

NOTICE
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2011 IL App (4th) 110466-U

Filed 9/22/11

NOS. 4-11-0466, 4-11-0467 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: X.F., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v. (No. 4-11-0466))	No. 09JA145
RICK FATHAUER,)	
Respondent-Appellant.)	
-----)	
-)	
In re: X.F., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	Honorable
v. (No. 4-11-0467))	Thomas E. Little,
SHELLY ARTIS,)	Judge Presiding.
Respondent-Appellant.)	

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

ORDER

¶ 1 *Held:* The appellate court affirmed this consolidated case, concluding that the trial court did not err by (1) finding respondent parents unfit and (2) terminating their parental rights.

¶ 2 In December 2010, the State filed a petition to terminate the parental rights of respondents, Rick Fathauer and Shelly Artis, as to their child, X.F. (born November 18, 2009).

In April 2011, following a fitness hearing, the trial court found respondents unfit. The next month, following a best-interest hearing, the court terminated respondents' parental rights.

¶ 3 Respondents appeal, arguing that the trial court erred by (1) finding them unfit

and (2) terminating their parental rights. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5

A. Adjudication of Wardship as to X.F.

¶ 6

On November 24, 2009, the State filed a juvenile petition, alleging that X.F. was neglected and abused. Specifically, the State alleged that X.F. was (1) neglected in that (a) X.F. was in an environment injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2008)) and (b) X.F. was born with cocaine in his system (705 ILCS 405/2-3(1)(c) (West 2008)), and (2) abused in that Rick's drug abuse, and Shelly's drug abuse and mental-health issues created a substantial risk of physical injury to X.F. (705 ILCS 405/2-3(2)(ii) (West 2008)). That same day, the trial court entered a temporary custody order, appointing the Department of Children and Family Services (DCFS) as X.F.'s temporary custodian.

¶ 7

In January 2010, the trial court (1) adjudicated X.F. neglected and abused, (2) appointed DCFS as his guardian, and (3) entered a dispositional order, which required respondents to (a) comply with the terms of their respective DCFS service plans and (b) correct the conditions that led to X.F.'s removal.

¶ 8

B. The Trial Court's Fitness and Best-Interest Determination

¶ 9

In December 2010, the State filed a petition to terminate the respondents' parental rights as to X.F., alleging that respondents were unfit in that they (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to X.F. (750 ILCS 50/1(D)(b) (West 2010)), (2) failed to make reasonable efforts to correct the conditions that were the basis for X.F.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)), and (3) failed to make reasonable

progress toward X.F.'s return within 9 months after an adjudication of neglect and abuse (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 10 At a March 2011 fitness hearing, the State presented testimony from several witnesses and submitted multiple exhibits in support of its allegation that respondents were unfit. Following that hearing, the trial court summarized that evidence, as follows:

**** Angie Latham, a caseworker for Lutheran Children and Family Services [(LCFS)], testified that she has served as the caseworker in this case since approximately January *** 2010. The service plans she prepared for the parents required substance abuse assessments and counseling, parenting classes, counseling, and a psychological exam. The evidence plainly demonstrated that LCFS made appropriate referrals so that the parents could complete the requirements of the service plan. Yet these service plan requirements were in large part ignored by the parents and no service plan ever has been rated satisfactory during the pendency of this case.

*** According to *** Latham, both parents admitted to abusing cocaine. Although both parents completed a substance abuse evaluation in March *** 2010, neither parent completed any of the recommended treatment and substance abuse appears to be an ongoing problem for both parents.

*** Kendra Warnsley, a case assistant for LCFS, testified

that she supervised visits for the parents from January 12, 2010, through May 18, 2010. According to *** Warningsley, there were approximately 20 possible visits during that time period, and each parent attended only 7 or 8 of those visits. Due to poor visitation attendance, visits were terminated in late May *** 2010. Although the visits were reinstated in June *** 2010, the parents often did not appear for the visits. This pattern continued until approximately December *** 2010, at which time [Rick] began visitation with the child.

*** [Shelly] testified that she was incarcerated in December *** 2010. According to her testimony, she will soon begin substance abuse and parenting classes. She specifically testified that she is tired of 'running on the streets,' and wants the child returned to her care. She testified that her tentative release date from the Department of Corrections is September 3, 2011.

*** [Rick] testified that he has been clean since approximately December *** 2010. To his credit, he has started and is regularly attending parenting classes. He also visits with the children one time per week, and he is employed. He resides with his sister currently, and hopes to obtain his own place 'soon.'

* * *

*** Liz McGarry, Program Manager of Addictions at

Heritage Behavioral Center, testified that [Rick] was initially referred to Heritage for a substance abuse evaluation, but did not follow up on the recommended treatment. He was therefore discharged from the program for non-compliance. More recently, [Rick] was reassessed and began treatment in January 2011. According to *** McGarry, [Rick] is currently in remission for alcohol, cocaine, and marijuana abuse and he is engaging in the recommended treatment.

*** McGarry also testified that despite a referral to Heritage, [Shelly] never appeared for her assessment and has not obtained any treatment from Heritage.

*** During her testimony, [Shelly] admitted a long history of substance abuse. Although the evidence was not entirely clear, [Shelly] is apparently attempting to enroll or has enrolled in a substance abuse treatment program through the Department of Corrections."

