

NOTICE
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NO. 4-11-0030

Order Filed 5/27/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: O.L., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 07JA50
TASHEBA PALMER,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

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

ORDER

Held: (1) Where the State sufficiently proved that respondent mother had failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the child's welfare, the trial court did not err in finding respondent an unfit parent.

(2) Where the State sufficiently proved that termination of respondent mother's parental rights was in the child's best interest, the trial court did not err in entering a judgment of termination.

Respondent mother, Tasheba Palmer, appeals the trial court's order terminating her parental rights to her son, O.L., born October 16, 2004. She claims the court's findings that (1) she was an unfit parent and (2) termination was in O.L.'s best interests were against the manifest weight of the evidence. We disagree and affirm the court's judgment.

I. BACKGROUND

Respondent became pregnant with O.L. when she was 12 years old and was

herself a ward of the court in neglect proceedings filed on her behalf and against her parents. The Illinois Department of Children and Family Services (DCFS) had placed respondent and her four younger siblings with her grandmother in relative foster placement. Upon his birth, O.L. resided with respondent in the home as well. O.L.'s father, Nathaniel L., who had his parental rights to O.L. later terminated in September 2009, is not a party to this appeal.

DCFS became involved with O.L. in May 2007, when respondent, who was 16 at the time, was pushing him in his stroller down the street when Nathaniel approached. Nathaniel wanted to see O.L. and grabbed the stroller from respondent. The two argued. Respondent reportedly accused Nathaniel of not being a good father and threatened that she would find someone who could be. Nathaniel punched respondent twice in the mouth and she fell to the ground. He continued punching her multiple times in the head as she laid on the ground trying to protect herself. He eventually stopped and ran from the area. Respondent walked home and called the police, but she refused to press charges against him.

In June 2007, the State filed a petition for adjudication of neglect on behalf of O.L., alleging he was neglected because respondent and Nathaniel created an environment injurious to his welfare by exposing him to domestic violence. See 705 ILCS 405/2-3(1)(b) (West 2006). The couple had a history of violent altercations. In October 2007, the trial court entered an adjudicatory order and, in November 2007, the court entered a dispositional order. Though the court awarded temporary custody and guardianship to DCFS, O.L. remained in his great-grandmother's home with respondent.

The caseworker, Caren Cohen-Heath of Catholic Charities, recommended that

respondent participate in general-equivalency-diploma (GED) classes, individual counseling, domestic-violence counseling, a psychological evaluation, a psychiatric evaluation, a substance-abuse assessment, and parenting classes. She also recommended that respondent have no contact with Nathaniel. As the case progressed, respondent's participation in her recommended services was limited. Through February 2009, respondent had been unsuccessfully terminated due to poor attendance from (1) domestic-violence classes, (2) substance-abuse treatment at Prairie Center, and (3) independent-living-skills classes. Though, she had completed (1) her parenting course on her second attempt, (2) her psychological evaluation, and (3) her GED classes. She had not obtained her equivalency diploma, as she still had to take the final exams. According to Cohen-Heath, as set forth in her August 2008 permanency-review report, respondent's participation in her services was poor because she "was developmentally unable to handle this situation and was not cooperating because of being overwhelmed by the many tasks she was being asked to complete."

Respondent also had some involvement with the criminal justice system. While this case was pending, she was arrested for the following criminal offenses: (1) a September 2007 felony theft, (2) a June 2008 domestic battery after fighting with her cousins, (3) a December 2008 larceny, and (4) a May 2009 property damage after attacking Nathaniel.

Based upon respondent's poor progress, in February 2009, the State filed a petition to terminate her parental rights, alleging she was unfit for (1) failing to make reasonable efforts to correct the conditions that were the basis for the child's removal (750 ILCS 50/1(D)(m)(i) (West 2008)), (2) failing to make reasonable progress toward the

return of the minor within the initial nine months after adjudication (750 ILCS 50/1(D)(m) (ii) (West 2008)), and (3) failing to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2008)). The petition further alleged termination of respondent's parental rights would be in O.L.'s best interest.

After a July 2009 fitness hearing, of which we are without the benefit of any transcript, bystander's report, or agreed statement of facts pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005), the trial court found respondent was an unfit parent for the reasons stated in the petition. In a written order, the court specifically found that (1) respondent had been unsuccessfully terminated from domestic-violence classes twice between January 7, 2007, and February 23, 2009; (2) she had not completed substance-abuse treatment; (3) she had failed to complete parenting classes; and (4) she had been involved in "an instance of family violence which resulted in her being threatened with a knife" by her cousin.

At the best-interest hearing in September 2009, again a hearing for which we have no report of proceedings, the trial court terminated Nathaniel's parental rights to O.L. According to a docket entry, the court continued the hearing as it related to respondent, "neither grant[ing] nor den[ying] at this time" the State's petition.

A September 2009 best-interest report submitted by DCFS and prepared by Cohen-Heath, indicated that respondent had (1) started her domestic-violence classes in March 2009, was still attending, and actively participating; (2) completed her independent-living-skills course in July 2009; and (3) started her substance-abuse treatment in July 2009 and was attending weekly.

The trial court conducted another best-interest hearing in January 2010 and

again deferred ruling until May 2010. In an April 2010 best-interest report, the caseworker noted that respondent had been arrested for domestic battery in January 2010 after an altercation with Nathaniel. Respondent had also been rereferred for individual counseling, but had yet to attend, and she was dismissed from substance-abuse treatment in February 2010 due to poor attendance. Cohen-Heath tried four times in March 2010 to get respondent to another evaluation without success. Respondent finally participated in April 2010, but those results indicated that further evaluation was required. That subsequent evaluation was scheduled for later in May 2010. Respondent had taken the GED examination in April 2010 and was awaiting the results.

