

NOTICE

Decision filed 05/06/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0496

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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<i>In re</i> J.E.W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Saline County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 07-JA-11
	)	
Teresa W.,	)	Honorable
	)	Todd D. Lambert,
Respondent-Appellant).	)	Judge, presiding.

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NO. 5-10-0497

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<i>In re</i> J.L.W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Saline County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 07-JA-12
	)	
Teresa W.,	)	Honorable
	)	Todd D. Lambert,
Respondent-Appellant).	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Justices Goldenhersh and Stewart concurred in the judgment.

**R U L E 2 3 O R D E R**

*Held:* The trial court's order terminating the respondent's parental rights and granting

the appointment of a guardian with the power to consent to adoption was not against the manifest weight of the evidence where the respondent failed to make reasonable progress toward the return of the minor children during the nine-month period after the adjudication.

The respondent, Teresa W., appeals the orders entered by the circuit court of Saline County terminating her parental rights to her minor children, J.L.W. and J.E.W. For the reasons that follow, we affirm.

J.E.W. was born May 31, 2000, and J.L.W. was born March 5, 2002. On February 7, 2007, the State filed separate petitions for adjudications of wardship for J.E.W. and J.L.W. The petitions alleged that the minors had been abused or neglected in violation of section 2-3 of the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2006)), based on the fact that on February 5, 2007, the environment was injurious to the welfare of the minor children in that they were present in a motor vehicle when the respondent was arrested for possession of cocaine. The petitions also alleged that the environment was injurious to the welfare of the minor children because the respondent was incarcerated at the Saline County Detention Center. On February 8, 2007, and February 16, 2007, the trial court entered orders for temporary custody and guardianship, finding that there was probable cause to believe that the minor children were abused, neglected, or dependent. The trial court granted temporary custody of the minor children to the Department of Children and Family Services.

On September 25, 2007, the minor children were adjudged neglected as defined by the statute and were made wards of the court. The respondent filed a motion to reconsider on October 4, 2007, which was denied on October 23, 2007. On the same date, a dispositional order was entered, finding that the respondent had failed to comply with any tasks in her service plans and had a substance abuse problem. The trial court entered a permanency order on February 26, 2008, with the goal of returning the minor children home within 12 months. On August 19, 2008, the trial court entered a new permanency goal of substitute care pending a termination of parental rights.

On September 5, 2008, the State filed a petition for the termination of parental rights and for the appointment of a guardian with the power to consent to adoption. The petition alleged that the respondent was an unfit person pursuant to section 1(D) of the Illinois Adoption Act (750 ILCS 50/1(D) (West 2008)), in that she failed to maintain a reasonable degree of interest, concern or responsibility for the children's welfare, failed to protect the children from conditions within her environment injurious to the children's welfare, failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children, and failed to make reasonable progress toward the return of the children within nine months after an adjudication of neglect.

On February 10, 2009, the respondent filed a motion to dismiss the petition for the termination of parental rights and for the appointment of a guardian with the power to consent to adoption, alleging that the grounds for the finding of unfitness were unconstitutional under the decision in *In re H.G.*, 197 Ill. 2d 317 (2001). On August 4, 2009, the State filed an amended petition for the termination of parental rights and for the appointment of a guardian with the power to consent to adoption. The petition alleged the same statutory grounds for unfitness as alleged in the original petition, but it added that the children had been in foster care for 15 months out of a 22-month period, pursuant to section 1(D)(m-1) of the Adoption Act (750 ILCS 50/1(D)(m-1) (West 2008)). On October 13, 2009, the respondent again filed a motion to dismiss the amended petition to terminate parental rights, alleging that the ground for unfitness pursuant to section 1(D)(m-1) was unconstitutional under the decision in *In re H.G.*, 197 Ill. 2d 317 (2001). Subsequently, on October 16, 2009, the State filed a motion to withdraw the amended petition to terminate parental rights originally filed on August 4, 2009, and proceed on the original motion to terminate parental rights filed on September 5, 2008, because the statutory ground for a finding of unfitness under section 1(D)(m-1) was found to be unconstitutional.

Hearings were held on the petition to terminate parental rights on February 10, 2009, March 10, 2009, March 24, 2009, April 7, 2009, and July 28, 2009. The following testimony was heard. David Bartok, the respondent's brother, testified that he was concerned with the respondent's drug use and lifestyle. According to David, the respondent frequently associated with men who have questionable character and who have criminal records. David had seen the respondent under the influence of drugs and had seen sores on her body that he believed to be the result of drug use. He had told the respondent that she needed help and that when she was willing to change, he would help her. He testified that the respondent had denied that she had a drug problem.

