

No. 1-13-0003

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN THE INTEREST OF DAMARION L.,	)	Appeal from the
ESSENCE L., AND SINCERE L.,	)	Circuit Court of
	)	Cook County.
Minors-Respondents-Appellees.	)	
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Petitioner-Appellee,	)	No. 09JA314
	)	No. 09JA404
v.	)	
	)	
SANTANYA H.,	)	The Honorable
	)	Maxwell Griffin, Jr.,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court  
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment

**ORDER**

¶ 1 *Held:* Contrary to the mother’s claim, her fifth amendment constitutional rights were not violated because the trial court and the service agency did not require her to admit to criminal culpability to achieve a satisfactory rating in her service plan. In addition, the circuit court judgment finding the mother unfit and terminating her rights based on the best interests of the minors was not against the manifest weight of the evidence. The judgment of the trial court is affirmed.

No. 1-13-0003

¶ 2 Following an unfitness and the best interest hearing, the trial court terminated Santanya H.'s parental rights on December 10, 2012, to her three minor children, Damarion L., Essence L. and Sincere L. On appeal, Santanya first contends that her fifth amendment rights under the federal constitution were violated when the Volunteers of America (VOA) agency, which created her service plan, required her to admit criminal culpability to achieve a satisfactory rating. Santanya also contends that the trial court's determination that she was unfit to parent based on a failure to make reasonable progress in services was against the manifest weight of the evidence. In addition, Santanya contends that the trial court's determination that it was in the best interest of the minors that her rights be terminated was against the manifest weight of the evidence. For the reasons set forth below, we affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. This case entered the system on April 10, 2009, when Danyiel L. Jr., the biological son of Danyiel L. Sr. and stepson of Santanya, sustained a subdural hematoma which necessitated the removal of the left side of his skull. Both parents alleged that Danyiel Jr. fell from his bunk bed in their home. Upon examination, however, medical personnel at Children's Memorial Hospital determined the parents' explanation was improbable due to the severity of the minor's injuries. Medical personnel also found considerable signs of abuse, such as bite marks and neck tissue injuries commonly resulting from being forcibly shaken. In addition, medical personnel considered the extent of the brain swelling and concluded it occurred over a period of several hours, which was inconsistent with testimony from both parents.

¶ 5 Santanya and Danyiel Sr. have three additional biological children together. The two eldest, Damarion and Essence, witnessed the incident with Danyiel Jr. At the hospital, medical

No. 1-13-0003

personnel also observed a "classic cigarette burn" mark on Damarion's shoulder allegedly inflicted by his father.

¶ 6 Following these incidents, the State charged Danyiel Sr. with aggravated battery of a minor and filed a petition for adjudication of wardship on April 14, 2009, placing Damarion and Essence in the temporary custody of the circuit court. Subsequently, on May 28, 2009, the State filed the same petition on behalf of the third biological child, Sincere, who was born shortly after the incident. The petitions alleged Santanya and Danyiel Sr. abused or neglected the minors (See 705 ILCS 405/2-3(1)(b) and 405/2-3(2)(ii) (West 2008)). The circuit court granted an adjudication order on April 1, 2010, placing the minors in the custody of the State. On January 28, 2011, DCFS placed the minors in foster care.

¶ 7 PERMANENCY PLANNING HEARINGS

¶ 8 A permanency planning hearing took place on November 24, 2010. Jessica Downs, the minors' VOA caseworker, testified that Santanya consistently complied with services, but failed to address the full severity of the minors' neglect. In addition, the agency concluded that until Santanya understood how the case entered the system, and that it was her responsibility to keep the minors safe, she could not make substantial progress towards the goal of regaining custody of her minors. Santanya complied with all of her services, except individual therapy. The agency suggested a psychiatric evaluation and a new therapist.

