

NOTICE
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2012 IL App (4th) 120109-U

Filed 5/30/12

NO. 4-12-0109

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: C.B., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 10JA36
SARA BIBBY,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's findings that respondent is an "unfit person" under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)) and that terminating her parental rights would be in the child's best interest are not against the manifest weight of the evidence, and therefore the court's judgment is affirmed.
- ¶ 2 Respondent, Sara Bibby, appeals from an order in which the trial court terminated her parental rights to her daughter, C.B. (The court simultaneously terminated the father's parental rights, but he is not a party to this appeal.) Respondent challenges the trial court's findings that (1) she is an "unfit person" under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)) in that she failed to make reasonable progress toward the return of C.B. to her within the initial nine months after the adjudication of neglect, (2) she is an "unfit person" under section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2010)) in that she failed to make reasonable progress during a nine-month period after the end of the initial nine-month period

following the adjudication of neglect, and (3) it was in C.B.'s best interest to terminate respondent's parental rights.

¶ 3 We conclude that the finding of unfitness under section 1(D)(m)(ii) (750 ILCS 50/1(D)(m)(ii) (West 2010)) is not against the manifest weight of the evidence. (Because any one of the grounds listed in section 1(D) (750 ILCS 50/1(D) (West 2010)), if proved, make the parent an "unfit person," we need not discuss the finding under section 1(D)(m)(iii) (750 ILCS 50/1(D)(m)(iii) (West 2010)). See *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006)). We further conclude that the trial court did not make a finding that was against the manifest weight of the evidence when it found that terminating respondent's parental rights would be in C.B.'s best interest. Therefore, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Petition for Adjudication of Wardship

¶ 6 On June 23, 2010, the State filed a petition to adjudicate C.B., born on February 15, 2008, a ward of the court on the ground that she was "neglected" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2010) ("Those who are neglected include *** any minor under 18 years of age whose environment is injurious to his or her welfare [.]"). According to the petition, a Quincy police officer discovered the neglect on June 22, 2010, in the course of a traffic stop. Respondent's paramour, Thomas Brown, was the driver of the pulled-over vehicle, and respondent and her daughter, C.B., were passengers. Inside the vehicle, the police officer found methamphetamine, precursors of methamphetamine, and materials for the manufacture of methamphetamine—all within C.B.'s reach.

¶ 7 After the police arrested respondent for the offenses of manufacturing

health counseling and taking psychotropic medications.

¶ 13 E. Respondent's Negotiated Guilty Plea

¶ 14 On September 7, 2010, in Adams County case No. 10-CF-370, respondent entered a negotiated plea of guilty to one count of unlawful possession of methamphetamine manufacturing materials (720 ILCS 646/30(a)(1) (West 2010)). The consideration for her guilty plea was twofold: (1) dismissal of the remaining count of the information and (2) a promise that her prison sentence would not exceed seven years.

¶ 15 F. The Adjudicatory Hearing

¶ 16 On September 22, 2010, the trial court held an adjudicatory hearing in the present case. At the conclusion of the hearing, the court entered an order finding C.B. to be neglected on the basis of an admission that respondent made in the hearing. Specifically, the factual basis of the finding of neglect consisted of the methamphetamine and other contraband found in the motor vehicle, close to C.B.; respondent's earlier admission to a caseworker that she had been using methamphetamine three times a week; and respondent's guilty plea in the felony case.

¶ 17 G. The Sentence

¶ 18 On October 20, 2010, in the felony case, the trial court sentenced respondent to five years' imprisonment. She remained in the Adams County jail until November 15, 2010, whereupon she was transported to Dwight Correctional Center. During that period, she had no contact with C.B.

¶ 19 H. Miller's Rating of Respondent's Progress Toward Meeting the Goals in the First Service Plan

¶ 20 On December 1, 2010, Miller rated respondent's progress toward meeting the goals in the first service plan, dated June 22, 2010. One of the goals was to cooperate with DCFS, such

as by meeting with Miller, keeping her apprised of what was happening in court, and signing any necessary authorizations for the release of information to DCFS. Miller rated respondent's progress as satisfactory with respect to that goal.

¶ 21 Miller rated respondent's progress as unsatisfactory, however, with respect to the following goals: taking a parenting class, demonstrating that she could parent C.B. by using the lessons she had learned in the parenting class, undergoing a mental-health assessment, receiving any recommended psychological therapy or counseling, undergoing a substance-abuse assessment, and receiving any recommended services for substance abuse. Respondent's progress was unsatisfactory in those areas because throughout the reporting period, June 22 to December 1, 2010, she was in the Adams County jail, where services were unavailable.