Haley Leach, a child welfare specialist with Lutheran Social Services of Illinois (LSSI), testified that she had been the caseworker in this case since March 2007. There were three evaluated service plans established for the respondent. The following tasks were to be performed by the respondent: to identify positive support persons, attend substance abuse treatment, attend parenting education, maintain adequate housing, maintain or obtain employment, maintain sobriety and submit to random drug screening, and attend visitation with the minor children. According to Haley, the only task that the respondent performed satisfactorily was to maintain adequate housing. Haley found the respondent's progress with the service plans to be unsatisfactory.

Haley further testified that the respondent missed 100 to 150 drug tests. When LSSI tried to contact the respondent for random drug testing, the respondent would not answer her phone, would refuse to come to the door at her home, or would outright refuse to submit to the testing. Eventually, the court ordered the respondent to submit to testing prior to visitation with the children. Nevertheless, the respondent refused to be tested numerous times prior to the visitations with the children. According to Haley, the respondent would only submit to testing at fixed times when the respondent knew of the testing in advance.

Some of the results of those tests were positive, others were "too small" or diluted for valid testing. Some tests revealed creatine in the respondent's system, which is a possible "drug masker." Of the various drug tests taken, the respondent tested positive for methamphetamine, alcohol, and hydrocodone.

The respondent was also supposed to identify a positive support group as a part of her plans, but she continued to associate with the same individuals, specifically, her former boyfriend, Jerome Patton, who had been convicted of possession of methamphetamine. The respondent also remained unemployed and never showed a lawful source of income. Furthermore, her visitations with the children had been unsatisfactory because she was often late, canceled for inadequate reasons, and disregarded the visitation rules, such as bringing persons to the visitations who were not allowed to be there.

According to Haley, the respondent was combative, argumentative, and insulting toward the caseworkers. In Haley's opinion, the respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children, she failed to make reasonable progress toward the return of the children, and she failed to display a reasonable degree of interest, concern, or responsibility for the children's welfare.

Theresa Bergen, the clinical manager of the Matrix Hope Program (Matrix), testified that the respondent was referred to Matrix in February 2007. The respondent did not complete the program because she never entered it. Matrix contacted the respondent, who informed them that her attorney had advised her not to talk to anyone due to a pending criminal case. Matrix then closed the referral. The respondent was referred again in June 2007 and the referral was closed again in July 2007, due to the respondent's refusal to comply with the referral. The respondent was referred a third time in October 2007. The respondent came to Matrix for an assessment in November 2007 and admitted that she had used methamphetamine. Matrix referred her to early intervention counseling at Franklin-

Williamson Human Services; however, her case was closed there because of the respondent's sporadic attendance, her dishonesty in her assessment, and positive drug screens. The respondent was referred back to Matrix in March 2008, and the respondent finally completed an assessment at Matrix in May 2008 and completed the program.

Rochelle Wilkerson, the program coordinator of the parenting education at Egyptian Mental Health, testified that she had dealt with the respondent in the parenting classes. Although the respondent had attended all 11 of the scheduled parenting classes, it was Rochelle's opinion that the respondent had not made much progress and tended to make complaints about her case rather than learn.

The respondent testified that she is 47 years of age and has six children. She denied that she currently does drugs. However, she admitted that she had tested positive for methamphetamine and alcohol, and she claimed she had a valid prescription for hydrocodone. The respondent denied that she had frequently refused to submit to random drug testing. She also admitted to missing 7 out of 16 visitations with the children between May and August 2008. However, she claimed that she missed them because she had to submit to drug testing. According to the respondent, the visitations went well with the children and she had been tested for drugs before each visit. She further testified that although she is a licensed practical nurse, she has been unemployed since her arrest. However, she testified that she was in school to receive her certificate to be a phlebotomist. The respondent denied that she is an unfit parent or addicted to drugs.

