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).

2012 IL App (3d) 110752-U

Order filed February 16, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

In re M.R.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit
Minor	)	Peoria County, Illinois
	)	
(The People of the State of	)	
Illinois,	)	
	)	Appeal No. 3-11-0752
Petitioner-Appellee,	)	Circuit No. 08-JA-205
	)	
v.	)	
	)	
Marchello W.,	)	Honorable
	)	Chris L. Fredericksen
Respondent-Appellant).	)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's finding that father was unfit for failure to make reasonable progress toward the return of his child within nine months of adjudication was not against the manifest weight of the evidence where father, who was incarcerated for entire nine-month period, failed to complete any tasks required by the court.

¶ 2 Marchello W. is the father of M.R. After M.R. was adjudicated neglected, the State filed a

petition for termination of parental rights. Following a hearing, the trial court found that Marchello W. was unfit and that M.R.'s best interests required that she be placed in the custody of the Department of Children and Family Services (DCFS). Following a best interest hearing, the court terminated Marchello W.'s parental rights. Marchello W. appeals the court's unfitness finding. We affirm.

¶ 3 In October 2008, the State filed a petition alleging that M.R. was neglected in that her environment was injurious to her welfare. The petition listed Jalita S. as M.R.'s mother and Davon R. as M.R.'s father.

¶ 4 In November 2008, M.R. was adjudicated neglected based on the contents of the petition. In December 2008, the trial court found Jalita S. unfit based on criminality. M.R. was made a ward of the court and DCFS was appointed as guardian of the minor.

¶ 5 In December 2009, Jalita S. testified that Davon R. is not M.R.'s father and identified Marchello W. as M.R.'s father. The court ordered DNA testing. On January 26, 2010, the trial court found that, based on DNA testing, Marchello W. is M.R.'s father.

¶ 6 On March 9, 2010, the trial court adjudicated M.R. neglected based on the prior adjudication. The adjudication order stated that Marchello W. did not contribute to the neglect. On the same date, the trial court entered an order finding Marchello W. unfit based on criminality, making M.R. a ward of the court and placing guardianship of M.R. with DCFS. The court ordered Marchello W. to perform several tasks to correct the conditions that led to the adjudication of M.R. Those tasks included obtaining a drug and alcohol assessment, performing random drug drops twice a month, successfully completing counseling to address criminality, employment and proper parenting, successfully completing parenting and domestic violence courses, obtaining and

maintaining stable housing, providing the assigned caseworker with any change in address within three days, and visiting M.R.

¶ 7 On March 2, 2011, the State filed a petition for termination of parental rights. Count II of the petition alleged that Marchello W. is unfit because he failed to make reasonable progress toward the return of M.R. within nine months of adjudication, the relevant period being March 9, 2010, to December 9, 2010.

¶ 8 A hearing on the petition was held on August 3, 2011. At the hearing, Marchello W. testified that he was in the county jail when he entered the case, in December 2009. After he was convicted for possession of a controlled substance with intent to deliver, he was transferred to Stateville Correctional Center. He originally believed he would be released from prison in September 2010, and then in March 2011, but because of changes to good time credit, he is scheduled to be released on September 2, 2011.

¶ 9 Marchello W. entered Stateville on April 1, 2010, and remained there until June 20, 2010, when he was transferred to Centralia Correctional Center. When he entered Centralia, he met with a counselor and asked about participating in programs so he could complete some of the tasks ordered by the court on March 9, 2010. Marchello W.'s counselor advised him that he could not participate in any programs because he was going to be in Centralia for only a short time.

¶ 10 In August 2010, Marchello W. was transferred to Vienna Correctional Center. When he entered Vienna, he spoke to a counselor about participating in programs. According to a document presented by Marchello W., he was placed on the waiting list for a parenting class on December 20, 2011. He was notified in March 2011, that he was still on the waiting list for the parenting class. While in prison, Marchello W. asked his counselor about performing drug tests and was told that

"they don't do that." He testified that mental health counseling was available in prison.

¶ 11 Marchello W. testified that he sent a letter to M.R.'s caseworker, Caroline Taiwo, on December 8 or 9, 2010, asking her to postpone an upcoming court date to March 2011, because he believed he would be out of prison then. In the letter to Taiwo, Marchello W. also expressed concerns about the well-being of M.R. Before that, he sent Taiwo a "how are you doing, miss card" to give to M.R.

¶ 12 Caroline Taiwo testified that she was the caseworker for M.R. from October 2008, to December 30, 2010. She first met Marchello W. in the Peoria County Jail when she interviewed him in February 2010. Marchello W. told Taiwo that he did not want M.R. to visit him in jail. Marchello W. told Taiwo that he was to be released in September 2010, and would like to begin visitation with M.R. then. He indicated that he wanted to be a part of M.R.'s life.

