

2012 IL App (2d) 110887-U
No. 2-11-0887 & 2-11-0888 cons.
Order filed April 27, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> LATEASHA K., NIREL W., and IMARI W., Minors)	Appeal from the Circuit Court of Kane County.
)	
)	No. 01-JA-13
)	No. 01-JAK-13
)	
(The People of the State of Illinois, Petitioner-Appellee, v. L'Erin F., Respondent-Appellant).)	Honorable Clint T. Hull, Judge, Presiding.

<i>In re</i> ALIAS T., a Minor)	Appeal from the Circuit Court of Kane County.
)	
)	No. 02-JA-13
)	No. 02-JAK-13
)	
(The People of the State of Illinois Petitioner-Appellee, v. L'Erin F., Respondent-Appellant).)	Honorable Clint T. Hull, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: The trial court's finding that clear and convincing evidence established respondent's unfitness was not against the manifest weight of the evidence. The trial court's finding that the State proved by a preponderance of the evidence that termination of parental rights was in the minors' best interests was not against the manifest weight of the evidence; affirmed.

¶ 1 Respondent, L’Erin F., the natural mother of Lateasha K., Nirel W., Imari W., and Alias T., appeals from the judgment of the circuit court of Kane County finding her an unfit parent and terminating her parental rights to the minors. We affirm.

¶ 2 **FACTS**

¶ 3 **Background**

¶ 4 Lateasha, a female, was born on March 29, 1995. Nirel, a female, was born on September 13, 1997. Imari, a female, was born on January 4, 2000. This case came to the attention of the Department of Children and Family Services (DCFS) on March 12, 2001, when respondent left her three children unattended at her mother’s home. Respondent’s mother, Renee P., had been in Missouri, and upon her return home, she found her grandchildren home alone. Imari was in the crib soaked with urine and feces. Respondent came home claiming that she had been across the street using the telephone. DCFS was granted temporary custody of the minors on March 14, 2001. The court held an adjudicatory hearing on May 21, 2001, and found the minors neglected. They were made wards of the court shortly thereafter and DCFS was granted guardianship of all three minors. Respondent was taken to an intervention center for treatment for drug abuse; her drug of choice was cocaine. The trial court number assigned to this case is 01-JA-13 (appeal No. 2-11-0887).

¶ 5 Respondent gave birth to her son Alias on January 28, 2002. At the time of birth, respondent was residing at Lydia Home, a half-way house “with a substance abuse component.” Respondent was placed in the mother’s unit of the program. A urine drop administered to respondent tested positive for cocaine and marijuana on February 28, 2002. Alias was adjudicated neglected, made a ward of the court, and placed in the temporary custody of DCFS, as respondent stipulated that she

had relapsed five times since Alias' birth. The trial court number assigned to this case is 02-JA-13 (appeal No. 2-11-0888).

¶ 6 Service plans required respondent to participate in substance abuse treatment, parenting classes, domestic violence treatment, and to maintain housing and income. Respondent continued to have relapse problems and failed to follow the recommendations of the court to return the minors to the home. In March 2003, the children moved to Mississippi where respondent's sister was the foster parent. Respondent was not to have contact with the children while they were with her sister in Mississippi, but she had considerable unsupervised contact with them while they were there. Because of the condition of the sister's home, however, the children were removed in January 2004 and taken to the maternal grandmother's home in North Aurora, Illinois.

¶ 7 Respondent's compliance with the service plans remained unsatisfactory in March 2005. By 2008, the goal was return home within 12 months. Sometime in 2009, however, the children were placed with respondent. On November 18, respondent asked permission to close her case and move with the children to Texas. The judge ordered a last drug drop, which came back positive for cocaine. Accordingly, the children were removed, respondent then moved to Texas, and did not thereafter engage in any of the client service plans. In fact, from the year 2001 until the year 2010, the service plan requirements for respondent to address substance abuse issues, to maintain housing, and employment or income were never removed.

