NOTICE
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2012 IL App (4th) 111046-U

Filed 3/8/12

NO. 4-11-1046

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Z.D.-H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 10JA38
EMONYA DAVIS,	)	
Respondent-Appellant.	)	Honorable
	)	Brian L. McPheters,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Where respondent was unfit and it was in the minor's best interest that her parental rights be terminated, the trial court's decision on termination was not against the manifest weight of the evidence.

¶ 2 In May 2010, the State filed a petition for adjudication with respect to Z.D.-H., the minor child of respondent, Emonya Davis. In September 2010, the trial court adjudicated the minor a ward of the court and placed custody and guardianship with the Illinois Department of Children and Family Services (DCFS). In May 2011, the State filed a motion to terminate respondent's parental rights. In September 2011, the trial court found respondent unfit. In November 2011, the court found it in the minor's best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding her unfit and (2)

terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2010, the State filed a petition for adjudication of abuse/neglect, alleging respondent's son, Z.D.-H., born in March 2010, was a neglected minor 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 2010)). The petition alleged Z.D.-H. was neglected because his environment was injurious to his welfare when he resided with respondent and/or his father because they failed to correct the conditions that resulted in prior adjudications of parental unfitness to exercise guardianship and/or custody of his sibling. In July 2010, the State filed a second petition, alleging Z.D.-H. was dependent pursuant to section 2-4(1)(a) of the Juvenile Court Act (705 ILCS 405/2-4(1)(a) (West 2010)) because he was without a parent or guardian who was able or willing to care for him. The trial court found Z.D.-H. was neglected/abused/dependent and an immediate and urgent necessity was demonstrated to place him in shelter care.

¶ 6 Also in July 2010, the trial court found the minor was abused or neglected based on an injurious environment. In its September 2010 dispositional order, the court found it in the minor's best interest that he be made a ward of the court and placed custody and guardianship with DCFS.

¶ 7 In May 2011, the State filed a motion to terminate respondent's parental rights. The State alleged respondent was unfit because she (1) failed to make reasonable progress toward the return of the minor within the initial nine-month period after the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2010)) (count I) and (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b)

(West 2010)) (count II).

¶ 8 In September 2011, the trial court conducted a hearing on the motion to terminate parental rights. Respondent agreed to stipulate to count I, and the State agreed to withdraw count II. In providing a factual basis, the State submitted a home and background report as well as three permanency reports. Without objection, the court admitted the exhibits into evidence. The court also took judicial notice of the prior orders entered in the case. Based on the stipulation, the court found respondent unfit for failing to make reasonable progress toward the return of the minor within the initial nine-month period after the adjudication of neglect or abuse.

¶ 9 In November 2011, the trial court conducted the best-interest hearing. The best-interest report indicated Z.D.-H. was 18 months old and had been placed in relative foster care. He is attached to his family "and fits in well with the dynamics of the home." The report indicated the minor had "a wonderful support system in the foster home." Z.D.-H. has a "dysplastic right kidney and mild hydronephrosis of the left kidney." His left kidney is inactive while the right one is "small but functioning properly." He takes medication for his condition but may need dialysis or a transplant in the future.

¶ 10 The best-interest report also indicated respondent completed parenting classes in May 2011 and domestic-violence classes in September 2011. She was enrolled in substance-abuse classes but had "sporadic attendance." She had obtained stable housing and income. The report indicated a psychological evaluation stated her prognosis for change was poor and "her shortsightedness, defensiveness, impulsiveness, and paranoia prevent her from providing minimal appropriate parenting to her son."

¶ 11 At the hearing, the trial court became aware that Z.D.-H. was no longer living

with the foster family mentioned in the best-interest report. The guardian *ad litem* stated the minor was with a new foster placement and the family was capable of caring for him. The court found the change in placement to be of no determinative value. Considering respondent's physical and psychological circumstances, her sporadic attendance at the necessary services, and Z.D.-H.'s kidney problems, the court found it in the minor's best interest that respondent's parental rights be terminated. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Unfitness Finding

¶ 14 Respondent argues the trial court erred in finding her unfit, claiming the evidence indicated she made reasonable progress. We disagree.

¶ 15 Because termination of parental rights is a serious matter, 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 determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Veronica J.*, 371 Ill. App. 3d 822, 828, 867 N.E.2d 1134, 1139 (2007).

¶ 16 In the case *sub judice*, respondent stipulated to one count of unfitness for failing to make reasonable progress. She makes no mention of that fact in her argument on appeal. Instead, she claims she made progress in her service plan goals and cites several examples with

citation to the record. However, the only evidence of compliance with the service plan was presented at the best-interest hearing. The unfitness hearing took place on September 7, 2011. The best-interest report was filed on October 13, 2011, and the hearing on best interests took place on November 9, 2011. A trial court cannot commit error for failing to consider evidence when that evidence has yet to be generated or presented. Since respondent makes no argument regarding the propriety of her stipulation, we find the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 17 B. Best-Interest Finding

¶ 18 Respondent argues the trial court erred in finding it in the minor's best interest that her parental rights be terminated. We disagree.

¶ 19 Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights. *M.H.*, 196 Ill. 2d at 362-63, 751 N.E.2d at 1140. Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). 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 2010). 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).

See also 705 ILCS 405/1-3(4.05)(a) through (4.05)(j) (West 2010).

¶ 20 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *I.B.*, 397 Ill. App. 3d at 340, 921 N.E.2d at 801. A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 21 In this case, the best-interest report indicated Z.D.-H. has done well in foster care. Although he had kidney problems, his needs were being addressed. Respondent's psychological evaluation stated she presented little evidence that she would be capable of making medical decisions in her son's best interest.

¶ 22 The report also indicated respondent had been involved with DCFS for the past 10 years. Although she enrolled in substance-abuse classes, her attendance was sporadic. Her therapist stated respondent is difficult to engage in an appropriate manner. Another therapist stated respondent appears hostile and angry in group sessions. Respondent failed to show up for

drug screens on 11 occasions. A psychological evaluation found her prognosis for change to be "poor" and "her shortsightedness, defensiveness, impulsiveness, and paranoia prevent her from providing minimal appropriate parenting to her son."

¶ 23 At the best-interest hearing, it became known that Z.D.-H. was no longer living with the foster family mentioned in the best-interest report. The trial court questioned the author of the report, and she stated the change occurred after she submitted it. Other than Z.D.-H.'s change in placement, she stood by her report. The court also became aware that respondent was no longer participating in any of the recommended services.

¶ 24 Here, the evidence has indicated Z.D.-H. has done well while in foster care. Although he has health concerns, his foster placement has addressed his needs and nothing indicates his new family will not continue to do so in the future. On the other hand, the evidence indicated respondent was not up to the challenge in regard to her son's medical care. Moreover, respondent was sporadic in attending her substance-abuse sessions and missed the majority of her drug screens. The evidence showed respondent would not be able to provide the stability and permanence Z.D.-H. needs for the foreseeable future. Based on the evidence presented, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment.

¶ 27 Affirmed.