NOTICE
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2012 IL App (4th) 111031-U

Filed 4/5/12

NO. 4-11-1031

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: B.W.-M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 10JA87
ELIZABETH MATHIAS,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in finding respondent an unfit parent where the State sufficiently proved respondent had failed to make reasonable progress toward the return of the minor.

(2) The trial court did not err in terminating respondent's parental rights where the State sufficiently proved termination was in the minor's best interest.

¶ 2 In July 2011, respondent mother, Elizabeth Mathias, was found to be unfit. In November 2011, her parental rights to her child, B.W.-M. (born April 28, 2010) were terminated. Respondent appeals, arguing the trial court erred both in finding her unfit and in terminating her parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 28, 2010, B.W.-M. was born prematurely and suffering from methadone withdrawal. According to the shelter-care report, respondent had a methadone prescription for

chronic pain. Her physician stated it would be too dangerous to take her off the drug altogether during the pregnancy and instead reduced the dosage. However, the physician also reported respondent had run out of her prescription several weeks before she should have and had requested more pills during her pregnancy. The report also indicated B.W.-M.'s father, Toby Mathias, is a registered sex offender. We note B.W.-M.'s father is not a party to this appeal.

¶ 5 On May 10, 2010, the State filed a petition for adjudication of wardship, alleging B.W.-M., then 12 days old, was neglected and abused. Count I alleged B.W.-M. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2008)) because the minor was residing in an environment injurious to her welfare in that:

> "the mother has mental health issues[.] [F]urther, the child was born prematurely and suffering from methadone withdrawal; the mother has been requesting refills weeks before the refill date. The mother has another child who is in the guardianship of grandparents. The father is a registered sex offender, classified as a sexual predator for a Logan County conviction for the Aggravated Criminal Sexual Abuse of his 9[-]year[-]old niece. The father has three prior indicated reports, [and] the mother has 2 prior indicated reports."

¶ 6 Count II alleged B.W.-M. was neglected pursuant to section 2-3(1)(c) of the Juvenile Court Act (705 ILCS 405/2-3(1)(c) (West 2008)) "by reason of being a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of [s]ection 102 of the Illinois Controlled Substances Act, in that the child was

born prematurely and with severe withdrawal symptoms from methadone."

¶ 7 Count III alleged B.W.-M. was abused pursuant to section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2008)) because the minor was exposed to a substantial risk of physical injury in that:

> "the mother has mental health issues[.] [F]urther, the child was born prematurely and suffering from methadone withdrawal; the mother has been requesting refills weeks before the refill date. The mother has another child who is in the guardianship of grandparents. The father is a registered sex offender, classified as a sexual predator for a Logan County conviction for the Aggravated Criminal Sexual Abuse of his 9[-]year[-]old niece. The father has three prior indicated reports, [and] the mother has 2 prior indicated reports."

¶ 8 On May 11, 2010, the trial court entered a temporary custody order, finding an immediate and urgent need to order removal of B.W.-M. from respondent's home. The court placed B.W.-M.'s temporary custody with the Department of Children and Family Services (DCFS).

¶ 9 On June 24, 2010, the trial court entered an adjudicatory order, finding B.W.-M. "abused, neglected" because she was born methadone positive, had severe withdrawal symptoms, there was a history of domestic violence and substance abuse, and the father was a sexual predator who was noncompliant with treatment.

¶ 10 A July 14, 2010, dispositional report, prepared by Webster-Cantrell Hall, recommended the minor remain in DCFS custody. The report indicated respondent's parents had

custody of her older daughter because respondent wanted to stay with Toby rather than comply with DCFS services.

¶ 11 On July 21, 2010, the trial court entered a dispositional order finding respondent unfit and unable to care for, protect, train, educate, supervise or discipline B.W.-M. and placement of the child with her contrary to the health, safety and best interest of B.W.-M. Toby was found unfit, unable, and unwilling to care for the minor because he was a sex offender and was defaulted in the proceeding. The court made B.W.-M. a ward of the court and placed her custody and guardianship with DCFS. The court set the permanency goal as return home within 12 months. Thereafter, DCFS filed a client-service plan with the trial court. According to the plan, respondent needed to, *inter alia*, complete a substance abuse assessment, engage in domestic violence therapy, attend parenting services, and establish housing and employment.

¶ 12 The December 14, 2010, permanency report, prepared by Webster-Cantrell Hall, indicated respondent had been compliant with most of her recommended services with the exception of housing and employment. However, the report indicated respondent was still involved in a relationship with B.W.-M.'s father, who respondent insisted would never harm B.W.-M.

¶ 13 On December 22, 2010, the trial court entered an order, finding respondent remained unfit because she had not made reasonable and substantial progress toward the goal of returning B.W.-M. home. The court kept the permanency goal as return home within 12 months.