¶ 13 Between her interview with Marchello W. in February 2010, and December 9, 2011, she never heard from Marchello W. He did not advise her when he was transferred from jail to prison. She did not learn that he was in the Department of Corrections until September 2010, when she searched for him.

¶ 14 Marchello W. never gave Taiwo any information about any services he was participating in or trying to participate in while in prison and never requested a visit with M.R. Sometime after December 9, 2010, Taiwo received a letter from Marchello W. in which he asked for a court date to be postponed.

¶ 15 At the conclusion of the hearing, the trial court found that count II of the petition was proven by clear and convincing evidence. In so ruling, the court noted that Marchello W. failed to keep in contact with M.R.'s caseworker or notify her when he was transferred to various prisons, made no

attempt to set up a communication system with M.R., did not request a parenting class until after the nine-month period expired, and never requested counseling. The court stated that it did not hold Marchello W.'s failure to obtain drug testing against him because drug testing was not available in prison. The court concluded that while Marchello W. sent one or two letters to M.R.'s caseworker, "one or two communications over a nine-month period does not constitute reasonable progress."

¶ 16 A best interest hearing was held on September 21, 2011. At the conclusion of the hearing, the trial court found that it was in the best interest of M.R. that Marchello W.'s parental rights be terminated.

¶ 17 In Illinois, the authority to terminate parental rights involuntarily is found in the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2008)) and the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2008)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). A petition to terminate parental rights is filed pursuant to section 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2008)). *J.L.*, 236 Ill. 2d at 337. That section delineates a two-step process in seeking termination of parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2008); *J.L.*, 236 Ill. 2d at 337. First the court must find by clear and convincing evidence that a parent is unfit as defined in section 1 of the Adoption Act. 705 ILCS 405/2-29(2), (4) (West 2008); 750 ILCS 50/1(D) (West 2008); *J.L.*, 236 Ill. 2d at 337. Second, the court considers the "best interest" of the child in determining whether parental rights should be terminated. 705 ILCS 405/2-29(2)(West 2008); *J.L.*, 236 Ill. 2d at 337-38.

¶ 18 Section 1(D)(m)(ii) of the Adoption Act provides that a parent may be declared unfit if he fails "to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act." 750 ILCS 50/1(D)(m)(ii) (West 2008).

Reasonable progress has been defined as "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001). In determining if a parent has made reasonable progress under section 1(D)(m) of the Adoption Act, the court considers the parent's compliance with the service plans and the court's directives. See *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046 (2007).

¶ 19 Only evidence from the relevant time period may be considered in determining whether a parent is unfit for failure to make reasonable progress toward the return of the child. *Reiny S.*, 374 Ill. App. 3d at 1046. Time spent incarcerated is included in the nine-month period during which reasonable progress must be made under section 1(D)(m). *J.L.*, 236 Ill. 2d at 343. If an incarcerated parent does not take advantage of services available to him in prison, he fails to make reasonable progress toward reunification. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 596 (2004).

¶ 20 A trial court's finding of unfitness is afforded great deference because the trial court is in the best position to assess the credibility of the witnesses. *Gwynne P.*, 346 Ill. App. 3d at 590. A reviewing court may reverse a circuit court's finding of unfitness only where it is against the manifest weight of the evidence. *Id*. A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id*.

¶ 21 Here, the court's directives of March 9, 2009, required Marchello W. to obtain a drug and alcohol assessment, perform random drug drops twice a month, participate in and successfully complete counseling to address various issues, successfully complete parenting and domestic violence courses, obtain and maintain stable housing, provide the assigned caseworker with any change in address, and visit M.R. At the time the order was entered and throughout the nine-month period, Marchello W. was incarcerated. Some of the court-ordered services, such as random drug tests, were not available to Marchello W. in prison. However, other services, including parenting

courses and counseling, were available to him.

¶ 22 The evidence at the hearing established that, despite their availability, Marchello W. did not attempt to sign up for a parenting class until after the relevant nine-month period and never sought counseling while in prison. Additionally, Marchello W. never sought visitation with M.R. and did not keep in contact with M.R.'s caseworker, as required by the court's directives.

¶ 23 Marchello W. failed to complete any of the tasks required by the court during the relevant time period. Thus, the trial court's finding that Marchello W. failed to make reasonable progress was not against the manifest weight of the evidence. See *Gwynne P.*, 346 Ill. App. 3d at 596.

¶ 24 The order of the circuit court of Peoria County is affirmed.

¶ 25 Affirmed.