¶ 9 In ordering additional psychological services, the trial court specifically noted that a criminal matter was pending against Santanya, and therefore, she did "not have to come clean on the facts," but did have to take responsibility for the care of the minors. The court stated that Santanya did not "need to admit that she abused" the minors, but did need to "show progress in the therapist's mind and other clinicians that she will show that she can take care and provide for

No. 1-13-0003

and keep her children safe." The trial court entered a goal of returning the children to Santanya within 12 months. In so ruling, the court found some progress had been made, although it was not substantial. The court further noted Danyiel Sr. made no progress due to his incarceration.

¶ 10 Another hearing took place on August 1, 2011. Nichole Johnson, the minors' VOA caseworker as of May 2011, testified that Santanya had made no progress in individual therapy and failed to begin family therapy. She did, however, complete domestic violence and parenting classes, as well as a psychiatric evaluation, which diagnosed her with mood depressive disorder and dependant personality features. Santanya's visitation with the minors remained inconsistent, partly due to her incarceration for misdemeanor child endangerment from June 6 through August 19, 2011.

¶ 11 Amanda Mitchell, the minors' VOA therapist, recommended that visits between Santanya and the minors be discontinued. During the visits Santanya displayed favoritism toward Sincere, which caused Damarion and Essence to display aggressive, violent behavior. In addition, the minors' behavior improved upon suspended visitation and the stable foster care environment.

¶ 12 The trial court ruled that Santanya failed to make substantial progress towards the return of her children. Further, the court stated that she failed to exhibit basic parenting skills and to address basic parenting issues. The trial court suspended visitation. At this juncture, the trial court entered a permanency goal of substitute care pending the court's termination of parental rights.

¶ 13 In December 2011, the State filed a motion to terminate the parental rights of Santanya. The State alleged, in pertinent part, that she was unfit because she failed to make reasonable progress towards the minors' return within nine months of the abuse or neglect adjudication, or for any nine-month period thereafter (750 ILCS 50/1D(m)(ii), (iii) (West 2010)). In addition, on

No. 1-13-0003

January 9, 2012, the father Danyiel Sr. signed specific consents for the adoption of the minors by their foster parents.

¶ 14

#### UNFITNESS HEARING

¶ 15 The case proceeded to an unfitness hearing on July 31, 2012. Danielle Guzick, the VOA foster care supervisor, testified that the agency enacted an initial service plan for Santanya from approximately April 2009 to October 2009, which included participation in parenting classes, parent coaching, visitation, individual and family therapy. During this period, Santanya failed to complete the necessary requirements and stopped engaging in services resulting in an unsatisfactory rating. Subsequently, Santanya also received an unsatisfactory rating for the period of October 2009 to April 2010 for the same reasons.

¶ 16 Santanya's next service plan ran from April 2010 to October 2010. In May of 2010, Santanya began parenting coaching through Arch Angels, individual therapy with the Salvation Army, and completed a psychological evaluation. Santanya made unsatisfactory progress with her therapist because she failed to address how the prior abuse and neglect of the minors impacted her ability to successfully and safely parent in the future. Therefore, Guzick recommended only supervised visitation. Santanya again received an overall unsatisfactory rating for services from October 2010 to April 2011 and April 2011 to October 2011.

¶ 17 Dr. Carrie Steiner, VOA clinical director and licensed clinical psychologist, testified that she began individual therapy with Santanya in December of 2010. Based on the notes from her previous therapist, Paula Christiansen, Steiner felt that Christiansen failed to provide Santanya with appropriate therapy. Specifically, the sessions focused on Santanya's grief issues and separation from the minors, as opposed to working on her goal of regaining custody and addressing the minors' abuse.

¶ 18 Steiner reported that Santanya repeatedly minimized the injuries and abuse Danyiel Jr. suffered while under her care and the impact it had on his siblings. In therapy, Santanya indicated that "it wasn't a big deal" when she failed to immediately call 911 despite admitting that she observed Danyiel Jr.'s "last gurgling noises . . . before his eyes rolled up into his head." In addition, Santanya admitted she and Danyiel Sr. had debated taking Danyiel Jr. to the hospital because they feared DCFS involvement, which resulted in a three to five hour delay in Danyiel Jr. receiving medical attention. When Steiner mentioned that Danyiel Jr.'s medical reports revealed his permanent paralysis, Santanya doubted its permanency and "bet that he's probably walking already." Santanya even admitted to observing Danyiel Sr. shake Danyiel Jr. once, but refused to view it as abuse. Steiner stressed this mentality suggested a clear denial and minimization of the injuries.