¶ 22 I. The Transfer to Lincoln Correctional Center

¶ 23 On December 22, 2010, respondent was transferred from Dwight Correctional Center to Lincoln Correctional Center to serve the rest of her sentence there.

¶ 24 On February 15, 2011, which was C.B.'s birthday, DCFS brought C.B. to the Lincoln facility. This was respondent's first visit with her since June 22, 2010.

¶ 25 Thereafter, except on two occasions when visitation was cancelled because C.B. was sick or the weather was unsafe for travel, DCFS transported C.B. to Lincoln once a month for visitation with respondent.

¶ 26 J. Miller's Rating of Respondent's Progress Toward Meeting the Goals in the Second Service Plan

¶ 27 On June 8, 2011, Miller evaluated respondent's progress toward meeting the goals in the second service plan—which had the same goals as the first service plan. Again, she rated

respondent as satisfactory in her cooperation with DCFS. She rated respondent as unsatisfactory, however, with respect to taking a parenting class, obtaining treatment for mental illness, and participating in a substance-abuse program, because Miller had not received any documentation that respondent had availed herself of any of those services.

¶ 28 K. The Permanency-Review Report of September 12, 2011

¶ 29 On September 12, 2011, DCFS filed a permanency-review report signed by Miller and by a public service administrator of DCFS, Kevin Blickhan. Attached to the report was a letter, dated August 9, 2011, from Brad Hillman, assistant warden of programs at Lincoln Correctional Center. Hillman wrote in his letter that (1) respondent had completed the parenting course; (2) she had been participating in the substance-abuse group since January 29, 2011; and (3) she was participating in a sexual-assault program.

¶ 30 Even though, in the permanency-review report, Miller accepted Hillman's letter as sufficient documentation of respondent's participation in the three services the letter referenced and even though respondent had been cooperating with DCFS all along, Miller had concerns. She wrote: "[I]t's going to be difficult for [respondent] to work her service plan and prove that she can provide a stable, loving home environment, which is what [C.B.] currently has at the foster home. [Respondent] can complete some services in prison, but her history of criminal activity and drug use are a concern, as her risk to re-offend is high."

¶ 31 L. The State's Motion for Termination of Parental Rights

¶ 32 On September 30, 2011, the State filed a motion for termination of parental rights. In its motion, the State alleged that respondent was an "unfit person" in three ways: (1) she had failed to make reasonable efforts to correct the conditions that were the basis for removing C.B. from

her custody (see 750 ILCS 50/1(D)(m)(i) (West 2010)), (2) she failed to make reasonable progress toward the return of C.B. within nine months after the court adjudicated C.B. to be neglected (see 750 ILCS 50/1(D)(m)(ii) (West 2010)), and (3) she failed to make reasonable progress toward the return of C.B. in any nine-month period after the end of the initial nine-month period following the adjudication of neglect (see 750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 33 On January 26, 2011, the day before the hearing on the motion to terminate parental rights, the State filed a document entitled "Amended Nine[-]Month Periods in Motion To Terminate Parental Rights," in which the State specified the initial nine-month period as September 23, 2010, through June 22, 2011, and the second nine-month period as June 23, 2011, through March 22, 2012.

¶ 34 M. Miller's Rating of Respondent's Progress
Toward Meeting the Goals in the Third Service Plan

¶ 35 On December 12, 2011, Miller rated respondent's progress toward meeting the goals in the third service plan (again, the same goals set forth in the first and second service plans). She rated respondent as satisfactory in cooperating with DCFS and obtaining substance-abuse treatment. She rated respondent as unsatisfactory, however, with respect to parenting and mental health.

¶ 36 The reason for the unsatisfactory rating in parental skills was that even though respondent had completed a parenting course in Lincoln Correctional Center, she had been unable to demonstrate an ability to "parent [C.B.] on a regular basis." Her imprisonment had made it impossible to show that she actually could raise C.B.—that she could be a responsible, competent parent for C.B. day by day, outside the structured setting of a prison.

¶ 37 As for mental health, Miller had received no documentation that respondent had undergone any treatment for her mental illness. (Respondent had explained to Miller that the

substance-abuse treatment program "consumed most of her days.")

