

NOTICE  
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2012 IL App (4th) 120709-U

NO. 4-12-0709

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
December 10, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: D.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 09JA42
RHIANNA RAY,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

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PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Pope 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 January 2012, the State filed a motion to terminate the parental rights of respondent, Rhianna Ray, as to her son, D.B. (born March 2, 2009). Following a June 2012 fitness hearing, the trial court found respondent unfit. A month later, the court conducted a best-interest hearing, after which 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 Circumstances Preceding the State's January 2012 Petition To Terminate Respondent's Parental Rights

¶ 6

In April 2009, the State filed a petition for adjudication of wardship, alleging, in part, that D.B. was (1) 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)) (count I) and (2) an abused minor under section 2-3(2)(ii) of the Act (705 ILCS 405/2-3(2)(ii) (West 2010)) (count II). Both of the State's counts were based on the allegation that respondent—who in June 2008, had her parental rights as to her other two children terminated—had not corrected the substance-abuse and domestic-violence issues that had been "ongoing" during her life.

¶ 7

Following a hearing on the State's petition, the trial court entered a March 2010 order adjudicating D.B. a neglected minor for the reasons alleged by the State. After a March 2010 dispositional hearing, the court adjudicated D.B. a ward of the court and appointed the Department of Children and Family Services (DCFS) as D.B.'s temporary guardian.

¶ 8

### B. The State's January 2012 Petition To Terminate Respondent's Parental Rights

¶ 9

In January 2012, the State filed a motion to terminate respondent's parental rights as to D.B. pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2010)). The State alleged that respondent was an unfit parent because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to D.B.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of D.B. (750 ILCS 50/1(D)(m)(i) (West 2010)); and (3) make reasonable progress toward the return of D.B. to her care within nine months after the adjudication of neglect (March 1, 2010, to November 1,

2010) (750 ILCS 50/1D)(m)(ii) (West 2010)).

¶ 10 1. *The June 2012 Fitness Hearing*

¶ 11 a. The State's Evidence

¶ 12 Amanda Gant-Taylor, the DCFS contractor handling respondent's case for the previous two years, testified that respondent's client-service-plan goals required her to (1) successfully complete parenting classes, (2) maintain employment, (3) attend weekly visits with D.B., (4) acquire and maintain suitable housing, and (5) "complete substance abuse treatment and remain substance free." Although she experienced missteps, respondent completed parenting classes and substantially complied with her goals of visiting D.B. and maintaining suitable housing. Gant-Taylor recounted that with regard to respondent's domestic-violence issues, she had successfully completed domestic-violence counseling, noting that respondent had "testified against her batterer." Gant-Taylor rated respondent's employment progress as unsatisfactory because she was unable to verify respondent's claim that she earned income cleaning houses.

¶ 13 Gant-Taylor's primary concern regarding respondent was her inability to stop abusing drugs, which began when she was 16 years old. Gant-Taylor summarized that respondent had been admitted to numerous substance-abuse treatment programs and successfully completed only one "Level III" inpatient program in June 2011. After completing that program, respondent was directed to participate in "Level II" intensive outpatient treatment, which she did not begin. Respondent's failure to attend the follow-on treatment garnered her an unsatisfactory rating on that client-service-plan goal. Thereafter, respondent failed to appear for a scheduled drug screen, which Gant-Taylor documented as a positive drug screen. Gant-Taylor surmised that during her tenure with respondent, she would experience periods of sobriety lasting up to 90

days but that she would eventually relapse, testing positive for either cannabis or cocaine. Gant-Taylor opined that respondent was "very knowledgeable" on the subject of substance abuse but did not employ that knowledge to her benefit.

¶ 14 Prior to the conclusion of the State's evidence, the trial court took judicial notice of two prior cases in which respondent's parental rights had been terminated as to her two other children.

¶ 15 b. Respondent's Evidence

¶ 16 Respondent, who at the time of the hearing was 32 years old, testified that she had successfully completed the client-service-plan goals as outlined by Gant-Taylor, but she acknowledged that she did not have stable employment. Respondent explained that she earned money cleaning houses for various clients, but her income fluctuated from week to week.

¶ 17 Respondent also acknowledged that she struggled with substance abuse since she was a teenager, commenting that she had attended 14 different substance-abuse training programs since that time. In explaining why she did not attend Level II treatment following her June 2011 completion of the Level III program, respondent stated that she, "was feeling \*\*\* really helpless and \*\*\* pretty much like it wasn't gonna matter because I had so many inconsistencies with my [drug screens] and my substance treatment and then I just pretty much had given up." Respondent characterized her drug abuse as a disease, commenting that she knew "one of the most important things for me to have my son is to stay clean and sober."

¶ 18 In July 2011, respondent moved from Decatur to Bloomington, which she stated helped her. Respondent admitted that she (1) continued to use drugs after a December 2011 meeting in which Gant-Taylor informed her that respondent's case was being referred for legal

screening to determine whether initiating parental termination proceedings was warranted and (2) failed to participate in a January 2012 drug screen because she knew the result would be positive for drug use.

