

Nos. 1-12-0740 and 1-12-0722 (consolidated)

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).

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTERESTS OF:)	Appeal from the
)	Circuit Court of
ELIJAH F. and LAILA T.,)	Cook County.
)	
Minors/Respondents-Appellees)	
)	
(The People of the State of Illinois,)	Nos. 09 JA 00800 &
)	11 JA 00174
Petitioner-Appellee,)	
)	
v.)	
)	
DeLean P.,)	The Honorable
)	Richard A. Stevens,
Mother/Respondent-Appellant).)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: Trial court did not commit error in changing minor's permanency goal, as its decision was not contrary to the manifest weight of the evidence based on the record.

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¶ 1 Respondent-appellant DeLean P. (respondent) appeals from an order entered by the trial court changing the permanency goal for her son, Elijah H., and from adjudication and disposition orders entered by the trial court concerning her daughter, Laila T. She contends that the trial court erred when it changed the permanency goal for Elijah because she has substantially complied with the service plan that was given to her. She asks that we vacate the trial court's order and remand the cause for proceedings consistent with a goal of return home for her son. Regarding the orders appealed from concerning Laila, respondent makes no argument on appeal. The State and the minors' public guardian have filed appellees' briefs. For the following reasons, we affirm.

¶ 2 **BACKGROUND**

¶ 3 Elijah was born to respondent on September 4, 2009, and Laila was born to respondent on March 9, 2011.¹

¶ 4 Regarding Elijah, the State filed a petition for adjudication of wardship on September 18, 2009, shortly after his birth. The petition alleged that Elijah was neglected based on injurious environment and abused based on a substantial risk of physical injury. The State's petition cited respondent's seven other children, all of whom are in the care and custody of the Department of Children and Family Services (DCFS), with findings of abuse and/or neglect and unfitness having been entered against respondent. The petition also detailed that respondent has had seven prior indicated reports since 1992, one of which was death by neglect; her history of both bipolar

¹The children's fathers are unknown and have not taken part in any of the proceedings involving the children, nor are they parties to this appeal.

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disorder and a chronic, life-threatening medical condition; and the fact that she was currently homeless, with her whereabouts unknown. The State's petition was granted and Elijah was placed in the temporary custody of DCFS. On July 13, 2010, an adjudication order was entered, finding that Elijah was neglected based on injurious environment as the result of abuse or neglect.

¶ 5 In March 2010, DCFS completed an Integrated Assessment of respondent. It detailed that respondent had been removed from her mother's care and was made a ward of the court. She had four children by the time she turned 21; one of these died at the age of three months, having been diagnosed with a failure to thrive due to parental neglect. Respondent then went on to have five more children. Her parental rights to all of her living children, save Elijah, have already been terminated. The report further noted that respondent has been diagnosed with bipolar disorder and with a potentially life-threatening disease.

¶ 6 In August 2010, a disposition order was entered finding respondent unable to care for Elijah, declaring him to be a ward of the court, and placing him in DCFS custody. A permanency order was also entered, setting the goal for Elijah as return home within 12 months. This order cited respondent as having made "substantial progress" toward his return home, visiting him on a regular basis and participating in assigned services. Permanency orders entered in February and July 2011 retained the goal as return home, again citing respondent's substantial progress, regular visits and engagement of services.

¶ 7 On March 18, 2011, shortly after her birth, the State filed a petition for adjudication of wardship of Laila, who was placed in temporary DCFS custody. An adjudication order was

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entered finding Laila to be neglected based on injurious environment.

