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2012 IL App (4th) 120007-U

Filed 4/30/12

NO. 4-12-0007

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 10JA113
WALLACE BRADY,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Presiding Justice Turner and Justice Appleton concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed, concluding that the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.
- ¶ 2 In October 2011, the State filed an expedited supplemental motion to terminate the parental rights of respondent, Wallace Brady, as to his daughter, A.B. (born October 5, 2006). Following a December 2011 fitness hearing, the trial court found respondent unfit. Following a best-interest hearing conducted later that month, the court terminated respondent's parental rights.
- ¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We disagree and affirm.

¶ 4

## I. BACKGROUND

¶ 5

### A. The Pertinent Circumstances Preceding the State's July 2011 Petition To Terminate Respondent's Parental Rights

¶ 6

In August 2010, the State filed a petition for adjudication of wardship, alleging, in part, that A.B. was a neglected minor under section 2-3(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1) (West 2010)). The State alleged, in part, that A.B.'s environment was injurious to her welfare, in that (1) A.B. reported respondent has sexually abused her and (2) respondent has mental-health and "criminal[-]involvement issues." At a shelter-care hearing held shortly thereafter, respondent stipulated that an immediate and urgent necessity required A.B.'s placement in shelter care. The trial court then entered a temporary custody order, appointing the Department of Children and Family Services (DCFS) as A.B.'s temporary guardian. (The State's petition also alleged that A.B. was neglected by her biological mother, Susanna Chisholm. Chisholm, however, had moved to Arizona, refused to appear at the proceedings in this case, and expressed her intent not to be involved.)

¶ 7

In January 2011—following several continuances—the State filed an amended petition for adjudication of wardship, again alleging that A.B. was a neglected minor. Specifically, the State asserted that A.B.'s environment was injurious to her welfare, in that respondent had "mental health, substance abuse, and criminal involvement issues."

¶ 8

Following a January 2011 adjudicatory hearing, the trial court entered an order adjudicating A.B. a neglected minor. The court based its finding on (1) respondent's admission that A.B. was neglected and (2) the State's factual basis, which showed that respondent had an "extensive prior history" with DCFS and unresolved substance-abuse and mental-health issues.

Following a dispositional hearing conducted immediately thereafter, the court adjudicated A.B. a ward of the court and maintained guardianship with DCFS.

B. The State's July 2011 Petition To Terminate Respondent's Parental Rights

¶ 9 In July 2011, the State filed a motion to terminate respondent's parental rights as to A.B. pursuant to the Adoption Act (750 ILCS 50/1 through 24 (West 2010)). The State alleged, in part, that respondent was an unfit parent because he failed to maintain a reasonable degree of interest, concern, or responsibility for A.B.'s welfare. 750 ILCS 50/1(D)(b) (West 2010).

¶ 10 1. *The Pertinent Evidence Presented at Respondent's August 2011 Fitness Hearing*

¶ 11 a. The State's Evidence

¶ 12 Tara Wickline, the DCFS-contracted caseworker handling respondent's case since April 2011, testified that respondent's May 2011 client-service-plan required him to complete the following initial assessments: mental health, sex offender, drug and alcohol, and anger management. In addition, respondent's plan required him to (1) comply with any treatment recommendations, (2) complete a comprehensive psychological evaluation, (3) attend weekly supervised visitation with A.B., and (4) maintain housing and employment.

¶ 13 Wickline noted that respondent completed his mental-health assessment but attended only 50% of his psychiatric appointments. At his last appointment, respondent told his psychiatrist that he had stopped taking his psychotropic medications because "he did not need them." Wickline explained that because respondent did not stop his drug use and had yet to complete his comprehensive psychological evaluation—which were both prerequisites for a sex-

offender assessment—respondent had yet to complete that goal but respondent had a 2011 sex-offender-assessment appointment scheduled for November 2011.