¶ 19 c. The Trial Court's Fitness Finding

¶ 20 In June 2012, the trial court entered a written order, finding that respondent "is interested and concerned for the welfare of [D.B.]." In later summarizing its position, the court wrote the following:

"The court finds that the State has proven by clear and convincing evidence that [respondent] has failed to maintain a reasonable degree of interest, concern[,] or responsibility for the welfare of [D.B.]. She is therefore unfit."

The court also found that (1) respondent made reasonable efforts to correct the conditions that were the basis of D.B.'s removal from her care and (2) the State had proved, by clear and convincing evidence that respondent was unfit by failing to make reasonable progress toward the return of D.B. to her care within nine months after the adjudication of neglect (March 1, 2010, to November 1, 2010). The court based its negative findings on respondent's failure to maintain her sobriety.

¶ 21 2. *The July 2012 Best-Interest Hearing*

¶ 22 a. The State's Evidence

¶ 23 At respondent's July 2012 best-interest hearing, Lindsey Sites, a DCFS-contracted foster-care supervisor, testified that she had managed D.B.'s case since September 2011. Sites noted that D.B. (1) was "doing fine" and progressing well in his foster home and his preschool

placement, (2) had no health problem or "major concerns," and (3) had bonded with his foster parents. Sites added that D.B.'s foster-care placement was a "prospective adoptive home."

¶ 24 Sites opined that although respondent was engaging in treatment and had not tested positive for drugs since May 2012, she believed that it was in D.B.'s best interest to terminate respondent's parental rights because of her history of drug abuse and inability to maintain stable employment.

¶ 25 b. Respondent's Evidence

¶ 26 Respondent testified concerning her efforts to achieve sobriety, noting that she was attending a weekly outpatient substance-abuse program and daily Alcoholics Anonymous meetings. Respondent added that although she was seeking stable employment, she continued to clean houses, which resulted in weekly income of approximately \$300. Respondent added that her main focus was maintaining her sobriety. Respondent described that her monthly visits with D.B. went well, adding that if she regained custody, she had a room for D.B. in her apartment.

¶ 27 c. The Trial Court's Best-Interest Finding

¶ 28 After considering the evidence and counsel's arguments, the trial court terminated respondent's parental rights as to D.B. In so doing, the court relied on the best-interest report, submitted by Gant-Taylor and Sites, noting the following:

"In reviewing the departmental report, [the court] note[s] that [D.B.] has been developing appropriately since being placed in foster care. He is very content in his current foster home. He continues to have his needs met on a daily basis. The report goes on to state that he goes on weekend vacations, camping trips, water

parks, and even hunting with his foster dad who [sic] he very much enjoys as well as appears content and well adjusted in his current placement."

¶ 29 This appeal followed.

¶ 30 II. TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 31 A. The Trial Court's Fitness Finding

¶ 32 1. *The Applicable Statute and the Standard of Review*

¶ 33 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).

¶ 34 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.*

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

¶ 36                    Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. In particular, respondent contends that "she [had] completed all of the services requested of her save one, namely substance abuse treatment." We disagree.

¶ 37                    We note that in finding that the State had proved by clear and convincing evidence that respondent failed to maintain a reasonable degree of interest, concern, or responsibility for D.B.'s welfare, the trial court placed great emphasis on respondent's failure to maintain her sobriety. Indeed, the record shows that respondent acknowledged that maintaining her sobriety was a necessary prerequisite to regaining custody of D.B. Despite this knowledge, respondent candidly admitted her ongoing substance abuse even after Gant-Taylor informed respondent that her consistent failure to maintain her sobriety would result in a referral to determine whether parental termination proceedings were appropriate.

¶ 38                    Although we commend respondent for her efforts to comply with her other client-service-plan goals, her partial compliance is not sufficient, especially given that the substance abuse was, in pertinent part, the basis of D.B.'s removal from respondent's care. In other words,

despite her partial compliance with her client-service-plan goals, respondent's inability to overcome her drug addiction prevented her from taking responsibility for D.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.

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

¶ 40 Because we have concluded that the trial court's finding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to D.B.'s welfare (750 ILCS 50/1(D)(b) (West 2010)) was not contrary to the manifest weight of the evidence, we need not consider other findings of parental unfitness. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental unfitness).

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

¶ 42 1. *The Standard of Review*

¶ 43 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).

¶ 44 "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. *Id.*

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

¶ 46 Respondent next argues that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondent contends that "[t]he court should have focused on the positives instead of the negatives when it made its best-interest finding." However, as evidenced by the focus of her contention, respondent misapprehends that the purpose of a best-interest hearing is D.B.'s interest in permanency, instead of her interest in retaining custody.

¶ 47 Based on her argument, respondent is essentially asking this court to give her additional time at the expense of D.B.'s interest in permanency on the chance she might overcome her drug addiction in the near future. We decline to entertain respondent's request given D.B.'s interest and respondent's extensive history of past failures in this regard. Here, the record clearly shows that at the time of respondent's best-interest hearing (1) D.B.'s interest in a stable, loving, home was being met by his foster family and (2) respondent could not provide for D.B. given that she had to first address her own best interest in sobriety. Indeed, the trial court correctly based its decision to terminate respondent's parental rights on the best-interest report, which described that (1) D.B. had been developing appropriately since being placed in foster care