¶ 8 **Petition for Termination**

¶ 9 On July 14, 2010, the State filed a fourth-amended, 11-count petition for termination of parental rights in case No. 01-JA-13, in which the State alleged respondent was an unfit person in that she failed: (1) to maintain a reasonable degree of interest, concern, or responsibility as to the

minors' welfare under section 1(D)(b) of the Adoption Act (Act) (750 ILCS 50/1(D)(b) (West 2010)), (2) to make reasonable efforts to correct the conditions which were the basis for the removal of the children from such parent, or to make reasonable progress towards the return of the children to such parent within nine months after an adjudication of neglected minors, abused minors, or dependent minors under the Juvenile Court Act, under section 1(D)(m) of the Act (nine-month period from June 15, 2001, to March 15, 2002); and (3) to make reasonable efforts to correct the conditions which were the basis for the removal of the children from such parent, or make reasonable progress towards the return of the children to such parent within the following nine-month periods of February 23, 2002, to November 23, 2002; November 24, 2002, to August 24, 2003; August 25, 2003, to May 25, 2004; May 26, 2004, to February 26, 2005; February 27, 2005, to November 27, 2005; November 28, 2005, to August 28, 2006; August 29, 2006, to May 29, 2007; June 1, 2007, to March 1, 2008; and October 14, 2008, to July 14, 2010, under section 1(D)(m) of the Act.

¶ 10 In case No. 02-JA-13, the State alleged respondent was an unfit person in that she failed: (1) to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare under section 1(D)(b); and (2) to make reasonable efforts to correct the conditions which were the basis for the removal of the child from such parent, or to make reasonable progress towards the return of the child to such parent within the following nine-month periods of November 24, 2002, to August 24, 2003, August 25, 2003, to May 25, 2004, May 26, 2004, to February 26, 2005, February 27, 2005, to November 27, 2005, November 28, 2005, to August 28, 2006, August 29, 2006, 60 May 29, 2007, June 1, 2007, to March 1, 2008, and October 15, 2009 to July 14, 2010, under section 1(D)(m).

¶ 11

Unfitness Findings

¶ 12 Following the hearing on unfitness, the trial court noted the following. Alias' case had been pending for over 9 years, and Lateasha's, Nirel's, and Imaris' cases had been pending for 10 years. During the entire time period, Imari was in respondent's physical custody for 10 months, Lateasha and Nirel for 5 months, and Alias for four months. Respondent's substance abuse issue was the core component of all of her service plans. Yet despite that, she had failed to maintain sobriety, relapsing multiple times during the 10 years the cases had been pending. Respondent testified that she did not believe she was an addict. However, the court found this testimony to be "extremely disturbing" and that it undercut respondent's credibility as a witness. The court found that the evidence demonstrated that respondent had failed to successfully comply with DCFS and Catholic Charities services, including substance abuse, parenting classes, maintaining stable income and stable housing, and visiting her children. During those times, respondent had admitted to using drugs, not having a job, and living in different places, and she had failed to maintain any contact with her children. The court emphasized the amount of time the cases had been pending, the court files, service plans, and exhibits consisting of thousands of pages of records, multiple judges, assistant state's attorneys, assistant public defenders, and case workers that had been assigned to and worked on the files. The court stated:

"Additionally, and more importantly, the four children, Lateasha, Nirel, Imari, and Alias have had countless foster parents, case workers, judges involved in their life [sic] during this time. They have been moved from Illinois to Mississippi back to Illinois then to Texas and then back to Illinois. They have been placed with their maternal aunt, their maternal grandmother, their mother, and been removed from each of those homes. Each move, each placement, has required the minor children to pack up their belongings, be

removed from their school and any friends they may have made, and to start up all over again. While this has been difficult for this Court and the attorneys involved to review, digest, summarize and argue ten years of hearings, reports, and testimony[,] the Court can't imagine how difficult it has been for the children when considering the amount of time they have remained in the system without having any permanency established. All of these moves have been caused by [respondent's] failure to satisfactorily complete the recommended services due to her continued drug use.”

¶ 13 Accordingly, the trial court found the evidence demonstrated that the State had met its burden of proving respondent unfit by clear and convincing evidence on all of the grounds alleged in both cases. All of the putative fathers were defaulted in the cases, having never made one court appearance, and they were also found unfit by clear and convincing evidence on all of the grounds alleged against them in both cases.

¶ 14 **Best-Interests Findings**

¶ 15 Following the best-interests hearing, the trial court again noted what the children had endured over the last 10 years; the different homes that they had lived in, starting with the maternal grandmother in 2001, Alias at Lydia House with his mother, returned to the maternal grandmother, then to their maternal aunt in Mississippi, returned to their maternal grandmother in Illinois, placed back in traditional foster placement in Illinois in 2005, then placed at Lazarus House in Illinois, then returned to Texas with the maternal grandmother in 2006, brought back to Illinois and placed in traditional foster care in 2007, returned to respondent in 2009, or some portion of time therein, and then removed from there and placed in their current placements.