The trial court entered another permanency order on November 3, 2009, with the goal of substitute care pending the termination of parental rights. On April 29, 2010, the trial court entered a finding of unfitness, noting that the respondent was found by clear and convincing evidence to be an unfit person pursuant to section 1(D) of the Act (750 ILCS 50/1(D) (West 2008)). The trial court noted that the respondent had failed to comply with

the client service plans in many respects: she refused to comply with 100 to 150 requests for random drug tests, her visits with the minor children were sporadic, the respondent frequently "pushes boundaries with her visits," she failed to obtain employment even though she is a licensed practical nurse and has a phlebotomy certificate, she failed to attend any support groups, she failed multiple drug tests and tested positive for methamphetamine and opiates, she finally obtained a drug assessment after her case had been closed by the assessing agency on three prior occasions, she completed the core components of the Matrix program but has not completed the group, and she has not satisfactorily completed her service plans. The trial court also noted that the respondent failed to make reasonable progress within nine months of the adjudicatory hearing. The court then noted that the respondent has been difficult and defiant, has been unable to control her attitude, and refused "submission to reasonable direction by others when she finds such direction objectionable." A best-interests hearing was held on August 17, 2010. Amy Bartok, respondent's sister-in-law, testified that she is married to the respondent's brother, Damian Bartok. Amy explained that she was concerned with the minor children's home environment and with the respondent because the respondent would leave the children in her care many times; at least four or five times, the respondent had brought the children to her and did not return for days or even a week. In one instance she cared for the children after a domestic incident between Jerome Patton, a former boyfriend, and the respondent.

Amy was concerned with the children being in the respondent's presence while she was under the influence of drugs or alcohol and in the presence of other people who also used drugs and alcohol. Amy had seen the respondent under the influence numerous times with the children when she dropped them off or when she came to pick them up. Amy had also seen drug paraphernalia in the respondent's home. Amy believed that the respondent was addicted to drugs and alcohol.

After the respondent was arrested and incarcerated, the children were placed in the care of Amy and her husband. The children lived with them for 18 months, until they were placed in the care of their foster parents, Mark and Rhonda McDaniel. Amy and Damian Bartok still visit the children often and have made arrangements with the McDaniels to allow the children to spend the night with them. According to Amy, the children are doing wonderfully, are happy, and love living with the McDaniels. The children are very attached to the McDaniels and want to live with them.

Tricia Stollar, a mental health clinician with LSSI, testified that she had been J.E.W.'s counselor from March 18, 2008, until September 23, 2008. When she first began seeing J.E.W., he was very closed and did not want to talk about his feelings. However, he did express concern about his mother and was scared for her well-being. After moving in with the McDaniels in July 2008, J.E.W. started to become more open to talking and began expressing wanting to be happy. He was happy living with the McDaniels and enjoyed living on the farm with the animals.

Mark McDaniel testified that he is 46 years of age and has been married to Rhonda for 26 years. They have three children, Troy, age 24, Amanda, age 22, and Rachel, age 20. Mark is the director of a medical laboratory at Hamilton Memorial Hospital in McLeansboro. He and his family live on a 100-acre farm, where they have horses, donkeys, mules, sheep, ducks, chickens, rabbits, and a dog and a cat.

The McDaniels had considered becoming foster parents but wanted to wait until their children were grown before they would foster children. According to Mark, J.E.W. expressed anger toward the respondent after visitations with her and would say things such as, "I don't know why she doesn't do what she's supposed to do," and "I wish she would just have done what she was supposed to do." J.E.W. talked about being left home alone and having to fix food for himself and J.L.W. J.E.W. also told Mark about incidents when he and

J.L.W. would be alone for days or the respondent would be asleep for days and they would have to take care of the home.

Since going to live with the McDaniels, J.L.W. continues to have good grades and J.E.W.'s grades have improved. The children enjoy and participate in extracurricular activities with the family, such as music lessons in piano, violin, and guitar. They also sing with the family at church, fairs, and community organizations. The children also have friends at school.

Rhonda McDaniel testified that she is retired and stays at home. According to Rhonda, the children are doing fantastic now compared to how they were when they first came to live with them. When the children first came to live with them, they would fight and could not be left alone with each other. J.E.W. expressed a lot of anger toward J.L.W. Now they are "best of friends" and play together. The children tell the McDaniels that they love them, and they call them mom and dad.