¶ 14 In May 2011, Wickline asked respondent to perform a drug test, which he failed to complete. Personnel at the Salvation Army shelter, where respondent had been living since March 2011, performed the drug test, which produced a positive result. Wickline noted that respondent complied with all random drug tests and consistently tested negative until August 26, 2011, when he failed to appear for testing, despite receiving Wickline's message. Wickline added that since the missed drug test, she attempted unsuccessfully to contact respondent, which was unusual given that respondent had always returned her calls promptly. Wickline documented respondent's testing failure as a positive result.

¶ 15 Wickline testified further that although respondent had not completed his anger-management assessment, respondent attended all his weekly, two-hour, supervised visits with A.B. Wickline observed that respondent would bring snacks or meals and would interact appropriately with A.B. by playing and instructing her with educational games. Respondent would also bring A.B. gifts and clothing. Respondent would, however, occasionally (1) overreact in response to minor issues or (2) get upset if he perceived, unreasonably, that A.B. was in danger. Wickline recounted an incident in which respondent became upset because A.B. was allowed to spend the night with her foster parents at a church slumber party and no background checks were performed on the other participants.

¶ 16 After respondent left the Salvation Army shelter in August 2011, Wickline asked respondent for his new address, but he stated that he could not remember it. Respondent's work history since Wickline assumed his case was inconsistent because respondent was employed by a

temporary agency that offered employment based on availability. Wickline rated respondent's overall progress on completing his client-service-plan goals as unsatisfactory, summarizing that she could not envision a time in the immediate future when respondent would sufficiently complete his client-service-plan goals to regain custody of A.B.

¶ 17

b. Respondent's Evidence

¶ 18

Respondent denied that he had sexual contact with A.B., but he confirmed his intention to (1) complete his sex-offender goals and (2) regain custody of A.B. Respondent acknowledged missing some psychiatric appointments, but he stated that he had an ample supply of medicine, which his psychiatrist allowed him to cut in half if the dosage was "too much." Respondent explained that three months earlier, he complained to his psychiatrist that his medications were (1) causing him to experience nightmares, (2) restricting his ability to use machinery, and (3) making it difficult to wake up, which resulted in his psychiatrist discontinuing the psychotropic medication.

¶ 19

Respondent also explained that he left the Salvation Army shelter on August 26, 2011, and that same night, rented an apartment for \$300 a month, which included utilities. Respondent received Wickline's August 26, 2011, call at 7:30 p.m., stating that he had to perform a drug test by 8 p.m. Respondent attempted to call Wickline back to explain that he was working and could not comply, but her office was closed. Respondent acknowledged that his employment was sporadic and temporary but that he was fired from his only full-time job because he had to comply with drug-test time constraints. Respondent never missed an opportunity to visit with A.B. and kept a journal in which he documented his visits. Respondent stated that he completed parenting classes, which was a goal of his client-service plan, and had attended weekly narcotics

anonymous classes, which he accomplished on his own initiative.

¶ 20 Respondent summarized that he intended to retain custody of A.B. because he had seen the hurt he inflicted when his parental rights to his previous three children—who were now adults—were terminated because one of those children accused him of sexual contact.

¶ 21 *2. The Trial Court's Fitness Finding*

¶ 22 In September 2011, the trial court entered a written order, finding, in part, as follows:

"9. After considering the evidence, the court finds that the State has failed to prove by *clear and convincing evidence* that [respondent] is unfit for failing to maintain a reasonable degree of interest, concern, or responsibility for [A.B.'s] welfare \*\*\*.

Clearly [respondent] is interested in and concerned for [A.B.'s] welfare \*\*\*. But the court has some doubts about [respondent's] responsibility for [A.B.'s] welfare \*\*\*. The court finds it curious and somewhat unbelievable that it would be a matter of coincidence that after several months of sobriety and relatively stable living at the Salvation Army, [respondent] would leave the shelter and fail to appear for a drug and alcohol screen, thereby jeopardizing his ability to proceed with the scheduled psychological exam and sex[-]offender assessment.