¶ 8 On March 1, 2012, the trial court held both a permanency hearing regarding Elijah, and a disposition hearing and first permanency hearing regarding Laila. At the outset, the court noted that the most recent permanency goal regarding Elijah was return home in 12 months. It also noted that the parties had entered into a stipulation of facts during Laila's adjudication. The stipulation included the dates and details of respondent's prior indicated reports regarding her other children; the circumstances regarding Laila's case, which cited respondent's "history of non-compliance;" respondent's statements to caseworkers that taking her medication is "against her religion;" and respondent's proffered testimony that the child she had who died passed away from Sudden Infant Death Syndrome rather than neglect, as well as her denial that her first child had suffered cuts and burns as indicated in DCFS reports. The stipulation also noted that respondent's therapist would state that respondent suffered from bipolar disorder mixed with depression, severe psychotic features, post partum disorder and post traumatic stress disorder, and that she was not ready to care for a child.

¶ 9 At the ensuing hearing, caseworker Camilla Jenkins testified that she has been assigned to respondent's case for the last two and a half years. She stated that respondent had been seeing a psychiatrist who diagnosed her with bipolar disorder, but was now seeing a different psychiatrist who diagnosed her with schizoaffective disorder and increased her psychotropic medication. Jenkins noted that, after this switch, she noticed a distinct change in respondent's mood and her consistency in seeing her doctor and taking her medication. Jenkins averred that respondent was more calm and approachable in her interactions and social behavior, and appeared to be less

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impulsive and angry.

¶ 10 Jenkins further testified that respondent has been attending individual therapy for two years with therapist Ina Beller. Respondent has never missed or been late to an appointment with Beller. Jenkins spoke to Beller about respondent's care and both agreed that respondent had made substantial progress regarding her own personal life, including the development of effective communication skills, the management of her anger, and the maintenance of a residence for over a year after having been homeless. Jenkins noted, however, that when it came to reuniting with her children, Beller made clear that respondent had not made sufficient progress for their return home. Rather, respondent still denied any abuse or neglect toward any of her children and, thus, Beller felt that respondent had "reached her capacity" as far as therapy was concerned and had made "as much progress as she was going to make in terms of parenting her children." Ultimately, Beller noted to Jenkins that respondent lacked empathy and understanding of her children and had not made progress in accepting why they were in DCFS custody.

¶ 11 Jenkins also testified regarding respondent's visits with Elijah and Laila, which occurred weekly and were supervised. Jenkins averred that respondent never behaved inappropriately with either child during these visits. Respondent did well with Laila; she would hold and feed her. Jenkins noted that there was a concern at one point because respondent would come to the visits with hamburgers and french fries for Laila, who was too young to eat them. Jenkins discussed this with respondent, who eventually corrected her behavior. As to Elijah, Jenkins testified that the visits were not as positive. During respondent's first visits with him, which were supervised by a different caseworker, Elijah's foster mother would stay in the room. When Jenkins became

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the caseworker, she made attempts to have only her, respondent and Elijah in the room, but this was difficult as Elijah would cry and become inconsolable. During her visits, respondent would pick him up and hold him right away, which was inappropriate for him because he is “very reserved.” Jenkins had to address this several times with respondent. When Elijah would calm down, he would not engage with respondent.

¶ 12 Finally, Jenkins testified regarding Elijah and Laila's foster homes, as well as her recommendations. Elijah and Laila were in separate nonrelative foster homes, the first and only home for each of them; however, both sets of foster parents conducted sibling visits for them. Elijah's foster home contained two adults and three other adopted children. Elijah gets along well with the children and is especially bonded with two of them. Elijah receives speech and developmental therapy in the foster home. There have been no problems with Elijah's interaction in the home, and he is calling his foster parents "mama" and "dada." Jenkins stated that the foster home is safe, appropriate and exhibits no signs of abuse, neglect or corporal punishment. Laila's foster home contains two adults and their biological daughter. Jenkins also stated that this foster home is safe, appropriate and exhibits no signs of abuse or neglect. Regarding Elijah, Jenkins recommended that his permanency goal be changed to substitute care pending court determination on termination of parental rights. She based this on the fact that Elijah is almost three years old, is very bonded with his foster family, and there has not been progress toward the possibility of even unsupervised visits with respondent. Regarding Laila, Jenkins recommended that she be adjudged a ward of the court with the appointment of DCFS guardianship and the permanency goal of return home pending status. Jenkins believed that it was not in Laila's best

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interest to live with respondent at the current time.