¶ 14 According to the May 3, 2011, client-service plan, respondent was not making satisfactory progress toward the goal of return home within 12 months. The report rated respondent's progress as unsatisfactory with regard to individual and domestic violence therapy.

According to the report, respondent stopped attending therapy in December 2010 and only recently reengaged. In addition, the report indicated respondent was dropped from the parenting program for missing more than four classes. According to the report, respondent stopped attending classes because she "feels like she already know[s] everything that is being taught in the classes." The report also rated respondent's progress as unsatisfactory with regard to the goal of obtaining stable housing and income. Respondent reported she had been living with friends in Blue Mound, Illinois. However, the report also noted the caseworker had received numerous calls stating respondent had been living with Toby in a hotel in Pana, Illinois.

¶ 15 On May 9, 2011, the State filed a motion seeking the termination of respondent's parental rights. The State alleged respondent failed to make reasonable efforts to correct the conditions that were the basis for removal of the minor from respondent. The petition also alleged respondent had failed to make reasonable progress toward the return of the minors within nine months after the adjudication of neglect or abuse.

¶ 16 During the July 13, 2011, hearing on the termination of respondent's parental rights, Kindra Smith, a caseworker for Webster-Cantrell Hall, testified respondent's recommended services included attending individual therapy and parenting classes, establishing housing and financing, as well as undergoing a substance abuse assessment, and cutting ties with Toby so she would not have B.W.-M. around him until after he sought a sex offender assessment and treatment through Webster-Cantrell Hall.

¶ 17 Smith testified respondent's service plan goals were "not completed successfully." Smith pointed out while respondent completed parenting classes, she did not do so until the day before the termination hearing. The delay occurred because respondent stopped going to class in

December, telling Smith she did not need nor like the class. She also told Smith she knew how to care for her child. Smith testified respondent also failed to obtain stable housing. According to Smith, respondent had been temporarily living with friends but not paying rent. Smith also testified respondent had failed to establish a stable income. Respondent reported in March 2011 she had filled out four employment applications. Respondent told Smith Toby's father provided her with money for gas and bills. Respondent continued to maintain a relationship with Toby. According to Smith's testimony, respondent continued to defend him and drove his vehicle to and from her visits.

¶ 18 Respondent testified she was, but is no longer, married to Toby. Respondent admitted occasionally speaking to Toby but denied being romantically involved with him. On cross-examination, however, respondent admitted she had been romantically involved with Toby after B.W.-M. was taken into protective custody. When asked her plans concerning Toby's release from prison, respondent replied, "That's too far in the future right now to be honest with you." Respondent then testified she would not let Toby live with her until he obtained a sex-offender evaluation.

¶ 19 Respondent explained, as far as she was concerned, she had completed her individual therapy because in December 2010 the counselor told her she was done. Respondent admitted she stopped attending parenting classes because she was having difficulty attending twice a week. Respondent testified she had just completed the program the day before the hearing.

¶ 20 Regarding her housing situation, respondent testified she had been temporarily living in Decatur and Blue Mound with friends and was still looking for permanent housing.

Respondent testified she was attempting to obtain subsidized housing, but it would take a number of months before she would be at the top of the waiting list. Respondent denied living with Toby.

¶ 21 As to her employment situation, respondent testified she filled out at least 20 job applications and had a couple of interviews. Respondent testified she made $300 to $400 per month cleaning friends' houses, including Toby's father's house. Respondent admitted driving Toby's vehicle but testified it belonged to Toby's father.

¶ 22 On July, 25, 2011, the trial court found respondent unfit where she (1) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor and (2) failed to make reasonable progress toward the return of the minor within nine months following the adjudication of abuse or neglect, *i.e.*, June 24, 2010, through March 24, 2011.

¶ 23 On September 14, 2011, a best-interest report, prepared by Webster-Cantrell Hall, was filed. According to the report, respondent failed to correct the conditions causing B.W.-M. to be placed into care. The report indicated respondent admitted she continued to be involved with Toby, a registered sex offender, even though he failed to engage in an assessment or sex-offender treatment. According to the report, B.W.-M. was doing well in her relative foster placement, which was committed to providing long-term permanency for her. The report recommended it was in B.W.-M.'s best interests that respondent's parental rights be terminated.

¶ 24 During the November 9, 2011, best-interest hearing, Smith testified respondent had just recently established housing and her only employment was cleaning houses for cash "under the table." B.W.-M. was developmentally delayed, showing no interest in walking even though she was two years old. Smith testified B.W.-M. had been placed with her maternal aunt and

uncle and was doing well in the placement. She was very attached and bonded to them. Smith testified B.W.-M.'s aunt and uncle were an adoptive resource.