¶ 19 Steiner believed additional abuse and neglect occurred in the home with respect to the other minors. When she questioned Santanya about medical personnel's observance of a cigarette burn on Damarion's shoulder, Santanya stated it was "dry skin." Also, when Damarion once injured himself in the bathtub and his shoulder bled profusely, Santanya again debated taking him to the hospital. She failed to recognize that her first response should have been getting the minor necessary medical attention. Furthermore, Steiner reported feeling troubled by Santanya's insistence that the minors, while sick with the flu, still should have attended a visit with her, enduring a three-hour trip by car. Steiner's concern stemmed from her belief that Santanya geared her focus towards her needs over the minors' ultimate welfare. Santanya never took responsibility for the abuse suffered by Danyiel Jr. and Damarion, and denied any abuse took place in her home. Ultimately, she failed to appropriately address how she could prevent future harm to the minors.

No. 1-13-0003

¶ 20 Mitchell, the minors' therapist, testified and reiterated her conclusion made at the permanency hearing that visitation should be discontinued. For instance, in therapy, Mitchell observed that Damarion feared blood. When Damarion was asked what he remembered about his mother, he said, "only what happen to my shoulder and the blood." The following day, he exhibited atypical daytime urinating behavior while at daycare. Mitchell felt further visitation would be traumatic and jeopardize the progress made within the foster placement, such as the minors' security and trust in their new home. The State rested.

¶ 21 Santanya then presented her case. Christiansen, licensed clinical social worker with the Salvation Army, treated Santanya in individual therapy from roughly March 2010 through October 2010, until the VOA removed her from the case. Christiansen testified that Santanya made progress in therapy by becoming more introspective regarding her own past trauma. Santanya consistently maintained that Danyiel Jr. sustained his head injury from an accidental fall, and Damarion's cigarette burn mark was due to dry skin. Christiansen further testified that Santanya displayed honesty in therapy and addressed how the case entered the system.

¶ 22 Downs, the minor's previous VOA caseworker, testified that while she worked on the case from May to November 2010, Santanya made progress towards return home based on her "full" engagement in services, visitation with the minors, and compliance with the service plan. Downs reported that during visitation, she observed no favoritism towards a particular child and no inappropriate behavior.

¶ 23 In rebuttal, the State called Guzick, who testified that due to the complexity of the case, the agency required her to supervise Downs. Regarding the October 2010 service plan, Guzick made changes to the narrative for Santanya's individual therapy, explaining to Downs at the time that mere attendance could not satisfy the goals of individual therapy. Guzick explained that

No. 1-13-0003

Santanya's failure in therapy to address the reasons this case came into the system were relevant to her progress, because that was the only way to correct the conditions in her home.

¶ 24 Following evidence and argument, the court ruled Santanya unfit. The court acknowledged that it was difficult to give as much weight to Downs' testimony because she was a new caseworker and it was unclear whether she was well-versed in the entire history of the case. In addition, in regard to Christiansen, the court concluded that she was more of an "advocate for the mother" than an "unbiased observer." Further, the court noted that Santanya did not need to admit any wrongdoing, such as, "I knew my child was being abused and I didn't do anything about it." But she had to acknowledge that the minors were abused and neglected while under her care, and it was her ultimate responsibility to keep them safe in order to prevent future abuse.

¶ 25 The court determined that as a whole, Santanya failed to make progress on issues that impacted the minors' welfare, although she had made reasonable efforts to attend therapy, parenting coaching and other services offered. The trial court entered its ruling on December 10, 2012, and found that Santanya failed to make progress in the specific time periods alleged by the State: April 2, 2010 to January 2, 2011, and January 3, 2011 to October 3, 2011.

