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2012 IL App (4th) 120250-U

Filed 8/1/12

No. 4-12-0250

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: N.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 09JA70
KIMBERLY BUCKNER and MICHAEL LOVE,	)	
Respondents-Appellants.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Presiding Justice Turner and Justice Cook 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 March 2011, the State filed a motion to terminate the parental rights of respondents, Kimberly Buckner and Michael Love, as to their son, N.L. (born January 23, 2009). Following a fitness hearing that ended in January 2012, the trial court found respondents unfit. Following a March 2012 best-interest hearing, the court terminated respondents' parental rights.
- ¶ 3 Respondents appeal, 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 March 2011 Petition To Terminate Respondents' Parental Rights

¶ 6

On May 27, 2009, the State filed a petition for adjudication of wardship, alleging that N.L. was a neglected minor under section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2010)). Specifically, the State claimed that N.L.'s environment was injurious to his welfare, in that (1) Buckner had substance-abuse problems; (2) Buckner would take N.L. with her to buy and use drugs; (3) in an attempt to retrieve N.L., Love kicked down a door when Buckner refused him entry; (4) police were unable to locate Buckner after the altercation with Love; and (5) police arrested and jailed Love because he had an outstanding warrant for failure to pay \$12,000 in child support. At a shelter-care hearing held that day, respondents stipulated that an immediate and urgent necessity required N.L.'s placement in shelter care. The trial court then entered a temporary custody order, appointing the Department of Children and Family Services (DCFS) as N.L.'s temporary guardian.

¶ 7

Following an October 29, 2009, adjudicatory hearing, the trial court entered an order adjudicating N.L. a neglected minor. The court based its finding on respondents' admission that N.L. was neglected, which was supported by the State's factual basis. Specifically, the court noted that (1) Buckner has "substance-abuse and mental-health issues" and (2) Love has "anger issues" and has "enabled" Buckner. At a dispositional hearing conducted immediately thereafter, the court adjudicated N.L. a ward of the court and maintained guardianship with DCFS.

### B. The State's March 2011 Petition To Terminate Respondents' Parental Rights

¶ 8

In March 2011, the State filed a motion to terminate respondents' parental rights



parental termination proceeding against them. Thereafter, respondents became depressed, which resulted in Buckner's hospitalization for suicidal ideation. Moore described that respondents' depression continued, which affected their ability to progress during their counseling sessions. Moore acknowledged that his services were directed toward respondents' individual development and not their interaction with N.L. or Buckner's drug use.

¶ 13 Elizabeth McGarry, a behavioral health facility manager, testified that Buckner, who was diagnosed as cocaine dependent, was enrolled in a drug-treatment program during the following three periods: (1) January to June 2009, (2) November 2009 to August 2010, and (3) December 2010 to June 2011. McGarry explained that during each period, Buckner was discharged for failure to fulfill the terms of her drug-treatment plan, which required her, in part, to attend individual and group therapy. During those periods, Buckner tested positive on three of six drug screens for alcohol, cocaine, and because her sample was diluted. McGarry recommended that Buckner attend inpatient treatment but Buckner was convinced outpatient treatment was sufficient. McGarry observed that when Buckner struggled, she would disappear and later return to resume treatment. McGarry also testified that from March to July 2010, Love successfully completed a drug-treatment program and had not tested positive on any drug screens.

¶ 14 Lillie Rainey supervised respondents' weekly visits with N.L. during the following periods: (1) Love's visitation from December 2009 to May 2010 and (2) respondents' visitation from May 2010 until March 2011. Rainey observed that respondents' visits went well, elaborating that respondents brought N.L. snacks and gifts, and acted appropriately. Love missed four visitations due to inclement weather and work commitments, which he made up by staying later on subsequent visits. Buckner missed 11 visits, but with the exception of one occasion, Rainey

did not know why Buckner was unable to meet her scheduled obligation. Buckner made up the missed visits through rescheduling or extending subsequent visits.

¶ 15 Kindra Smith, respondents' DCFS caseworker since May 2009, testified that Love's client-service-plan goals required him to (1) complete (a) a substance-abuse assessment and comply with follow-up recommendations, (b) domestic-violence-prevention therapy, and (c) parenting classes, and (2) maintain housing and employment. Love had completed the majority of his assigned goals and was enrolled and participating in domestic-violence-prevention therapy. Smith noted that as of July 2011, Love no longer maintained adequate housing. Buckner's client-service-plan goals contained the same goals as Love's but added the additional goal of completing a mental-health assessment and complying with subsequent recommendations. Although Buckner had successfully completed her parenting classes and was enrolled in domestic-violence-prevention therapy, she failed to successfully complete her other plan goals.