10. Inasmuch as there are no remaining allegations of unfitness as to [respondent], and because [respondent] has not yet



referrals for mental-health and substance-abuse assessments to her center. Respondent's first referral was in May 2010, but his file was closed as unsuccessful in August 2010 because although respondent completed the assessment, he did not participate in recommended treatment.

¶ 30 Respondent's second referral was in December 2010, which was later closed as unsuccessful, due to "noncompliance with treatment recommendations." McGarry explained that respondent's record during that time showed that he was "fairly compliant" until August 2011. After that time, respondent would either fail to show up for a drug test or test positive for illegal drugs. McGarry detailed that from April through October 2011, respondent was required to provide 23 drug test samples. During that time, respondent (1) tested positive for either cocaine or cannabis six times and (2) did not appear for five drug tests. Respondent's last positive test for cocaine occurred in October 2011.

¶ 31 In December 2011, respondent participated in a third assessment, which resulted in the following diagnosis: "cocaine abuse, alcohol dependence in remission, and methamphetamine dependence in remission." Because respondent was requesting inpatient mental-health services, which were not available at that time, McGarry placed respondent on a waiting list, estimating that respondent would begin his four-week inpatient program in approximately six weeks.

¶ 32 Wickline testified that she had minimal contact with respondent after his August 2011 fitness hearing. Respondent provided Wickline two addresses where he claimed to live, but Wickline determined that one address was false, and based on her inquiries, she doubted that respondent had ever lived at the second address. At an October 2011 home visit at a third address respondent had provided, Wickline observed (1) that respondent lived with two male

roommates and (2) a bag of cannabis on a coffee table that respondent denied was his. Wickline determined that the Salvation Army would not allow respondent to return to its shelter after August 2011 because respondent would no longer submit to drug testing.

¶ 33 Wickline summarized that her contact with respondent consisted of him telling her (1) to "fuck off" when she asked him to perform drug tests, (2) that he did not have time for this "bullshit," and (3) that he would not attend inpatient rehabilitation. Since August 2011, respondent missed 2 of 14 scheduled visits with A.B. In both cases, respondent told Wickline that the visits conflicted with his employment. Wickline could not recommend A.B.'s return to respondent's care because he "has a pretty lengthy road" to recover from the substance abuse that brought A.B. into DCFS's care.

¶ 34 *ii. Respondent's Evidence*

¶ 35 Respondent testified that he lived in a home since August 2011 with two other men and a woman and had maintained steady employment in construction since that time. Respondent explained that he missed two scheduled visits with A.B. because he worked in various parts of the State. Respondent characterized his visits with A.B. as, "good," recounting instances when he imposed the appropriate amount of discipline because A.B. had falsely claimed that he would not object to A.B. getting her ears pierced. Respondent expressed his concern that A.B. no longer had her own room but had to share a bed with another child because a relative of the foster parents came to live with them.

¶ 36 Respondent admitted that he had relapsed by using cocaine "throughout the period," but he said that he had taken steps to address his problem by participating in a psychological evaluation in November 2011. Respondent acknowledged that he was on a waiting list

for residential drug treatment, which he explained would help him overcome his addiction.

Respondent took exception with Wickline's testimony, stating that he only once told her to "leave [him] the F alone." When asked if he would have tested positive during the five dates he missed his drug testing, respondent stated as follows: "Not necessarily, no. Maybe." Respondent admitted that he (1) had recently used cocaine, (2) still had a cocaine-abuse problem, and (3) required "in-house [drug] treatment."

¶ 37

b. The Trial Court's Fitness Finding

¶ 38

After the presentation of evidence and argument, the trial court found, as follows:

"[Respondent] had a stable living environment at the Salvation Army as I pointed out in my [September 2011] order. He moved shortly before the hearing. Although he's been in the same place now for \*\*\* the last two to three months, I don't find it's a stable living environment where he is at now, and sobriety, the evidence is crystal clear, that we've still got issues there.