¶ 13 The State admitted two reports made by therapist Beller into evidence. The first covered the period from May to August 2011, and the second covered the period from August to November 2011. In them, Beller noted that respondent still denies the past abuse and neglect of her children and claims that her cases came before authorities only because the information presented to them “was a lie on the part of the judge and other professionals that reported the information.” Beller further commented that while respondent’s mood swings and behavior had improved with the increase in her medication, she still lacked understanding and empathy toward Elijah. Beller stated that respondent did not understand “attachment issues” between Elijah and his foster mother, that she was unwilling “to listen to any input *** that may involve taking responsibility for her own behavior,” and that she was focused first on “her own needs” which “seem[] to take priority.” Beller elaborated that when respondent is approached with constructive criticism regarding her behavior in relation to her children, she “shuts down” and refuses to discuss this. Accordingly, Beller opined that, since respondent’s “behavior in the past has been dangerous (abuse and neglect of her children), this dynamic does not seem to [] leave any room for improvement in her ability to take responsibility for past actions and her interaction with her young children today.”

¶ 14 Respondent also testified at the hearing. Regarding Elijah, she stated that she had been “cut *** out” of her visits with him and that he now thinks of his foster mother as his mother. She acknowledged that Jenkins had tried to improve this situation, but she believed “it was already too late.” Regarding Laila, respondent reported that their visits are “wonderful.” She

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stated that while she has been in therapy with Beller, she does not feel that she has a good relationship with her, believing that Beller “stereotypes” her due to her race, economic situation and her lack of custody of her children. Respondent averred that she told her caseworker on three different occasions, the latest in November 2011, that she wanted a different therapist. Respondent testified, however, that she did feel that she was able to discuss anything in her life with Beller because Beller knew her well. She further denied having anger issues and asserted that her work with Beller regarding communication skills provided her no benefit.

¶ 15 Jenkins was then recalled to testify. She stated that, while she remembered respondent requesting a new therapist in November, she did not remember the other two times respondent claimed she had done so. Regarding respondent’s request, Jenkins averred that she discussed this with respondent and recommended that she work it out with Beller, since she had been Beller’s patient for over two years already. Respondent, however, told Jenkins she could not work with Beller and that she did not need to be in therapy. Jenkins further testified that, regarding respondent’s prior psychiatrist, respondent terminated her treatment after that psychiatrist testified in court at a hearing. The trial court then asked Jenkins if respondent could be assigned to a different therapist. Jenkins opined that it appeared to be “somewhat of a trend for” respondent to terminate services with those who provided views counter to hers regarding her capacity to reunite with her children, and that starting with a new therapist after over two years with Beller would be “detrimental.”

¶ 16 At the close of the hearing, the trial court issued its rulings. Regarding Elijah’s permanency, the court found that his permanency goal should be changed from return home to

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substitute care pending court determination on termination of parental rights. The court cited Elijah's age, his attachment to his foster family and noted that, while respondent had made significant personal progress, she has not "adequately addressed" her prior behavior toward the boy and, thus, had "not made substantial progress" toward his return. The court then specifically explained to respondent that it was not yet terminating her parental rights to Elijah, and that it might reconsider its decision as her cause progressed. Regarding the issue of Laila's disposition and permanency, the court found that it was in her best interest to be made a ward of the court and placed in DCFS guardianship, as respondent was presently unable to care for her and had yet "not made substantial progress." However, the court set Laila's permanency goal as return home, stating that while respondent would need to make more progress, this would give her the chance to work toward Laila's return.

¶ 17

ANALYSIS

¶ 18 As noted at the outset of this consolidated appeal, respondent has challenged the trial court's determinations regarding both her children. That is, she filed a petition for leave to appeal the decision regarding Elijah's new permanency goal, and she filed a *pro se* notice of appeal of the adjudication and disposition orders entered for Laila. We address each case separately.