¶ 38 The transcript of the fitness hearing does not appear to contain any evidence that respondent suffered from a diagnosed mental illness (although, admittedly, using methamphetamine three times a week hardly seems consistent with mental health). In its brief, the State cites and discusses an "integrated assessment," in which DCFS noted that, at age 15, respondent was diagnosed with bipolar disorder, antisocial personality disorder, and borderline personality disorder and that she had been psychiatrically hospitalized five times. It does not appear, however, that this integrated assessment ever was offered as evidence in the fitness hearing. Therefore, we will not consider it.

¶ 39 N. The Fitness Hearing

¶ 40 1. *The State's Case*

¶ 41 On January 27, 2012, the trial court held a fitness hearing. After presenting a certified copy of respondent's conviction in the felony case, the State called Miller, who testified regarding the three service plans and her reasons for the ratings she had given respondent. She had rated respondent as unsatisfactory in the area of parenting because respondent's imprisonment for the felony conviction prevented her from demonstrating that she actually could perform her parental duties "on a consistent basis outside the prison."

¶ 42 Respondent had supervised visitation with C.B. once a month for 1 1/2 to 2 hours. Visitations were only once a month because respondent was in prison, C.B. was very young, and the round trip between the foster home and the prison took four hours.

¶ 43 Miller had rated respondent as unsatisfactory in the area of mental health because, to Miller's knowledge, respondent was not receiving any mental-health services. Miller did not know

if Lincoln Correctional Center offered such services.

¶ 44

2. Respondent's Case

¶ 45

At respondent's request, the trial court took judicial notice of three documents: (1) the petition for adjudication of wardship; (2) the order adjudging C.B. to be neglected; and (3) the dispositional order of November 1, 2010. We already have discussed the first two documents, but we have not yet discussed the third. The dispositional report stated that on June 22, 2010, respondent's paramour, Thomas Brown, was driving a vehicle in which respondent and C.B. were passengers. Materials for the manufacture of methamphetamine were on the backseat of the car, next to where C.B. was sitting. That much already was evident from the petition for adjudication of wardship—but the dispositional report went further: Brown, the driver, "showed signs of methamphetamine intoxication."

¶ 46

After the trial court admitted these three documents in evidence without objection by the State, respondent testified in her own behalf. She said she had completed the substance-abuse program at Lincoln Correctional Center and that she next would enroll in a career technology program. The Department of Corrections probably would release her on June 23, 2011. She had been seeing her caseworker once a month, during visits with C.B. She had provided the caseworker with documentation during those visits, proving her participation in the services. Upon her release, respondent would participate in another substance-abuse program.

¶ 47

At the conclusion of the evidence, the trial court found respondent to be an "unfit person" on two grounds: (1) she failed to make reasonable progress toward C.B.'s return within nine months after the adjudication of neglect on September 22, 2010 (see 750 ILCS 50/1(D)(m)(ii) (West 2010)); and (2) she failed to make reasonable progress toward C.B.'s return during a nine-month

period after the end of the initial nine-month period following the adjudication of neglect (see 750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 48 The trial court reasoned that although respondent had completed some services while in prison and although those efforts deserved to be taken into account, the focus should be on "the fitness of the parents in relation to the needs of the child," not on compliance or noncompliance with service plans. Efforts did not necessarily translate into progress, especially if the efforts were made only in prison. Respondent had been in prison during the entire pendency of the case, and she was unable to discharge any parental responsibilities during her imprisonment. Because respondent never demonstrated that she could function as a parent outside the prison, the court found that the State had proved, by clear and convincing evidence, that she was an "unfit person" by reason of failure to make reasonable progress during the initial nine-month period after the adjudication of neglect (September 23, 2010, to June 22, 2011) and during the succeeding nine-month period as well (June 23, 2011, to March 22, 2012). (In its remarks from the bench, the court said that "January 22nd, 2011," was the ending date of the initial nine-month period. Obviously, that was a slip of the tongue, and the court meant "June 22nd, 2011.")

¶ 49 O. The Best-Interest Hearing

¶ 50 Immediately after finding respondent to be an "unfit person," the trial court held a best-interest hearing, in which the State called Miller back to the stand. Miller testified that C.B., who would be four the next month, had been living with the Hansens in Pike County since June 22, 2010, ever since she "came into care." Miller visited the Hansen residence at least once a month, and she had observed a close relationship between C.B. and the Hansens. C.B. called Melissa "Mommy" and Jeremy "Daddy." The extended family provided daycare for C.B. when she was not

in preschool. There were games and activities in the Hansen household—and discipline when necessary. The Hansens made sure that C.B. received medical care, including the implantation of tubes in her ears. They had signed a commitment to adopt her.