¶ 16 Smith opined that the main issues preventing N.L.'s return were (1) Buckner's failure to confront (a) her continued drug use and (b) diagnosis of manic depression with bipolar disorder and (2) Love's refusal to end his relationship with Buckner given her deficiencies, which could compromise N.L.'s safety. Smith spoke with Love numerous times about his ongoing relationship with Buckner, documenting in his client-service plan that it could result in termination of his parental rights, but Love continued to see Buckner. Smith explained that because of their relationship, Buckner and Love are treated as one parenting unit and, as such, Buckner's failure to comply with her service plan goals reflects upon Love. Smith confirmed that Buckner did not believe she needed long-term inpatient drug treatment, noting that Buckner had yet to successfully complete any client-service plan assigned to her.



across the street from her mother's home, which she planned to remodel with Love. Buckner acknowledged that she could not live with Love and N.L. but had made arrangements to stay with her mother. Buckner stated that DCFS never recommended inpatient drug treatment.

¶ 21 McGarry, who monitored Buckner's progress while in inpatient care, stated that Buckner was doing well. McGarry opined that Buckner was "concerned about her role in [N.L.'s] life" and "wants to do better" but had to continue her current drug-treatment progress.

¶ 22 Love testified that he had been in a relationship with Buckner for approximately four years and was employed by a local restaurant for three years. Love confirmed that he resided in the home located across from the residence of Buckner's mother and acknowledged that Smith had informed him about the consequences of a relationship with Buckner. Love stated that he and Buckner agreed that if the court permitted him to retain custody of N.L., Buckner would refrain from contacting him or N.L. Love admitted that until recently, he had not been complying with his client-service-plan goal of maintaining suitable housing.

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

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

"b. It is readily apparent to the court that [N.L.] was removed from the home due to the injurious environment in the home in that [Buckner] had serious and ongoing substance abuse problems. The parental deficits set forth in the Adjudicatory Order referred to [Buckner's] 'substance[-]abuse and mental[-]health issues,' as well as the fact that [Love] was 'enabling' [Buckner].

\* \* \*

e. Although [Buckner's] most recent efforts at engaging in substance[-]abuse treatment should be commended, the court finds that her actions do not constitute *reasonable* efforts, especially when considering the fact that [Buckner] is just now engaging in inpatient treatment when the case has been open since May 2009.

\*\*\*

g. During his testimony, [Love] admitted that he had been informed that continuing in the relationship with [Buckner] could jeopardize his chances of getting [N.L.] back. [Love] then testified that he would do what he needed to do and if that meant that he had to terminate the relationship, he would do so.

h. The court finds that [Love's] testimony as to this issue is not credible. [Love] is presently residing in a house owned by [Buckner's] parents. It is difficult for this court to believe that [Love] would be permitted to live in a house owned by the [Buckner's] parents if [Love] had in fact terminated his relationship with [Buckner]. Even [Buckner], during her case in chief, testified that after she was released from inpatient treatment, she would be moving back in with [Love] in the house owned by her parents." (Emphasis in original).

The court then found respondents unfit on all three grounds alleged by the State.

¶ 25

*3. The Pertinent Evidence Presented at Respondents'  
March 2012 Best-Interest Hearing*

a. The State's Evidence

¶ 26

At respondents' March 2012 best-interest hearing, Smith testified that N.L., who was three years old, (1) had been in an adoptive placement since July 2009, (2) was "doing very well," and (3) had bonded with his foster parents. Smith opined that removing N.L. from his current placement would have a negative affect on him, considering that his foster family is the only family he has known. Smith recounted that on one occasion when N.L. had an extended hospital stay, he had "issues" being separated from his foster mom.

¶ 27

Smith opined further that it would be in N.L.'s best interest to terminate respondents' parental rights because they failed to make reasonable progress to correct the conditions that were the basis for N.L.'s removal from their care, estimating that a reasonable time frame would have been nine months after the adjudication of neglect. When asked whether N.L. could be returned to respondents' care within the next four to six months, Smith stated that Buckner needed to continue complying with her substance-abuse treatment plan and maintain suitable housing but had yet to demonstrate that commitment. Smith noted that Buckner would engage in mental-health services for a while, but then would either fail to (1) comply with her treatment plan or (2) attend her appointments, which required her to begin the process anew.

¶ 28

Smith observed that the home Buckner's mother rented to Buckner and Love was nicely furnished and was "very livable." Buckner informed Smith that she was in the process of acquiring a refrigerator, stove, and performing some "work" on the home. Smith acknowledged that Buckner and Love appeared to be working hard to improve their environment.

¶ 29

b. Respondents' Evidence

¶ 30

Buckner testified that she had been sober for five months and had been voluntarily attending outpatient substance-abuse classes and Alcoholics Anonymous sessions three times a week during those five months. Buckner confirmed that she was living with Love in the home her mother owned and was looking for a job. Buckner stated that when she visits N.L., he "lights up" and alternates between calling her by her first name and mommy. Buckner believed that during the next six months, she could remain sober.

¶ 31

Love testified that he completed all his assigned client-service plan goals. Love stated that although he and Buckner have not always accomplished what was asked of them, they were on the right track. Love requested that the court return N.L. to their custody and care.