¶ 25 Respondent testified Toby was currently incarcerated, and she would only have a relationship with him if he gets treatment. She testified she still had a prescription for methadone to treat her chronic back pain. Respondent testified she had been living in Pana since August in what used to be a motel room, which she rents on a month-to-month basis for $420. Respondent cleaned approximately three houses a week. When asked if she is able to survive on the amount of money she makes, respondent replied, "Considering, it's just me, for right now; yes." When asked what she would do if B.W.-M. were returned to her, respondent replied,

> "Well, I know that I can apply for WIC for her. Um—I was going—I actually found out about a job in Taylorville yesterday—found out about it yesterday afternoon so, I was gonna look into that tomorrow. And um—go see about trying to get um—on the link—a link card. I do know that there is a food pantry if it's necessary in the town and go from there."

¶ 26 Following the hearing, the trial court found it in the minor's best interests to terminate respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent argues the trial court erred in (1) finding her to be an unfit parent and (2) terminating her parental rights.

¶ 30 A. Finding of Unfitness

¶ 31 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 223-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 32 In this case, the trial court found respondent unfit, *inter alia*, for failing to make reasonable progress during the nine-month period following the adjudication of neglect (June 24, 2010, through March 24, 2011). Reasonable progress is an objective standard which focuses on the amount of progress toward the reunification goal that can reasonably be expected. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999); *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). Here, the court found the following:

> "[T]he court recognizes [respondent] was successful in completing certain portions of her service plan. She did well while visiting with the child. She also completed parenting classes, but it is undisputed that she did not complete those classes until the day before the hearing and approximately three months after the expiration of the relevant nine month period. Yet as set forth above, she failed to obtain suitable housing or stable employment. Perhaps the most

> significant failure to comply with the service plan relates to the fact [respondent] continues to maintain a relationship with the Father, a sexual predator. The court concludes [respondent] was unsuccessful in completing her service plan requirements."

The court concluded the little amount of progress made was "not sufficiently demonstrable and [was] of such little quality that the child cannot be returned within the near future."

¶ 33 The trial court's finding respondent failed to make reasonable progress during the nine-month period following the adjudication of neglect was not against the manifest weight of the evidence. One of the service plan goals was for respondent to undergo individual and domestic violence therapy to understand how her continued relationship with Toby would place B.W.-M. at risk. Smith testified they needed to make sure respondent would not have B.W.-M. around Toby until after he had a sex-offender assessment and underwent treatment. According to Smith's testimony, respondent continued to maintain a relationship with Toby.

¶ 34 Further, respondent failed to find a stable source of income. While respondent testified she had completed a number of employment applications, she had not successfully obtained employment. Respondent testified she made $300 to $400 a month cleaning houses.

¶ 35 Moreover, respondent failed to obtain suitable housing. Respondent lived with a friend in Decatur and then with a friend in Blue Mound. Smith testified respondent was not on the lease and did not pay rent at either residence. At the time of the fitness hearing, respondent testified she was living in Blue Mound temporarily and was still looking for permanent housing. It was not until after the fitness hearing when respondent had obtained housing, paying $420 a month to rent a room in what used to be a motel.

¶ 36 Here, the trial court found respondent's lack of progress with regards to employment and safe and stable housing combined with evidence she continued to maintain a relationship with Toby prevented the minor's return. Based on the evidence in the record, we conclude the court's finding of unfitness was not against the manifest weight of the evidence.

¶ 37 B. Best-Interest Finding

¶ 38 Once a parent has been found unfit for termination purposes, the focus changes to what is in the best interest of the child. 705 ILCS 405/2-29(2) (West 2008); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2008). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and

(10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 39 The trial court's best-interest determination is reviewed under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 40 In this case, B.W.-M. was less than two weeks old when she was removed from respondent's custody and placed with her maternal aunt and uncle. Smith testified B.W.-M. was doing well in her relative placement and was very attached and bonded to her aunt and uncle. Respondent testified she was living in a rented room in Pana on a month-to-month basis for $420 per month. (We note the May 3, 2011, service plan indicated the caseworker had received numerous calls stating respondent was living with Toby in a hotel in Pana.) Respondent testified she cleaned approximately three houses a week and made just enough money to support herself. According to the best-interest report, B.W.-M.'s maternal aunt and uncle were capable of providing for B.W.-M.'s medical and developmental needs. Further, her aunt and uncle were committed to providing long-term permanency for B.W.-M. Smith testified B.W.-M.'s foster family was an adoptive resource.

¶ 41 Based on the evidence presented, we hold the trial court's order finding termination of respondent's parental rights was in the minor's best interest was not against the manifest weight of the evidence.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the trial court's judgment.

¶ 44 Affirmed.