¶ 51 Miller's testimony was the only evidence presented in the best-interest hearing. The trial court observed that, according to Miller's testimony, the Hansens' home was the only home C.B. had known for the past 18 months and that C.B. had grown close to the Hansens, who not only provided for her needs but intended to adopt her.

¶ 52 On the other hand—although the trial court acknowledged that the State had the burden of proof—the court had heard no evidence that C.B. was able to have unsupervised visits with either of her natural parents, both of whom were incarcerated. Nor had the court heard any evidence "with regard to what relationship, if any, currently exist[ed] between the minor and either of the natural parents."

¶ 53 So, on the basis of the evidence before it, the trial court found the State had proved, by a preponderance of the evidence, that termination of parental rights would be in C.B.'s best interest. Accordingly, the court terminated the parental rights of respondent and the father to their daughter, C.B., and changed the goal of the case to adoption.

¶ 54 This appeal followed.

¶ 55 II. ANALYSIS

¶ 56 A. The Finding That Respondent Is an "Unfit Person"

¶ 57 According to the State's petition for termination of parental rights, one of the reasons why respondent was an "unfit person" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) was her "[f]ailure *** to make reasonable progress toward the return

of the child to the parent within 9 months after an adjudication of neglected *** minor." 750 ILCS 50/1(D)(m)(ii) (West 2010). The trial court found, by clear and convincing evidence, that respondent had failed to make reasonable progress during this initial nine-month period, and respondent argues that this finding is against the manifest weight of the evidence. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001) ("In order to reverse a trial court's finding that there was clear and convincing evidence of parental unfitness, the reviewing court must conclude that the trial court's finding was against the manifest weight of the evidence.").

¶ 58 The supreme court has explained that "[a] finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *C.N.*, 196 Ill. 2d at 208. Evidently, in this context, "the opposite conclusion" is the conclusion opposite to that stated in the "finding." The trial court's finding is as follows: the State proved, by clear and convincing evidence, that respondent failed to make reasonable progress during the initial nine months after the adjudication of neglect. That finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident, namely, that the State did *not* prove, by clear and convincing evidence, that respondent failed to make reasonable progress during the initial nine months after the adjudication of neglect. See *C.N.*, 196 Ill. 2d at 208.

¶ 59 "[T]he date on which to begin assessing a parent's *** progress is the date the trial court enters its order adjudging the minor neglected ***." *In re D.F.*, 208 Ill. 2d 223, 243 (2003). In the present case, September 22, 2010, was when the trial court adjudged C.B. to be neglected. Therefore, the initial nine-month period was from September 22, 2010, to June 22, 2011. (The State regarded the beginning date as September 23, 2010; whether it is September 22 or 23 makes no difference.)

¶ 60 The initial nine-month period (September 22, 2010, to June 22, 2011) encompassed two service plans. The first service plan began on June 22, 2010, and ended on December 1, 2010. The second service plan began on December 3, 2010, and ended on June 8, 2011.

¶ 61 DCFS gave respondent an overall rating of unsatisfactory on the first service plan because she had participated in no services; none were available in the Adams County jail.

¶ 62 DCFS gave respondent an overall rating of unsatisfactory on the second service plan because DCFS had received no documentation that she had participated in any services at Lincoln Correctional Center either. Later, after receiving documentation that she had participated in services at Lincoln, DCFS nevertheless adhered to its view that her progress was unsatisfactory on the second service plan, because (1) she had not demonstrated that she could consistently discharge her parental responsibilities outside the structured setting of the prison and (2) she had not participated in any mental-health services. The trial court agreed with these ratings, most notably because performance in a classroom setting in prison did not necessarily translate into performance as a parent outside of prison.

¶ 63 Respondent argues that the trial court's decision is untenable because it implies that any parent confined in a jail or prison during the initial nine months after adjudication would be *per se* unfit, because (1) services generally are unavailable in jail and (2) no matter what services the parent completes in prison, the parent never will be able to validate his or her classroom learning until the parent puts it into practice for some length of time outside prison.