¶ 16 The court observed that Lateasha, who was currently 16, had been a ward of the court since she was 5 years' old, and during the 10-year period that she had been a ward of the court, she had lived with her mother only 5 months in 2009. Lateasha was currently enrolled in school, was making plans for college, and was willing to stay with her foster family if the court terminated respondent's parental rights. Although Lateasha stated that she would like to be returned to her mother, she understood that this was not her decision and may not be possible.

¶ 17 The court commented that Nirel, who was 13 years' old at the time, was 3 when she became a ward of the court and also had been placed with respondent a total of 5 months during the 10-year period that she had been a ward of the court. Nirel has highly destructive behaviors. She has used illegal drugs, has engaged in sexual activity, has consistently run from placements, and has been the victim of abuse during her placements. She most recently was placed at a behavioral center and the hope was to place her in specialized foster care. Nirel wished to be placed with respondent and there was a bond between Nirel and respondent. However, both Nirel and Lateasha had been repeatedly disappointed by their mother, had difficulty trusting her, and the therapist described the bond as more of a friendship than as a mother-child relationship.

¶ 18 As to Imari, who was 11 years' old at the time and had lived with her mother for only 10 months out of the 10-year period, she had completed the fifth grade, was doing well in her placement, and all of her current needs were being met. She was observed calling her foster mother "mom," and stated that she does not want to leave.

¶ 19 Alias, who was 9 years' old at the time, had been in placement or in foster care since a week after his birth. During that time, he had been placed with respondent only for a four-month period. He was currently in a "stable placement," but it was not considered to be "pre-adoptive" at that point.

The foster parents have indicated that they would be willing to consider adoption after they were able to know Alias and his different behaviors.

¶ 20 In concluding that the State had shown, by a preponderance of the evidence, that it would be in the best interests of the children that the parental rights of respondent be terminated, the court considered the following evidence. Respondent had been unable to provide any of her four children with consistent food, shelter, health, or clothing due to her repeated drug use and relapses. Because of respondent's multiple relapses and her periods of absence, she could not provide the children with a sense of security. Also due to respondent's behavior over the years, the children had been unable to establish ties to church, school, or friends. Because the children attended multiple schools, lived in a number of different communities, and rarely stayed in one location with the same people for extended periods of time, the children had difficulty in establishing any consistency or identity of their own. If parental rights were terminated, this would allow the court to set a permanency goal of adoption, which would help the children to achieve their identities. If her rights were terminated, all of the children would have a better chance of creating ties with their church, with school, and with friends. Respondent had voluntarily chosen to remove herself from Illinois where her children lived, to be present where she could have visitation, and move to Texas, which "resulted in minimal visits and minimal to zero support in the areas which would include food, shelter, health, and clothing." The children needed permanency, stability, and continuity of relationships, and the "roller coaster road that they [had] been on need[ed] to end."

¶ 21 Respondent timely appeals, contending that the trial court's determinations that she was unfit and it was in the children's best interests that her parental rights be terminated are against the

manifest weight of the evidence. This court granted respondent's motion to consolidate her appeals in Nos. 2-11-0887 and 2-11-0888.

¶ 22

ANALYSIS

¶ 23

Unfitness

¶ 24 Respondent first challenges the trial court's finding that she was an unfit parent. Specifically, respondent argues that, because the children were returned to her care for most of 2009, the State waived its right to assert that respondent was unfit on any grounds for termination that may have existed prior to that placement. The State claims that evidence of parental unfitness is not a right that can be "waived." Respondent replies that her waiver argument is not only directed at the evidence but also at the grounds upon which the State can charge her as an unfit parent.

¶ 25 To begin, we are unsure of what respondent intends by the term "waiver." "Waiver arises from an affirmative act, is consensual, and consists of an intentional relinquishment of a known right." *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 326 (2004). Here, there was no affirmative, consensual act, consisting of an intentional relinquishment of a known right. The State did not affirmatively relinquish its right to charge respondent as an unfit parent on any grounds of termination that may have existed prior to returning the minors to respondent in 2009.

¶ 26 Furthermore, respondent does not cite, nor can we find, any authority which supports respondent's proposition that the State can voluntarily relinquish its right to assert a parent is unfit merely because a minor, who had been adjudicated neglected, is reunited with the family, and then is removed again when his or her safety or welfare is inadequately safeguarded by a parent.