After hearing all the evidence, the trial court concluded that it is in the best interests of the minor children to terminate the parental rights of the respondent. The trial court noted that the respondent had failed to show concern for the children, failed to comply with her service plans, failed multiple drug tests, had been irregular with her visitations, and failed to provide a stable home or life even though she has the ability to do so. The trial court stated that the children need stability and daily routines and need to live in a home where they are happy, healthy, and well-educated, which is what they are receiving living with the McDaniels. According to the trial court, the children appear to be well-rounded, not stressed, and their well-being is not in jeopardy. On September 15, 2010, the trial court entered a written order terminating the respondent's parental rights and appointing a guardian with the power to consent to adoption. On October 14, 2010, the respondent filed a timely appeal. On February 28, 2011, and March 2, 2011, this court entered orders consolidating *In re*

*J.E.W.*, No. 5-10-0496, and *In re J.L.W.*, No. 5-10-0497, for purposes of oral argument and disposition only.

On appeal, the respondent argues that the trial court erred in finding that she is unfit by clear and convincing evidence. The respondent argues that the evidence reveals that she followed her service plans and has maintained adequate housing. She also notes that although she has not maintained employment, she has received a certificate in phlebotomy during the proceedings, and she has completed parenting classes, completed a substance abuse assessment and completed the recommended treatment, identified persons of positive influence and support, and made progress with visitation. She maintains that she did not fail to comply with the random drug testing.

Section 1(D) of the Adoption Act contains three grounds on which a parent's unfitness can be established, and the State need only prove by clear and convincing evidence one of the statutory grounds of parental unfitness. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). Section 1(D)(b) provides that a parent will be found unfit if the parent fails to maintain a reasonable degree of interest, concern, or responsibility for the children's welfare. 750 ILCS 50/1(D)(b) (West 2008). Section 1(D)(m)(I) provides that a parent will be found unfit for the failure during the nine-month period after an adjudication of neglect to make reasonable efforts to correct the conditions which led to the removal of the children. 750 ILCS 50/1(D)(m)(I) (West 2008). Section 1(D)(m)(ii) provides that a parent will be found unfit if the parent fails to make reasonable progress toward return of the children within nine months of an adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(ii) (West 2008). A failure to make reasonable progress includes a failure to substantially fulfill the parent's requirements under the service plans properly adopted by the social service agency involved. 750 ILCS 50/1(D)(m)(ii) (West 2008).

The trial court's determination of parental unfitness involves factual findings and

credibility assessments that the circuit court is in the best position to make. *In re Katrina R.*, 364 Ill. App. 3d at 842. Therefore, this reviewing court defers to the trial court's factual findings and will not reverse the trial court unless the factual findings are contrary to the manifest weight of the evidence. *In re Katrina R.*, 364 Ill. App. 3d at 842. The question of whether the respondent substantially complied with the service plans is a factual one; therefore, the findings of the trial court will be upheld on appeal unless the decision is against the manifest weight of the evidence or the record clearly demonstrates that the result opposite to the court's determination was the proper result. *In re T.D.*, 268 Ill. App. 3d 239 (1994).

In the instant case, the respondent's service plans required that she identify positive support persons, attend substance abuse treatment, attend parenting education, maintain adequate housing, maintain or obtain employment, maintain sobriety and submit to random drug screening, and attend visitation with the minor children. The evidence reveals that the respondent failed to identify positive support persons or attend support groups. Instead, the respondent continued to associate with persons involved in drugs, alcohol, and crime. The respondent finally obtained a drug assessment after her case had been closed by the assessing agency on three prior occasions. After obtaining an assessment at a later date, she finally completed the Matrix program. However, the respondent failed multiple drug tests and tested positive for methamphetamine and opiates. The trial court noted that the respondent refused to comply with 100 to 150 requests for random drug tests and would only submit to testing at fixed periods when she was aware of when the testing would occur.

Moreover, the evidence reveals that the respondent's visitations with the minor children were sporadic and that the respondent frequently "pushes boundaries with her visits." Although the respondent is a licensed practical nurse and has received her phlebotomy certificate during the proceedings, she has failed to obtain employment. According to the caseworker, the only task that the respondent performed satisfactorily was

to maintain adequate housing, although the trial court disagreed.

Accordingly, the record indicates that the respondent has failed to make reasonable progress toward the goals of her service plans. Therefore, the trial court's findings that the respondent failed to make reasonable progress toward the return of the minor children during the nine-month period after the adjudication of neglect was not against the manifest weight of the evidence.

For the foregoing reasons, we affirm the orders entered by the circuit court of Saline County terminating the respondent's parental rights and appointing a guardian with the power to consent to adoption.

Affirmed.