Bottom line is this: I do not find at this point after considering all [the evidence] and being fully advised on the premises, I specifically find that the State has met its burden by clear and convincing evidence. [The State had] convinced [the court] that [respondent] is unfit \*\*\* for failing to maintain a reasonable degree of responsibility as to the welfare of the child."

¶ 39

*2. Respondent's December 2011 Best-Interest Hearing*

¶ 40

a. The Pertinent Evidence Presented at Respondent's  
December 2011 Best-Interest Hearing

*i. The State's Evidence*

¶ 41

At respondent's December 2011 best-interest hearing, Wickline testified that since August 2011, respondent's progress in complying with his client-service-plan goals was "fairly poor," noting that she did not have any contact with him since the December 2011 fitness hearing. Wickline stated that respondent had failed to (1) comply with drug testing, (2) document that he was employed, (3) prove he was meeting his financial obligations, and (4) comply with sex-offender treatment. In addition, although respondent had visited A.B. consistently prior to August 2011, respondent failed to visit with A.B. since the December 2011 fitness hearing, but that he had called Wickline's office to provide various explanations for his absences.

¶ 42

Wickline noted that since August 2010, A.B. had been placed with the same foster family, which was an adoptive resource. Wickline observed that A.B. was adjusting well and "gets along" with her foster parents and her older foster sibling. Wickline opined that A.B.'s current placement would continue to provide her a safe, stable environment, and that it was her recommendation that the trial court allow A.B. to be adopted to provide A.B. permanency.

¶ 43

Wickline acknowledged that respondent had a "fairly normal father-daughter relationship" and that A.B. had bonded with respondent but also noted the same was true with regard to her foster parents and sibling. Wickline opined that it would be in A.B.'s best interest to terminate respondent's parental rights and proceed with adoption.

¶ 44

ii. *Respondent's Evidence*

¶ 45 Respondent testified that since DCFS's involvement, he had "maintained constant visitation" with A.B. During those weekly visits, respondent would play activities with A.B. and routinely bring books, toys, and clothes, commenting that his completion of parenting classes gave him the necessary skills to successfully parent A.B. Respondent explained that he missed his last two visits with A.B. because of medical issues, for which he was continuing to take medication since they remain unresolved. Respondent's living arrangements had not changed, in that he still had roommates, noting that, "[i]t's hard for somebody to get clean if you've got somebody next[ ]door to you that's doing stuff" but stated that his current roommates did not consume drugs. Respondent noted that in addition to other employment, he was employed by his landlord as a "house manager," performing various maintenance duties.

¶ 46 Respondent then read a statement in which he expressed (1) the depression, sadness, and anger he experienced when A.B. was removed from his care, (2) A.B.'s desire to live with him, (3) that he had "made a big mess of getting [A.B.] back," and (4) that it was not in A.B.'s best-interest to terminate a bonding relationship with the "only parent A.B. knows."

¶ 47

b. *The Trial Court's Best-Interest Finding*

¶ 48 After considering the evidence and counsel's arguments, the trial court terminated respondent's parental rights as to A.B. In so doing, the court quoted the best-interest report, which described that (1) A.B. was thriving with her current foster family and (2) all her emotional, physical, and educational needs were being met.

¶ 49

This appeal followed.

¶ 50 II. TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 51 A. The Trial Court's Fitness Finding

¶ 52 1. *The Applicable Statute, Reasonable Progress,  
and the Standard of Review*

¶ 53 Section 1(D)(b) of the Adoption Act provides, in pertinent part, as follows:

"D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

\* \* \*

(b) Failure to maintain a reasonable degree of interest, concern[,] or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2010).