¶ 26 BEST INTEREST HEARING

¶ 27 The best interest hearing immediately followed the unfitness hearing. Jenn Liggett, a VOA caseworker, testified that the minors' foster home provided them with a safe, stable environment. No signs of abuse, neglect or corporal punishment existed. The foster parents maintained a positive interaction with the minors.

¶ 28 Damarion received medication for his diagnosed ADHD, which the foster parents monitored. The foster parents secured Damarion's 504 plan at school so he could receive occupational therapy. He saw a psychiatrist monthly and received individual therapy in the foster

No. 1-13-0003

home weekly. His behavioral problems diminished concurrent with his adaptation to the foster home.

¶ 29 Essence received medication for her diagnosed mood disorder, which the foster parents monitored. Essence's initial acting-out behaviors lessened. She saw a psychiatrist regularly and received weekly in-home therapy. Essence sometimes exhibited daytime urinating behaviors, but the foster parents addressed this issue by keeping a spare set of clothes for her in the nurse's office at school. This condition, however, improved while in foster care.

¶ 30 Sincere attended daycare and had no special needs. In addition, all three minors' medical records were up to date. Damarion and Essence would also receive trauma-focused therapy going forward to help them continue to adapt to their new environment.

¶ 31 Liggett further testified that the foster parents desired to adopt all three minors. The minors all reported to Mitchell that they would be excited to become a permanent part of the family. The minors developed strong bonds and attachments to both foster parents, as well as to Tabitha's live-in mother. Liggett believed that for the sake of permanency and a stable environment, it was in the minors' best interest to be adopted by their foster parents.

¶ 32 Tabitha, the foster mother, testified that she and her husband treated all three minors as their own. Strong bonds developed by maintaining a high level of involvement in the minors' daily lives. Both parents wished to adopt the minors to give them a loving stable home. The State then rested.

¶ 33 Santanya testified that it was not in the best interest of the minors to be adopted. The court suspended her rights, which was the only reason she has had no contact with them. She believed the minors "were not born" the year their foster parents took them in, and therefore, it was not in their best interest to terminate familial connections.

No. 1-13-0003

¶ 34 Following evidence and argument, the court stated that it previously had found by clear and convincing evidence that Santanya was unfit, specifically on Ground M (750 ILCS 50/1(D)(m)(ii)-(iii) (West 2010)), failure to make reasonable progress towards return of the minors to her care, from April 2, 2010 to January 2, 2011, and January 3, 2011 to October 3, 2011. The court also found that the State again met its burden of proof by a preponderance of the evidence and determined it was in the best interests of the minors that the parental rights of Santanya be terminated.

¶ 35

#### ANALYSIS

¶ 36 On appeal, Santanya first contends that her fifth amendment constitutional right was violated because the VOA required her to admit criminal culpability to achieve a satisfactory rating in her service plan. The standard review of a fifth amendment violation is *de novo*. *In re Robert S.*, 213 Ill. 2d 30, 45, (2004). The Fifth Amendment to the United States Constitution provides that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const., amend. V. This provision applies to the states through the fourteenth amendment. *In re A.W.*, 231 Ill. 2d 92, 106 (2008). The fifth amendment privilege not only permits a person to refuse to testify against herself during a criminal trial in which she is a defendant, but also allows her to refuse to answer questions put to her in any other proceeding, civil or criminal, where the answers might tend to incriminate her in future criminal proceedings. *Id.*; see *Allen v. Illinois*, 478 U.S. 364, (1986).

¶ 37 Santanya specifically contends that throughout the case, the VOA required her to undergo individual therapy and by doing so the VOA insisted that she admit to active participation in Danyiel Jr.'s and Damarion's physical abuse. She contends that this was sanctioned by the judge, and given the pending criminal case against her, the service plain requirements violated her right