¶ 32

c. The Trial Court's Best-Interest Finding

¶ 33

After considering the evidence and counsel's arguments, the trial court terminated respondents' parental rights as to N.L. In so doing, the court placed emphasis on N.L.'s sense of attachment and need for stability, which were being met by his foster parents.

¶ 34

This appeal followed.

¶ 35

II. TERMINATION OF RESPONDENTS' PARENTAL RIGHTS

¶ 36

A. The Trial Court's Fitness Finding

¶ 37

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

¶ 38

Section 1(D)(m)(iii) of the Adoption Act provides, in pertinent part, as follows:

"The grounds of unfitness are any \*\*\* of the following[:]"

\* \* \*

(m) Failure by a parent \*\*\* (iii) to make reasonable progress toward the return of the child to the parent during any [nine]-month period after the end of the initial [nine]-month period following the adjudication of neglected or abused minor \*\*\* or dependent minor[.]" 750 ILCS 50/1(D)(m)(iii) (West 2010).

¶ 39 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent."

¶ 40 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

" 'Reasonable progress' \*\*\* exists when the [trial] court \*\*\* can conclude that \*\*\* the court, in the *near future*, will be able to order

the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent." (Emphases in original.)

The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004); *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 41 "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." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. 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.*

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

¶ 43 Respondents argue that the trial court's fitness findings were against the manifest weight of the evidence. In particular, respondents contend that (1) Buckner made progress by completing the majority of her client-service-plan goals except for her substance-abuse issues and (2) Love made reasonable progress by completing his client-service-plan goals. We

disagree.

¶ 44 In this case, the trial court correctly noted that N.L. was removed from respondents' custody and adjudicated a neglected minor on October 29, 2009, in part, because Buckner had ongoing substance-abuse problems and mental-health issues. The record shows that after the court's finding of neglect, Buckner failed to successfully address either deficiency by complying with her client-service-plan goals. Indeed, the evidence presented at the January 2012 fitness hearing showed that in December 2011, Buckner began to address her substance abuse by voluntarily admitting herself into an inpatient drug treatment program. Although we commend Buckner for taking that initial step, her action came eight months after the period in which the State called into question her fitness under section 1(D)(m)(iii) of the Adoption Act (July 29, 2010, through April 29, 2011). In addition, we note that in January 2012, Buckner had yet to address her mental-health issues. More important, the evidence presented clearly and convincingly showed that Buckner had not complied with the terms of her client-service plan such that the court could have returned N.L. to her care and custody in the near future.

¶ 45 The situation with Love is more problematic in that the record shows that he complied with all of his client-service-plan goals but would not heed the repeated warnings conveyed by DCFS—both orally and in his client-service plan—regarding his continued relationship with Buckner. Here, if N.L. were returned to Love's custody with that relationship intact, it would essentially place N.L. back into the care and custody of Buckner, which is not appropriate given her unresolved history of substance abuse and mental illness. Love undoubtedly contemplated the existence of that danger to N.L., which prompted him to concoct a fanciful story that he and Buckner agreed to remain apart, despite (1) their close proximity to one another

and (2) Buckner's testimony that they were planning to remodel the home together. Although his effort to keep his family together is admirable, his willingness to place N.L. in such an arrangement leads us to conclude that the court's determination that Love was unfit was not against the manifest weight of the evidence.

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

¶ 47 1. *The Standard of Review*

¶ 48 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).

¶ 49 "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.

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

¶ 51 Respondents next argue that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondents contend that given Love's completion of his client service plan goals and Buckner's progress in completing her client-service-plan

goals, the court should have "continued the case for six months to monitor [respondents]." However, as evidenced by the focus of their contention, respondents misapprehend that the purpose of a best-interest hearing is N.L.'s interest in permanency, instead of his interest in retaining custody. See *In re Brandon A.*, 395 Ill. App. 3d 224, 239, 916 N.E.2d 890, 903 (2009) (after parents have been adjudicated unfit in a proceeding to terminate parental rights, the parent rights in the care, custody, and control of their children must yield to their children's best interest).

¶ 52 In this case, respondents are essentially asking this court to give them more time on the chance that Buckner might overcome her substance-abuse and mental-health issues at the expense of N.L.'s interest in permanency. We decline to entertain respondents' request. Here, the record clearly shows that at the time of respondents' best-interest hearing (1) N.L.'s interest in a stable, loving, home was being met by his foster family for 32 months of his 38-month life and (2) respondents could not provide for N.L.'s best interest given that Buckner had to first address her own best interest in a stable life. Indeed, the trial court correctly based its decision to terminate respondents' parental rights on N.L.'s sense of attachment and need for stability, which were being met by his foster parents.

¶ 53 Accordingly, we conclude that the trial court's best-interest finding was not against the manifest weight of the evidence.

¶ 54 III. CONCLUSION

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

¶ 56 Affirmed.