

NOTICE
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2012 IL App (4th) 120600-U
NO. 4-12-0600
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 14, 2012
Carla Bender
4th District Appellate
Court, IL

In re: C.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 10JA42
KENNARD DAVIS,)	
Respondent-Appellant.)	Honorable
)	April Troemper,
)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not err by (1) finding the respondent unfit and (2) terminating his parental rights.
- ¶ 2 In May 2012, the State filed an amended supplemental petition to terminate the parental rights of respondent, Kennard Davis, as to his daughter, C.H. (born May 25, 2009). At a hearing held shortly thereafter, the trial court found respondent unfit in that he failed to make reasonable progress toward the return of C.H. during the nine-month period between May 2011 and February 2012. Following a June 2012 best-interest hearing, the court terminated respondent's parental rights.
- ¶ 3 Respondent appeals, arguing that the trial court erred by (1) finding him unfit and (2) terminating his parental rights. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 On May 28, 2009, the Peoria County State's Attorney's Office filed a juvenile petition, alleging that C.H. was neglected. Specifically, the State posited that C.H. was in an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2010)) because her mother, Renae Holcomb—who is not a party to this appeal—(1) had been previously found unfit, (2) had tested positive for cocaine and cannabis one month after C.H.'s birth, and (3) suffered from "mental health problems." On June 3, 2009, the State filed a supplemental petition in which it alleged that C.H. was neglected because C.H. tested positive for cocaine.

¶ 6 Shortly thereafter, the trial court entered an order as to shelter care, (1) appointing the Department of Children and Family Services (DCFS) as C.H.'s temporary custodian and (2) ordering C.H.'s mother—although she failed to appear—to cooperate with DCFS in completing a client-service plan. The court later determined that respondent was C.H.'s father. In December 2009, the court entered a dispositional order, (1) finding C.H.'s mother unfit, (2) determining that insufficient information existed as to respondent to make any findings as to his fitness, (3) directing respondent to cooperate with DCFS, and (4) ordering the case transferred to Sangamon County.

¶ 7 After establishing permanency goals for respondent, the Sangamon County Circuit Court ordered respondent to cooperate with DCFS in completing his client-service plan objectives. In May 2011, however, the State filed a petition to terminate respondent's parental rights, alleging that respondent—who was incarcerated in the Sangamon County jail at the time—was unfit. In April 2012, the State filed a supplemental petition to terminate respondent's parental rights, alleging that he (1) failed to make reasonable progress toward C.H.'s return

within nine months after an adjudication of neglect or abuse (May 16, 2011, through February 16, 2012) (750 ILCS 50/1(D)(m)(ii) (West 2010)) and (2) was deprived in that he had been convicted of a sex crime. In May 2012, the State filed an amended supplemental petition to terminate respondent's parental rights, alleging only that respondent failed to make reasonable progress toward C.H.'s return within nine months after an adjudication of neglect or abuse (May 16, 2011, through February 16, 2012).

¶ 8 A. Respondent's May 2012 Fitness Hearing

¶ 9 At a May 2012 fitness hearing, the State presented evidence from C.H.'s client-service provider that respondent was unfit.

¶ 10 Jessica Starky, C.H.'s client-service provider, testified that she had been C.H.'s caseworker since November 2010, and she rated respondent "unsatisfactory." She explained that respondent was unemployed, had been living in public-supported housing, and did not routinely attend his mental-health counseling sessions. Starky added that respondent needed to achieve several objectives, as follows:

"[Respondent] needed to complete parenting classes in order to develop appropriate parenting skills. He needed to participate and complete anger management counseling in order to address his past history of arrests for battery and domestic violence. He needed to participate in mental health counseling in order to address his past history of neglect. He needed to provide stable housing and income in order to provide for [C.H.'s] basic needs, and he needed to participate in substance abuse services in

order to address any possible substance abuse issues."

Starky explained that respondent did not cooperate with these tasks and objectives, in part, because respondent had been arrested and the services were not available at the jail. She added that respondent's interaction with C.H. during his supervised visitation was "poor." On cross-examination, Starky acknowledged that respondent had regularly attended anger-management classes and had made some progress regarding his anger-management issues. She also noted that although he had been unsuccessful, respondent had been trying to obtain a job and suitable housing before he went to jail—indeed, Starky acknowledged that before he went to prison, respondent had completed approximately "90%" of his overall plan.

¶ 11 Respondent did not testify.

¶ 12 On this testimony, the trial court found respondent unfit for failing to make reasonable progress between May 16, 2011, and February 16, 2012.

¶ 13 B. Respondent's June 2012 Best-Interest Hearing

¶ 14 At a June 2012 best-interest hearing, the State presented the following evidence from Starky to support its assertion that respondent's parental rights should be terminated.

¶ 15 Starky testified that C.H. had been placed within "specialized placement" and that she was making progress, in that she was "developmentally on target, medically healthy, [and] sociable." She explained that the foster family had been attending church together, eating dinner together, and otherwise socializing together. Starky added that the family had a large home with a large backyard and that the family was prepared to adopt C.H. She also noted that C.H. referred to her foster parents as "mama" and "dad."

¶ 16 Respondent did not testify.

¶ 17 On this evidence, the trial court terminated respondent's parental rights, finding, in pertinent part, as follows:

"All right, the Court does agree with the arguments from [respondent] *** that [he] has tried to be a loving parent to his daughter. There was no question as to that, but I [cannot] look at this as to what *** is in his best interest. I do have to look at what's in the best interest of [C.H.], and she deserves some permanency.

She is in a loving home and has bonded well, so the Court does find it is in the best interest of [C.H.] that the parental rights of [respondent] be terminated ***."

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Respondent argues that the trial court erred by (1) finding him unfit and (2) terminating his parental rights. We address respondent's contentions in turn.

¶ 21 A. Respondent's Claim That the Trial Court Erred by Finding Him Unfit

¶ 22 Respondent first contends that the trial court erred by finding him unfit. Specifically, respondent asserts that the court erred by finding that he failed to make reasonable progress toward C.H.'s return within nine months after he was adjudicated neglected. We disagree.

¶ 23 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 D.F.*, 201 Ill. 2d 476, 498-99, 777 N.E.2d 930, 943 (2002). We will not reverse a trial court's finding of parental unfitness unless it was contrary to the manifest weight of the evidence, meaning that the correctness of the opposite conclusion is clearly evident from a review of the record. *D.F.*, 201 Ill. 2d at 498, 777 N.E.2d at 942.

¶ 24 One of the grounds for unfitness is failure of the respondent to make reasonable progress toward the minor's return within nine months after adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(ii) (West 2010). In this case, the pertinent time period was May 16, 2011, through February 16, 2012. The State presented evidence that during that time period, respondent did not make reasonable progress toward the goal of C.H.'s return to his care, in large part because he had been arrested on suspicion of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2010)) and was later convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)). Moreover, the State presented evidence that respondent failed to provide stable housing or employment sufficient to allow C.H. to return to respondent's care.

¶ 25 In light of this evidence, we conclude that the trial court's finding that respondent was unfit for failing to make reasonable progress toward C.H.'s return within nine months after she was adjudicated neglected was not against the manifest weight of the evidence.

¶ 26 In so concluding, we note that respondent complains that "[t]here is no reason [he] could not pick back up with [his] progress when he was released from custody." Respondent is wrong. There is a reason—namely, the need to provide C.H., who had been in temporary care for approximately three years, much needed permanency. See *In re Aaron R.*, 387 Ill. App. 3d 1130, 1143-44, 902 N.E.2d 171, 181-82 (2009) (Steigmann, J., specially concurring) (explaining that