¶ 27 Additionally, we do not find that the underlying rationale of the Juvenile Court Act or the Adoption Act would permit the waiver of evidence of parental unfitness. The paramount concern

of the Juvenile Court Act is to protect the moral, emotional, mental, and physical welfare of the minor and the best interests of the community and to strengthen family ties whenever possible, removing the minor from the custody of his or her parent only when the minor's welfare or safety or the protection of the public cannot be adequately safeguarded without removal. See 705 ILCS 405/1-2(1). The Adoption Act expressly provides that it "shall be construed in concert with the Juvenile Court Act of 1987" (750 ILCS 50/2.1 (West 2010)). Given that an important aim is to preserve and strengthen family ties, it makes sense for the State to return the minor to the family if possible. Similarly, it makes sense to find another permanent home for the minor if reunification is not consistent with the health, safety, and best interests of the minor. 705 ILCS 405/2-14(a) (West 2010). As such, the State will reunify families where the minor can be cared for at home without endangering his or her health or safety and it is in the best interests of the minor. 705 ILCS 405/2-14(a) (West 2000). To then prohibit the review of evidence regarding the minor's health, safety, and best interests in the context of the parent's fitness would be inconsistent with the principles set forth in the Acts. If we were to disallow the review of such evidence, the State would never consider returning minors home. Accordingly, we reject respondent's waiver argument.

¶ 28 However, even assuming, *arguendo*, that any evidence or grounds of unfitness were waived preceding the time the minors were placed with respondent, prior to November 2009, when the minors were removed from her care, respondent can still be found unfit pursuant to section 1(D)(b), which does not limit evidence to a specific time frame. See 750 ILCS 50/1(D)(b) (West 2010).

¶ 29 Because termination of parental rights permanently and completely severs the parent-child relationship, a finding of parental unfitness must be based on clear and convincing evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A trial court's finding of unfitness is afforded great deference

because it has the best opportunity to view and evaluate the parties and their testimony; the trial court's finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Daphnie E.*, 368 Ill. App. 3d at 1064.

¶ 30 Section 1(D)(b) provides that a parent's "[f]ailure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" are grounds for finding the parent unfit. 750 ILCS 50/1(D)(b) (West 2010). Our courts have repeatedly held that, because the language of subsection 1(D)(b) is stated in the disjunctive, any one of the three elements on its own can be the basis for an unfitness finding: the failure to maintain a reasonable degree of interest or concern or responsibility as to the child's welfare. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004); see also *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). In examining allegations under subsection 1(D)(b), a trial court must focus on the reasonableness of the parent's efforts and not the success of those efforts, and must consider any circumstances that may have made it difficult for the parent to visit, communicate with or otherwise express interest in her children. *Jaron Z.*, 348 Ill. App. 3d at 259; see also *C.E.*, 406 Ill. App. 3d at 109-10. However, our courts have repeatedly held that a parent will not be found fit merely because she has demonstrated some interest in or affection for her child. *Jaron Z.*, 348 Ill. App. 3d at 259, citing *In re E.O.*, 311 Ill. App. 3d 720, 727 (2000). Rather, her interest, concern, and responsibility must be reasonable. *Jaron Z.*, 348 Ill. App. 3d at 259, citing *E.O.*, 311 Ill. App. 3d at 727. Evidence of noncompliance with an imposed service plan, a continued addiction to drugs, or infrequent or irregular visitation with the minor all have been held sufficient to support a finding of unfitness under subsection 1(D)(b). See *In re Janira T.*, 368 Ill. App. 3d 883,

893 (2006); see also *Jaron Z.*, 348 Ill. App.3d at 259. Ultimately, we must accord great deference to a trial court's finding of unfitness and will not reverse that finding unless it is against the manifest weight of the evidence. See *In re Grant M.*, 307 Ill. App. 3d 865, 868 (1999).

¶ 31 Respondent's children were in her custody from approximately January (Imari), May (Lateasha and Nirel), and June (Alias) of 2009 to November 2009. The children were removed from respondent in November 2009, when she tested positive for drugs on November 17, 2009. She admitted that she had relapsed two weeks earlier, around November 3, 2009, while the minors were in her care. Respondent then moved to Texas in December 2009, despite Catholic Charities attempting to place her in a rehabilitation facility in Illinois. From January 2010 to May 2010, respondent's whereabouts were unknown and she had no contact with her children or the agency. She also admitted to using drugs and stopped participating with the imposed service plans. Respondent did not communicate with the children until August 2010, when she started sending the children letters and pictures. Respondent's move out-of-State, lack of contact with her children for approximately eight months, her continued noncompliance with the imposed service plans, and admitted continued addiction to drugs more than sufficiently demonstrated that she had not maintained a reasonable degree of interest, concern, or responsibility toward the welfare of her children. Therefore, we find that the trial court's determination that she was unfit under section 1(D)(b) was not against the manifest weight of the evidence.