No. 1-13-0003

against self-incrimination. Similar contentions have been raised and rejected by other courts addressing termination of parental rights cases, for there is a clear "distinction between terminating parental rights based specifically upon a parent's refusal to admit that which he denies, thereby forcing him to waive the fifth amendment privilege against self-incrimination, and terminating parental rights based upon a parent's failure to comply with an order to undergo meaningful therapy or rehabilitation." *In re P.M.C.*, 387 Ill. App. 3d 1145, 1151, (2009); see also *In Re L.F.*, 306 Ill. App. 3d 748, 754 (1999) (where the trial court specifically noted that DCFS was allowed to require the respondent to engage in effective therapy, which may include some incriminating disclosures to be effective). Here, there is no evidence in the record to suggest that the VOA conditioned Santanya's progress in individual therapy on her confessing criminal culpability in the minors' abuse. In fact, the VOA specifically tried to foster meaningful therapy and rehabilitation with the original goal of return home. Ultimately, the VOA simply concluded that Santanya made unsatisfactory progress because she failed to acknowledge that the minors suffered abuse and neglect. It was not because she denied any actual participation in the abuse, and thus, failed to take responsibility for the safety and welfare of the minors.

¶ 38 There is also no evidence to suggest that the trial court ordered or required her to do anything in connection with the criminal case against her. The trial court on several occasions specifically stated that Santanya did not need to admit to abusing Danyiel Jr. and Damarion as a precondition to retaining her parental rights. See *In re D.P.*, 327 Ill. App. 3d 153, 158-61 (2001); *Cf In re L.F.*, 306 Ill. App. 3d at 754 (where the reviewing court determined that the mother's fifth amendment rights were violated because the record showed that the trial court required her to admit to a crime). Based on the record, it is abundantly clear that Santanya was not required to implicate herself as the perpetrator of the minors' injuries. Therefore, there is no violation of her

No. 1-13-0003

constitutional rights against self-incrimination.

¶ 39 Santanya next contends that the trial court's determination that she was unfit to parent based on a failure to make reasonable progress in services was against the manifest weight of the evidence. The Juvenile Court Act (Act) of 1987 provides a two-stage process for involuntary termination of parental rights. *In re C.E.*, 406 Ill App. 3d 97, 107 (2010); 705 ILCS 405/2-29(2) (West 2010). First, there must be a showing, based on clear and convincing evidence, that the parent is “unfit,” as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)); *In re C.E.*, 406 Ill App. 3d at 107. After finding a parent unfit, the trial court’s task is to determine whether the termination of parental rights is in the best interests of the minor. *Id.* The trial court's unfitness finding is entitled to great deference on appeal and will not be reversed unless it is against the manifest weight of the evidence. *In re C.E.*, 406 Ill App. 3d at 107.

¶ 40 Under the Act, a parent is unfit when she fails to make reasonable progress toward the return of the child within nine months of the adjudication or nine months thereafter. 750 ILCS 50/1(D)(m)(ii)-(iii) (West 2010); see *In re C.N.*, 196 Ill. 2d 181, 216 (2001) (where the overall focus in evaluating a parent's progress remains on the fitness of the parent in relation to the needs of the child).

¶ 41 Santanya contends that she completed all services required of her by the VOA. For example, she completed her parenting and domestic violence classes, a psychological evaluation, and worked with a parenting coach. She also actively engaged in supervised visitation with the minors, until her incarceration, which the VOA allegedly found safe and appropriate.

¶ 42 Based on the record in its entirety, we cannot agree with Santanya's assertion. The testimony of Guzick, Mitchell and Steiner, which the trial court found credible, demonstrated

No. 1-13-0003

that Santanya failed to make progress in individual therapy, visitation and to understand issues relating to the minors' basic care. Guzick, the supervisor on the case from its inception, created a service plan that included participation in parenting classes, parent coaching, visitation, individual and family therapy. During the two nine-month time periods allotted, Santanya failed to meet the criteria warranting a satisfactory rating. Specifically, in individual therapy, she failed to address how the prior abuse and neglect of the minors impacted her ability to successfully and safely parent the minors in the future. Further, Guzick was only able to recommend supervised visitation to protect the minors' well-being. The record also reflects that Santanya occasionally missed scheduled visitation which ceased entirely upon her incarceration.