¶ 54 Because the language of section 1(D)(b) of the Adoption Act is in the disjunctive, any of the three elements—interest, concern, or responsibility—may be considered on its own as a basis for unfitness. *In re C.E.*, 406 Ill. App. 3d 97, 108, 940 N.E.2d 125, 136 (2010). "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808

N.E.2d 596, 604 (2004). A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id.*

¶ 55                    *2. Respondent's Claim That the Trial Court's Fitness Finding  
Was Against the Manifest Weight of the Evidence*

¶ 56                    Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. In particular, respondent contends that (1) he completed most of his client-service-plan goals and was trying to get his addiction under control, and (2) his case manager failed to schedule his psychological counseling or his sex-offender evaluation. We disagree.

¶ 57                    We note that respondent's efforts in completing his client-service-plan goals prior to August 2011 were commendable. Indeed, respondent's efforts up to that point persuaded the trial court to find that the State failed to meet its burden of proving—by clear and convincing evidence—that respondent was unfit at his August 2011 fitness hearing. However, the court astutely expressed its skepticism that after months of sobriety in the stable, controlled atmosphere of the Salvation Army shelter, respondent left the shelter and immediately thereafter, failed to appear for his next drug screening, "thereby jeopardizing his ability to proceed with the scheduled psychological exam and sex[-]offender assessment."

¶ 58                    The trial court's pronouncements proved prophetic, as the evidence presented at respondent's December 2011 fitness hearing showed that after August 2011, respondent continued to spiral downward due to his inability to curb his drug use, which was the basis of the removal of A.B. from his care. In other words, despite his initial success, respondent's inability

to overcome his drug addiction prevented him from taking responsibility for A.B.'s care, custody, and control. See *In re Richard H.*, 376 Ill. App. 3d 162, 166, 875 N.E.2d 1198, 1202 (2007) (affirming the trial court's fitness finding because the respondent's drug use prevented her from taking responsibility for the care and custody of her children). Given the evidence presented in this regard, we reject respondent's claim that the opposite fitness finding than that made by the court in this case was clearly evident.

¶ 59 In so doing, we also reject respondent's second contention that Wickline failed to schedule his psychological counseling or his sex-offender evaluation. The evidence presented clearly showed that respondent completed his psychological evaluation, as scheduled in November 2011, and could not begin sex-offender treatment until he had demonstrated that he could remain drug free, which respondent did not accomplish.

¶ 60 Accordingly, we conclude that the court's finding that respondent was unfit was not against the manifest weight of the evidence.

## ¶ 61 B. The Trial Court's Best-Interest Finding

### ¶ 62 1. *The Standard of Review*

¶ 63 At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 64 "We will not reverse the trial court's best-interest determination unless it was

against the manifest weight of the evidence." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 65            2. *Respondent's Claim That the Trial Court's Best-Interest Finding Was Against the Manifest Weight of the Evidence*

¶ 66            Respondent next argues that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondent contends that the court should have allowed him to complete his inpatient treatment and "see how he did from that point forward." However, as evidenced by the focus of his contention, respondent misapprehends that the purpose of a best-interest hearing is A.B.'s interest in permanency, instead of his interest in retaining custody.

¶ 67            In this case, respondent is essentially asking this court to give him more time on the off chance that he might overcome his drug addiction at the expense of A.B.'s interests in permanency. We decline to entertain respondent's request. Here, the record clearly shows that at the time of respondent's best-interest hearing (1) A.B.'s interest in a stable, loving, home was being met by her foster family for over 16 months and (2) respondent could not provide for A.B.'s best interest given that he had to first address his own best interest in a drug-free existence. Indeed, the trial court correctly based its decision to terminate respondent's parental rights on the best-interest report, which described that (1) A.B. was thriving with her current foster family, and (2) all her emotional, physical, and educational needs were being met.

¶ 68            Accordingly, we conclude that the trial court's best-interest finding was not

against the manifest weight of the evidence.

¶ 69

### III. CONCLUSION

¶ 70

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

¶ 71

Affirmed.