¶ 64 But how would such an outcome be untenable? The parent has deficiencies that have necessitated the removal of the child from the parent's custody. It would be irresponsible to return the child to the parent's custody before one were reasonably certain that the deficiencies had been

corrected. The deficiencies, however, cannot be corrected, at least not in the near future, because, owing to the parent's criminal misconduct, the parent is in jail, where remedial services are unavailable. (We do not have before us the situation in which an innocent parent was jailed.) Or the parent is in prison, where it is impossible to tell whether the services have made any real difference. It would be unfair to the child to keep the child in the limbo of foster care until the parent were released, whereupon the child would remain in limbo even longer, awaiting the final result of the services: whether they yielded a substantially changed or unchanged parent. For that reason, the supreme court has held that "time spent in prison does not toll the nine-month period." *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 65 Again, the initial nine-month period was from September 22, 2010, to June 22, 2011. During most of that period—from December 22, 2010, to June 22, 2011—respondent was in Lincoln Correctional Center, where services were available, and she availed herself of the parenting course, the substance-abuse group, and the sexual-assault program. Nevertheless, she did not participate in any mental-health services (the significance of that omission is unclear, given the lack of any evidence of a diagnosed mental illness), and she never demonstrated that she could consistently put into practice what she had learned in the parenting course. In prison, of course, she never had the opportunity to make that demonstration.

¶ 66 Nevertheless, one of the things that respondent agreed to do in the service plans was "demonstrate what [was] learned in parenting on an ongoing basis with [C.B.]" This requirement makes sense because, arguably, it would be unwise to rely solely on the completion of a parenting course as evidence that the parent has overcome his or her parental deficiencies. Knowing some abstract principles of parenting and consistently putting them into practice can be quite different

matters. "In order to show progress toward the return of [her] child, the respondent needed to show that [she] could function as a law-abiding citizen and responsible parent in an unstructured, real world, environment." *In re S.E.*, 296 Ill. App. 3d 412, 415 (1998). Respondent never made this showing during the initial nine-month period, and hence the trial court did not make a finding that was against the manifest weight of the evidence when it found that she failed to make reasonable progress during that period.

¶ 67 It might be objected, though, that if we take this view, failure to make reasonable progress was the predestined outcome all along and each of the service plans was, from the start, an exercise in futility, a pointless agreement. Even if respondent complied with the service plans to the fullest extent humanly possible while she was in Lincoln Correctional Center, all was in vain, because each service plan contained a built-in fail provision, a provision that she could not possibly fulfill, namely, demonstrating for DCFS, "on an ongoing basis with [C.B.]," what she had learned in the parenting course. Little did she know, perhaps, that DCFS and the courts would interpret "an ongoing basis with [C.B.]" as meaning contact with C.B. that was more frequent and more extensive than was practicable or possible in prison—and, moreover, contact with C.B. in some place resembling a domestic setting (outside prison).

¶ 68 On the other hand, we can envision a reply from DCFS. Perhaps DCFS would point out that it had the responsibility of telling respondent what she had to do to remedy her parental deficiencies so that it would be safe to return C.B. to her custody and if, because of circumstances of her own making, respondent was unable to take all the necessary remedial steps, DCFS was not to blame. A service plan should not be adjusted or compromised to fit the parent's circumstances. DCFS never suggested to respondent, even impliedly, that all the remedial steps were feasible for

(West 2010). C.B. is attached to them, addressing them as her mother and father. See 705 ILCS 405/1-3(4.05)(d)(i) (West 2010). At the time of the best-interest hearing, she had been living with them for the past year and seven months. See 705 ILCS 405/1-3(4.05)(d)(iii), (d)(v), (g) (West 2010). They want to adopt her. See 705 ILCS 405/1-3(d)(iv) (West 2010); *In re Tashika F.*, 333 Ill. App. 3d 165, 170-71 (2002).

¶ 73 With respondent, by contrast, the trial court could not rule out the possibility that C.B. once again would end up in the backseat of a car loaded with equipment and precursors for the manufacture of methamphetamine and driven by someone under the influence. One hopes that the services respondent has received in prison will enable her to abstain from methamphetamine when she is released and to live as a productive, law-abiding citizen, but that hope does not provide enough assurance when the safety and welfare of a child are at stake. One wants the assurance of deeds. We can understand the trial court's unwillingness to trade a certainty for an uncertainty.

¶ 74

III. CONCLUSION

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

¶ 76 Affirmed.