.*, 322 Ill. App. 3d 1011, 1013 (2001).

Nevertheless, in its order of September 9, 2010, which terminated respondent's parental rights, the trial court found that "DCFS ha[d] made reasonable efforts." According to the notice of appeal, respondent appeals from that order, which is a final, appealable order (Ill. S. Ct. R. 307(a)(6) (eff. February 26, 2010)). We surely have subject-matter jurisdiction to review the findings in a final, appealable order that is specified in the notice of appeal.

We also have subject-matter jurisdiction to review every nonfinal order that produced the final judgment. *Steinberg v. System Software Associates, Inc.*, 306 Ill. App. 3d 157, 166 (1999). One of those final orders was the adjudicatory order of July 29, 2010, in which the trial court found respondent to be an "unfit person" within the meaning of sections 1(D)(b) and (D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (D)(m)(ii) (West 2008)) in that he had failed to demonstrate a reasonable degree of interest, concern, or responsibility as to D.B.'s welfare and he had failed to make reasonable progress toward the return of D.B. to him within the initial nine months after the adjudication of neglect. See *In re M.J.*, 314 Ill. App. 3d 649, 654-55 (2000). The finding of a lack of reasonable progress by respondent implies that DCFS did its part. The finding implies that DCFS made a reasonable effort to reunify D.B. with his parents. See 705 ILCS 405/2-13.1(1)(a) (West 2008). The very concept of a service plan implies the necessity of a reasonable effort by

DCFS. Because the finding of a reasonable effort by DCFS is implied in the adjudicatory order finding respondent to be an "unfit person" and because the adjudicatory order was a step in the progression to the final, appealable dispositional order, which terminated respondent's parental rights, we conclude that we have subject-matter jurisdiction to review the finding that DCFS made a reasonable effort in respondent's case. See *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023 (2009).

B. A Reasonable Effort by DCFS

According to respondent, the trial court's finding that DCFS made a reasonable effort to reunify him with D.B. is against the manifest weight of the evidence because even though DCFS knew he was illiterate, all DCFS did was send him documents, which DCFS knew he could not read, complete, or sign. In support of that argument, respondent cites *In re Overton*, 21 Ill. App. 3d 1014, 1018 (1974), in which the Second District overturned the trial court's finding that a mother had failed to maintain a reasonable degree of interest, concern, or responsibility as to her children's welfare. The Second District held that the finding was "not based upon clear and convincing evidence," because the mother in that case had shown interest, concern, and responsibility as to her children's welfare but DCFS had sabotaged or frustrated her efforts. *Id.* The mother sent a gift to her children, but DCFS never delivered the gift. *Overton*, 21 Ill. App. 3d at 1019, 316 N.E.2d at 205. The mother wrote DCFS a letter, but DCFS did not respond to the letter. *Id.* "If [the mother] did not see her children frequently enough the Department was prepared to and did file a petition alleging that [the mother] did not show reasonable interest, yet, if she insisted upon seeing her children in opposition to the feelings of her case worker, her case worker may not have recommended the return of her children." *Id.* In

short, the mother made reasonable efforts, and not only did DCFS fail to meet her halfway, but DCFS "virtually insured that once [the mother] was separated from her children she would eventually lose them permanently." *Id.*

Overton is the only authority that respondent cites in support of his argument that by communicating with him in writing, DCFS failed to make a reasonable effort to reunify him with D.B. *Overton*, however, is distinguishable. DCFS did not do in this case what it did in *Overton*. DCFS did not affirmatively set up obstacles to respondent's reunification with D.B.

Apart from the general uncontroversial proposition that DCFS must make a reasonable effort, *Overton* is irrelevant. *Overton* has nothing to say about the reasonableness of sending correspondence to an illiterate parent. Respondent really does not make a reasoned argument on that question. We require a reasoned argument because given respondent's assertion that it was *per se* unreasonable for DCFS to send him a letter, knowing that he was illiterate, one might wonder how another important writing, a summons, could be reasonable. If an illiterate parent is served with a summons pursuant to section 2-15 of the Juvenile Court Act of 1987 (705 ILCS 405/2-15 (2008)) and if, because of an inability to read the summons, the parent fails to appear and ends up losing his or her parental rights, would the parent's illiteracy be grounds for vacating the judgment? Probably not.

In other words, competent adults of all levels of education are chargeable with the knowledge of various legal writings, and they can lose rights and liberties by disregarding such writings. Because our legal system relies upon such imputed written notice, respondent would have to offer us a coherent rationale for holding that DCFS acted

unreasonably in sending him a letter, especially considering that he had continuous access to the prison staff, which presumably was literate.

A reasonable trier of fact could find it difficult to believe that no one on the staff of Graham Correctional Center was willing to read to respondent the correspondence from DCFS. Respondent does not say he ever asked anyone to read the correspondence to him. Nor does the record reflect that he ever tried calling DCFS. He simply did nothing, or so it appears. We understand respondent's point that it makes no sense to send letters to someone who the sender knows cannot read. Our standard of review, however, is deferential (*In re T.A.*, 359 Ill. App. 3d 953, 960 (2005)), and the counterarguments could be made that (1) in our legal system, illiteracy does not inevitably shield one from the effect of legal writings and (2) communicating with respondent by correspondence seems more reasonable than it otherwise might be, considering that in prison, respondent had continuous access to the administrative staff. If respondent asked no one on the staff to help him, not all reasonable minds would have to agree that respondent met DCFS halfway. Arguably, his complete unresponsiveness to DCFS's correspondence is inconsistent with demonstrating a reasonable degree of interest, concern, or responsibility as to D.B.'s welfare and making reasonable progress toward the return of D.B.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.