At the next best-interest hearing on May 5, 2010 (another hearing for which there is no report of proceedings in the record), after considering evidence and arguments of counsel, the trial court denied the State's petition, finding, according to its docket entry, that termination was not in the minor's best interest. The court ordered custody and guardianship to remain with DCFS but changed the permanency goal to "return home."

In September 2010, the State filed a second petition to terminate respondent's parental rights, alleging (1) she was unfit based on her failure to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of O.L. (750 ILCS 50/1(D)(b) (West 2008)), and (2) it was in O.L.'s best interest to terminate respondent's parental rights.

Also in September 2010, DCFS filed a permanency-review report prepared by Cohen-Heath dated September 1, 2010, which indicated the State would file its second petition to terminate "due to lack of completion of services." Respondent was then 19 years old. According to the report, respondent had "not met with the caseworker nor kept any

appointment made with the caseworker since May 2010." She had been absent from the home "due to reported employment for the past four months." However, respondent did not provide any proof of employment. She was required to retake the math, science, and constitution portions of the GED examination, but had not done so. She had not met with her individual counselor and was terminated from counseling services in April 2010 for repeatedly cancelling meetings. Respondent failed to participate in the subsequent substance-abuse assessment in May 2010.

In November 2010, the trial court conducted a fitness hearing in respondent's absence. The State presented a copy of the September 1, 2010, permanency-hearing report, seeking to introduce the report as its only evidence. Respondent's counsel stipulated that "if called to testify, witnesses would testify consistent with that report." The State also asked the court to take judicial notice of the prior orders entered in the case. Without objection, the court did so. The State rested. No other evidence was presented. After considering the parties' arguments, the court found respondent unfit as alleged in the State's second petition.

At the best-interest hearing in December 2010, respondent again did not appear. The State presented DCFS's December 1, 2010, best-interest report as its only evidence. That report indicated that after May 2010, respondent "did not continue to stay involved with the case." Apparently, since August 2010, respondent no longer resides with her grandmother, siblings, or son. O.L. continues to reside with respondent's grandmother, his foster parent. O.L. is six years old and, according to the report, is "happy and healthy." He is in good health, has a good appetite, and sleeps well. He is "very intelligent" and has "a wonderful personality." He has no physical or developmental concerns. He resides in

the home with his three uncles, ages 18, 13, and 9, and his aunt, age 7. He considers them his siblings, as they were raised together by their grandmother. O.L. has "a close attachment to his great[-]grandmother and she is very attached to him." His great-grandmother adopted O.L.'s aunt and uncles and she expressed her desire to do the same with O.L.

No other evidence was presented. After considering the best-interest report and arguments of counsel, the trial court terminated respondent's parental rights, finding termination in O.L.'s best interests. This appeal followed.

II. ANALYSIS

Respondent claims the trial court's decisions finding her unfit and finding that termination of her parental rights would be in O.L.'s best interests were against the manifest weight of the evidence. We disagree.

The termination of parental rights is a serious matter and therefore the State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365 (2001). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 960 (2005)

Here, the trial court found the State had sufficiently proved that respondent was unfit based on respondent's failure to maintain a reasonable degree of interest, concern, or responsibility as to O.L.'s welfare. "Before finding a parent unfit on this ground, the court must examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." (Internal quotation marks omitted.) *In re Richard H.*, 376 Ill. App. 3d 162, 166 (2007) (quoting *In re Adoption of Syck*, 138 Ill. 2d

255, 278 (1990)). As the three elements are listed in the disjunctive, proof of all three is not required. *Richard H.*, 376 Ill. App. 3d at 166.

A determining factor in this case is that respondent moved away from the home in which her son resided. That act alone certainly demonstrates a lack of parental interest, concern, and responsibility for her son. In May 2010, respondent stopped participating in services and became uncooperative with the caseworker. She also absented herself from the home. She had yet to engage in individual counseling and substance-abuse treatment. She had also failed to retake her GED examination. As for her completion of the other services, it took multiple unsuccessful attempts before those were completed. Perhaps due to her age, her involvement in services could be described as less than enthusiastic.

Respondent was in the unique and advantageous position of being able to reside with her son while she worked toward the goal of regaining custody of him. Apparently, she lost the desire to do both. Though she could have remained in the same home with him, she did not. She presented no evidence at the hearing to challenge the State's allegation that she failed to maintain a reasonable degree of interest, concern, or responsibility as to her child's welfare. Thus, we find the trial court's order finding respondent unfit was not against the manifest weight of the evidence.

We further find the evidence supports the trial court's finding that termination was in the child's best interest. The best-interest report indicated that O.L. was doing very well in his relative placement. He was surrounded by family and thriving. He was doing well physically, mentally, and emotionally, and he deserved a stable and secure environment. His foster mother/great-grandmother had expressed her desire to adopt him

and to raise him together with the rest of the family. Given respondent's voluntary absence from O.L.'s life, we find it was appropriate that he be given the permanency and stability he deserves. Without any supporting evidence to the contrary, we affirm the court's judgment, finding termination of respondent's parental rights was in O.L.'s best interest.

III. CONCLUSION

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

Affirmed.