¶ 19 We turn to Laila's cause first, as it is easily disposed of via the parties' concessions. In a footnote in her brief on appeal, respondent states before this Court that "[i]n The Matter of L.T. a minor (12-0722) no argument will be presented." In fact, apart from this mention of Laila, respondent does not address her cause anywhere on appeal, choosing instead to focus all her

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arguments solely on the situation involving Elijah. The record is clear that, although she initially appealed the orders concerning Laila, respondent has now elected not to challenge these.

Accordingly, respondent has waived all argument concerning Laila at this time, any challenge is thereby forfeited, and we affirm the court's adjudication and disposition orders declaring Laila to be a ward of the court and placing her under DCFS guardianship. See Ill. S.Ct. R. 341(h)(7) (eff. July 1, 2008) (points not argued by appellant in opening brief on appeal are waived and forfeited from review); see also *In re L.H.*, 384 Ill. App. 3d 836, 843 (2008); accord *In re R.S.*, 382 Ill. App. 3d 453, 464 (2008) (while mother's notice of appeal sought review of trial court's disposition order regarding child, her failure to address that ruling in her brief on appeal resulted in waiver of that issue).

¶ 20 Having disposed of Laila's cause, we now turn to the determination regarding Elijah.

¶ 21 As a threshold matter, we wish to clarify the order pertaining to Elijah, as well as the proper standard of review. Respondent argues on appeal that the trial court erred in entering a finding of unfitness against her because this was not supported by "clear and convincing evidence" and because it was contrary to the manifest weight of the evidence. She relies principally on cases involving the termination of parental rights.

¶ 22 However, the record is clear that the trial court did not enter a finding of unfitness against respondent, nor did it terminate her parental rights to Elijah. Rather, the hearing resulting in the order from which respondent appeals was a permanency hearing. In the course of such a hearing, the trial court does not enter a finding of unfitness or terminate parental rights. Instead, the court selects a permanency goal for the child which it considers to be in his best interest, such as return

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home, substitute care, adoption, etc., based on several factors, such as the child's age, current placement, emotional, physical and mental needs, etc. See 705 ILCS 405/2-28(2) (West 2010); see *In re Faith B.*, 359 Ill. App. 3d 571, 572 (2005); *In re K.H.*, 313 Ill. App. 3d 675, 680 (2000).

While it is true that efforts should be made to preserve a child's family ties, the child's welfare and the need to establish permanency for the child as soon as possible are primary considerations. See *Faith B.*, 359 Ill. App. 3d at 572.

¶ 23 The selection of a permanency goal is not a final determination in a child custody case but, rather, only an "intermediate procedural step" for the child's protection. *K.H.*, 313 Ill. App. 3d at 682. As such, the trial court is given "broad discretion to select a permanency goal," and its decision "will not be disturbed on appeal unless contrary to the manifest weight of the evidence." *K.H.*, 313 Ill. App. 3d at 682 (trial court's permanency goal determination is entitled to "great deference"); see also *In re J.H.*, 304 Ill. App. 3d 188, 200 (1999). A trial court's finding is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. See *Faith B.*, 359 Ill. App. 3d at 573.

¶ 24 Accordingly, then, respondent is required to show that the trial court's decision to change Elijah's permanency goal of return home to substitute care pending determination on termination of parental rights was against the manifest weight of the evidence. Based on the record before us, we find that she has not.

¶ 25 We note that respondent has clearly made a great amount of personal progress in her life. The changes documented in the record are quite positive and she should be commended for her improvements. For example, respondent once exhibited a history of noncompliance with DCFS

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recommendations which were precipitated by the multiple indicated reports issued against her for her various children, she was homeless, and she refused to take medication for her mental and physical illnesses. Now, respondent has obtained an apartment and has maintained this as a home for over a year. She has participated in individual therapy for over two years; she has attended every scheduled therapy session and has never been late for a single meeting.