¶ 43 In addition, Santanya's therapist Steiner testified that Santanya repeatedly minimized the injuries and abuse suffered by Danyiel Jr. and Damarion, the impact the abuse had on the minors, and the importance of immediately procuring medical attention. Steiner's concerns stemmed from her belief that Santanya geared her focus towards her needs over the minors' ultimate welfare. Moreover, Mitchell, the minors' therapist, recommended that visits between Santanya and the minors be discontinued because their overall behavior and well-being improved upon suspended visitation and the stable foster care environment.

¶ 44 Furthermore, the trial court determined that the case worker Downs lacked perspective and deemed Christiansen's testimony incredible, because the court felt that she was more of an advocate for the mother than an unbiased observer. Ultimately, as with any case involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses testifying during permanency and unfitness hearings. See *In re Deandre D.*, 405 Ill. App.3d 945, 952 (2010).

¶ 45 In making its determination, the trial court noted that Santanya did make reasonable

No. 1-13-0003

efforts in terms of attending therapy, parenting coaching and other services. The court, however, concluded that as a whole Santanya failed to make progress in relation to the needs of the minors and take responsibility for their welfare. Due to the delicacy and difficulty of child custody cases, wide discretion is vested in the trial court to an even greater degree than in an ordinary appeal to which the manifest weight principle applies, and we will not substitute our judgment for that of the trier of fact in this matter. See *In re D.L.*, 226 Ill. App. 3d 177 (1992).

¶ 46 Santanya next challenges the trial court's best interest finding. As stated, following an unfitness finding, the trial court's task is to determine whether it's in the minor's best interests to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). At this stage, the trial court focuses on the child's welfare and whether termination would improve the child's future financial, social, and emotional well-being. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1071 (2006). In determining whether termination of a parent's rights is in the minor's best interests, the trial court must consider and balance a number of factors such as the minor's physical safety and welfare, including food, shelter, health, and clothing; her sense of attachments, security, and continuity of affection; and her need for permanence, as well as the preferences of individuals available to care for the minor. See 705 ILCS 405/1-3(4.05)(a) through (j) (West 2010). In addition, a court may consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have on her emotional and psychological well-being. *In re Jaron Z.*, 348 Ill. App. 3d at 262. The State must prove by a preponderance of the evidence that termination is in the best interests of the minor, and the trial court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62; *D. T.*, 212 Ill. 2d 347, 356-57 (2004); *In re Tiffany M.*, 353 Ill. App. 3d 883, 891-92 (2004).

No. 1-13-0003

¶ 47 Santanya contends the trial court's best interest finding was against the manifest weight of the evidence because she and the minors share a strong bond. In addition, she argues that their behavior worsened after placement in their current foster home. The record, however, does not support this view. Further, Santanya fails to make a single substantial argument that directly focuses on the best interests of the minors as opposed to her own interests.

¶ 48 The record supports the trial court's determination and suggests that the minors' foster home provided them with a safe, stable environment. Both Damarion and Essence came into the placement with severe behavioral problems, which have drastically improved since the placement and suspended visitation with Santanya. The minors have developed strong bonds with their foster parents and all want to remain in the home on a permanent basis. Balancing the factors, the trial court concluded that the minors were in a stable permanent environment where they had been integrated into the immediate and extended family. Given the evidence, the State clearly met its burden of proof.

¶ 49 On this record, we cannot help but agree with the trial court's sound and well-reasoned determination. The best interests stage is about the best interests of the child, not the parent, and all considerations yield to the child's interest in a stable, loving home. 705 ILCS 405/1-3(4.05) (West 2010); *D.T.*, 212 Ill. 2d at 364. While Santanya may have completed some services, she never made progress in individual therapy to the extent the court and VOA believed the minors would be safe in her care. Although she contends she was prevented from visitation, due to her incarceration and the VOA, it was her own inability to engage in the recommended therapy that precluded this interaction. Given the evidence demonstrating the minors' bonded attachment to their foster family and their secure environment, we cannot say the opposite conclusion is in any way evident. See *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52 (2008).

No. 1-13-0003

¶ 50

CONCLUSION

¶ 51 Based on the foregoing, we affirm the decision of the circuit court of Cook County.

¶ 52 Affirmed.