¶ 11 In April 2011, the trial court entered a written order, in which it found respondents unfit. Specifically, the court found as follows:

*** After considering the evidence and assessing the credibility of the witnesses, the court finds that the parents have maintained a reasonable degree of interest and concern for [X.F.] Yet, the evidence also plainly and undeniably demonstrates that

the [State has] proven by clear and convincing evidence that the parents have completely failed to maintain a reasonable degree of responsibility for the welfare of [X.F.] and they are therefore unfit.

* * *

*** The court finds that the [State has] proven by clear and convincing evidence that the parents are unfit in that they have failed to make reasonable progress toward the return of [X.F.], and they have failed to comply with the terms of their service plans. The court further concludes that what little progress has been made is not sufficiently demonstrable and is of such little quality that [X.F.] cannot be returned to the parents within the near future."

¶ 12 At a May 2011 best-interest hearing, the State presented evidence in support of its position that respondents should have their parental rights terminated.

¶ 13 Latham, X.F.'s caseworker, testified that neither Rick nor Shelly had made any progress toward reunification since the fitness hearing. Latham explained that the "main problem" with Rick and Shelly was their substance abuse. Latham further testified that X.F. was in foster care and was doing "very well." X.F. had bonded with his foster parents and was in a home that was "an adoptive resource." Latham added that X.F. was 18 months old and that it would be in his best interest to remain with his foster parents and be adopted.

¶ 14 Respondents testified that they did not want to have their parental rights terminated. Shelly explained that she was looking forward to being released from prison so that she could move from transitional housing to her own apartment. Rick said that he was

employed, was living with his sister, and had applied to rent an apartment that day.

¶ 15 On this evidence and arguments from counsel, the trial court found that it would be in X.F.'s best interest to terminate respondents' parental rights.

¶ 16 Rick and Shelly separately appealed (case Nos. 4-11-0466 and 4-11-0467, respectively). On its own motion, this court consolidated those appeals.

¶ 17 **II. ANALYSIS**

¶ 18 Respondents argue that the trial court erred by (1) finding them unfit and (2) terminating their parental rights. We address respondents' contentions in turn.

¶ 19 **A. Respondents' Claim That the Trial Court Erred by Finding Them Unfit**

¶ 20 Respondents contend that the trial court erred by finding them unfit. Specifically, respondents assert that the court erred by finding that they failed to (1) maintain a reasonable degree of responsibility as to X.F., (2) make reasonable efforts to correct the conditions that led to X.F.'s removal, and (3) make reasonable progress toward X.F.'s return. Because we agree with the court that respondents failed to make reasonable progress toward X.F.'s return, we disagree.

¶ 21 **1. Parental Unfitness and the Standard of Review**

¶ 22 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, 777 N.E.2d 930, 942 (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. *In re D.F.*, 201 Ill. 2d at 498, 777 N.E.2d at 942.

¶ 23

2. *The Pertinent Portion for the Adoption Act*

¶ 24

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).

¶ 25

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).

¶ 26 3. *The Evidence Presented in This Case and the Court's Fitness Determination*

¶ 27 In this case, the State presented evidence that Rick and Shelly each failed to complete their client-service plan. Specifically, the State showed that Rick and Shelly largely ignored their service plans and were therefore rated unsatisfactory. In fact, despite admitting using cocaine, Rick and Shelly each failed to complete substance-abuse counseling.

¶ 28 Given this evidence, we agree with the trial court that respondents did not make reasonable progress because it did not appear that either one of them was going to be able to provide a satisfactory environment for X.F. anytime in the near future. Accordingly, we conclude that the court's finding that respondents failed to make reasonable progress toward X.F.'s return was not contrary to the manifest weight of the evidence. Indeed, our review of the

record from the fitness hearing reveals that the court's unfitness findings were *supported* by the manifest weight of the evidence.

¶ 29 Because we have concluded that the trial court's finding that respondents failed to make reasonable progress toward the return of X.F. was not contrary to the manifest weight of the evidence, we need not consider other findings of parental unfitness. *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).

¶ 30 In closing, we commend the trial court for its thoughtful written order, in which it explained its fitness findings in detail and cited the appropriate standard of review.

¶ 31 B. Respondents' Claim That the Trial Court Erred by Terminating Their Parental Rights

¶ 32 Respondents next contend that the trial court erred by terminating their parental rights. Specifically, respondents assert that the court erred because X.F. "deserves to grow up with his parents." We disagree.

¶ 33 1. *The Best-Interest Proceedings and the Standard of Review*

¶ 34 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).

¶ 35 "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.

¶ 36 *2. The Best-Interest Proceedings in This Case*

¶ 37 At the time of the best-interest hearing, X.F. had been living with foster parents since shortly after he was born. The State presented evidence that X.F. (1) was doing "very well" in foster care; (2) had bonded with his foster parents; and (3) was in a home that was a resource for adoption. Meanwhile, Rick, although making some progress, was not in a position to provide for X.F. in the near future and Shelly was incarcerated with nothing more than generalized plans to provide for herself.

¶ 38 Accordingly, we conclude that the trial court's finding that it was in X.F.'s best interest to terminate respondents' parental rights was not against the manifest weight of the evidence.

¶ 39 III. CONCLUSION

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

¶ 41 Affirmed.