¶ 32 Because parental rights may be terminated upon proof, by clear and convincing evidence, of a single ground for unfitness (*In re D.L.*, 191 Ill. 2d 1, 8 (2000)), we need not consider here whether respondent also was unfit on the other alleged bases of unfitness.

¶ 33

Best Interests

¶ 34 In the best-interests stage of a termination proceeding, due process does not require standards as strict as at the unfitness stage. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004) (explaining why the stricter “clear and convincing” standard is not needed at the best-interests stage). Although the State had to prove unfitness by clear and convincing evidence, it has to prove the child’s best interests by only a preponderance of the evidence. *D.T.*, 212 Ill. 2d at 366. By the time of the best-interests stage of the proceeding, the trial court has already found the parent to be unfit. Although the parent still has an interest in the best-interests stage, the focus is on the child, and the interests of the parent and the child may differ. *D.T.*, 212 Ill.2d at 363-64. Once the parent has been found unfit, all considerations, including the parent’s rights, yield to the best interests of the child. *D.T.*, 212 Ill. 2d at 363-64. On appeal, our standard of review is whether the trial court’s preponderance ruling was against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80. Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008).

¶ 35 Section 1-3 of the Juvenile Court Act of 1987 lists the relevant best-interests factors to be considered. 705 ILCS 405/1-3(4.05) (West 2010). Under this section, the trial court is required to consider and balance the following factors, while keeping in mind the child’s age and developmental needs: (1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s background and ties, including familial, cultural, and religious; (4) the child’s sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child’s wishes; (6) the child’s community ties; (7) the child’s need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10)

the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010). Our supreme court has observed that balancing these factors is “a difficult and delicate task, requiring a nuanced analysis of the statutory factors.” *D.T.*, 212 Ill. 2d at 354-55.

¶ 36 Respondent contends the trial court’s ruling that it was in the best interests of her children to terminate her parental rights was against the manifest weight of the evidence. Respondent addresses each of the factors as they apply to each of her children and concludes that it was error for the trial court to destroy the family. She asserts, inter alia, that the trial court gave no consideration to the children’s familiarity and ties with the family, their need to continue existing relationships with the family, and the risks attendant to substitute care.

¶ 37 The trial court is not required to explicitly mention each factor listed in section 1-3(4.05) while rendering its decision. *Jaron Z.*, 348 Ill. App. 3d at 262-63. In fact, the court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by the trial court below in affirming its decision. *Jaron Z.*, 348 Ill. App. 3d at 263.

¶ 38 In this case, however, the trial court reviewed each factor and emphasized that it would treat each child’s circumstance as unique. As to each child, the court considered the length of the child’s relationship, what effect a change in placement would have on his or her emotional and physical well-being, and the numerous placements each child had been subjected to for up to 10 years of foster care. The court found that some factors did not favor terminating respondent’s parental rights, but after considering all of the factors and evidence received, the court found the State had met its burden of proof. The court noted that respondent’s failure to overcome her addiction was the basis of all of the children’s problems. The evidence supports the trial court’s finding.

¶ 39 Respondent was an admitted cocaine user. She had continually relapsed and could not be assured of maintaining sobriety, she had been jailed for a drug offense, and had failed on a majority of occasions to take advantage of the services offered to her. Because of her failure to maintain sobriety, respondent had not demonstrated that she could care for the children. The children had been wards of the court for most of their lives. They had been placed with relatives and non-relatives, lived in homes in three different states, and, in Nirel's case, had been hospitalized and institutionalized. Each child had been affected by respondent's failure to control her drug problem, which clearly indicates that the children's best interests favored the termination of respondent's parental rights.

¶ 40 Respondent argues at length that the children have strong ties with each other. However, there is no law preventing them from seeing each other if respondent's parental rights are terminated. At present, the children have a chance to achieve the permanency and stability that have been missing in their lives. Further delay and the lack of permanency and stability certainly would not be in their best interests. See *K.H.*, 346 Ill. App. 3d 443, 463 (2004) (permanency and stability is important for a child's welfare). Moreover, while familial ties and permanency are factors to be considered in weighing a child's best interests, a review of the evidence in relation to the statutory factors shows that the trial court's decision to terminate respondent's parental rights was not contrary to the manifest weight of the evidence.

¶ 41 Affirmed.