Respondent has also completed parenting classes, and it is apparent that, with the new diagnosis for her mental illness, she has been taking her medication regularly and improved her psychiatric development, establishing a better mood and better skills in dealing with her impulse control and her social relationships. In addition, she consistently visits Elijah.

¶ 26 However, while we acknowledge respondent's personal improvement, it is, unfortunately, just that—improvement of her own personal situation. When it comes to the reunification of respondent with Elijah, her progress in this department has fallen short.

¶ 27 The evidence presented at the permanency hearing demonstrates that respondent is not ready to parent Elijah at this time. Caseworker Jenkins testified in detail regarding several aspects of the case. First, regarding respondent's therapy, Jenkins stated that she had consulted with respondent's therapist, Beller, who agreed that, while respondent has made substantial progress regarding her own personal life, she has not made any significant progress toward reuniting with Elijah. Respondent still denies any abuse or neglect of her children and refuses to recognize why they are in DCFS custody. Beller told Jenkins that, while respondent continues her therapy, she has "reached her capacity" and has made "as much progress as she was going to make in terms of parenting her children." Beller also told Jenkins that respondent lacks empathy

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and understanding toward her children. Regarding respondent's visits with Elijah, Jenkins testified that these were often difficult. Elijah would cry and become inconsolable when left alone with respondent. When he was calm, Elijah would not engage with her. While respondent was never inappropriate with Elijah, she sometimes exhibited a misunderstanding of his situation, such as when she would attempt to immediately hold him. It often required multiple instances of correction before respondent would modify her behavior. Finally, Jenkins noted a pattern in respondent's services. Respondent complained to Jenkins that she could no longer work with Beller after over two years, even though she admitted that she could tell Beller anything because Beller "knew her." Respondent also told Jenkins that she did not need to be in therapy any longer. Jenkins testified that, in a similar vein, respondent had terminated her therapy with a prior psychiatrist after that psychiatrist had testified at one of her court hearings. As Jenkins stated, respondent tends to terminate services with those who disagree with her views regarding reunification with her children.

¶ 28 Beller's therapy reports corroborate Jenkins' testimony that respondent has not made sufficient progress toward reunification with Elijah. In these, Beller confirmed that respondent still denies the past abuse and neglect of Elijah and her other children, and that she still attributes their removal from her care to alleged "lie[s] on the part of the judge and other professionals" involved in her case. Beller noted that respondent does not comprehend the "attachment issues" Elijah has with his foster mother, nor does she have understanding or empathy for these. Significantly, Beller reported that respondent still refuses to listen to anyone who suggests that she take responsibility for her behavior regarding her children, and that when she is approached

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with constructive criticism, she "shuts down" and refuses to discuss the situation. Beller's ultimate conclusion was that there does not seem to be "any room for improvement in [respondent's] ability to take responsibility for past actions and her interaction with her young children today."

¶ 29 At the same time, the record demonstrates that Elijah, since shortly after his birth, has been in an appropriate foster home, the first and only he has ever known. He is now almost three years old. The home contains two foster parents and three other adopted children, with whom Elijah gets along and has become critically bonded. He calls his foster parents "mama" and "dada." He receives speech and developmental therapy there and, while he is separated from his biological siblings, his foster parents conduct sibling visits between him and Laila. The home is safe and exhibits no signs of abuse, neglect or corporal punishment. All this is in stark contrast to the fact that there has not been progress toward the possibility of even unsupervised visits with respondent.

¶ 30 Ultimately, the record here establishes that the trial court's decision to change Elijah's permanency goal from return home to substitute care pending court determination on the termination of respondent's parental rights was not contrary to the manifest weight of the evidence. Accordingly, we find no error on the part of the trial court.

¶ 31 **CONCLUSION**

¶ 32 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 33 Affirmed.