

2013 IL App (2d) 130602-U  
No. 2-13-0602  
Order filed November 4, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> HEAVEN R. and DAE'SEAN R.,	)	Appeal from the Circuit Court
Minors	)	of Winnebago County.
	)	
	)	No. 10-JA-426
	)	10-JA-427
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-	)	Mary Linn Green,
Appellee, v. Brooke L., Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices McLaren and Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err in determining that the mother was unfit and that it was in the best interests of the child to terminate her parental rights.
- ¶ 2 This case involves the termination of the parental rights of the respondent, Brooke L., to her daughter, Heaven, and her son, Dae'Sean. Brooke appeals the trial court's decision to terminate her parental rights, arguing that none of the bases for the trial court's finding of unfitness were adequately supported by the record, and that the termination of her rights was not in the best interests of the children. She also objects to the trial court's denial of continuances on court dates at which she was not present. For the following reasons, we affirm.

¶ 3

### BACKGROUND

¶ 4 Heaven was born on June 5, 2000. Her younger brother Dae'Sean was born on March 13, 2010. The children's mother is Brooke L., and Martez R. is their father. In the following summary of the facts pertinent to the appeal, many of the facts relating to Martez are omitted due to the fact that the appeal was brought by Brooke.

¶ 5 Brooke has been diagnosed with post-traumatic stress disorder, bipolar disorder, and borderline personality disorder. In addition, she has chronic back pain and fibromyalgia. She took several prescription medications for these conditions, including Soma, Neurontin, tramadol, Xanax, and Thorazine.

¶ 6 On November 17, 2010, the children were living with both parents. The Department of Children and Family Services (DCFS) received a call to their hotline stating that Martez had forcefully dropped Dae'Sean (who was 8 months old) into his crib with a loud noise, causing him to cry, and that Dae'Sean had a scratch on his cheek. An investigator visited the home and found Brooke barely conscious and so sleepy that she kept nodding off during the interview. Because this was the third report to DCFS within a two-month period, there were safety concerns within the home, and the parents could not identify any acceptable safety monitors, DCFS took the children into protective custody. The children were placed with their paternal great-aunt, Mattie R.

¶ 7 The State filed neglect petitions on behalf of both children. The petitions alleged that the parents were responsible for an environment injurious to their children's welfare in that: (1) Martez inflicted excessive corporal punishment on Heaven; (2) Martez inflicted mental abuse on Heaven; (3) Brooke had mental health problems that prevented her from properly parenting; (4) Brooke had substance abuse problems that prevented her from properly parenting; and (5) Heaven heard Martez

yelling loudly at Dae'Sean as he was crying, then heard a loud bang, and Dae'Sean later had scratches on him.

¶ 8 CASA was appointed as a guardian *ad litem* for the children, and attorneys were appointed to represent the parents. Adjudication was initially set for February 17, 2011, but on that date Brooke's attorney was absent due to a death in the family. The case was continued to March 23, 2011, but on that date both Brooke and the investigator were not in court when the case was called, and Martez was not present because he was in jail. The adjudication eventually took place on April 27, 2011. On that date, Brooke was present and agreed to stipulate that the State could show a basis for removal under count IV of the neglect petitions (her substance abuse). She agreed to perform services based both on that count and on the other counts that were dismissed by the State. Near the close of the adjudication, the trial court commented that Brooke was "falling asleep as we speak" and was "obviously, on something" because she could not "even stay alert and awake while [she was] here in court." The trial court ordered her to take an immediate drug drop, noting that it would have held her in contempt of court if it were not aware that she took a number of prescription drugs in connection with her mental health diagnoses.

¶ 9 The case was set for disposition on May 26, 2011, but was continued because the CASA attorney was sick. On July 28, 2011, the case was continued again; both parents were present, but Brooke's attorney was not present.

¶ 10 On September 14, 2011, the case again came up for disposition. Neither parent was present. According to her attorney, Brooke had been hospitalized for psychiatric issues. The State proffered evidence that the service plan for Brooke included a drug and alcohol assessment, a mental health assessment, compliance with the recommendations that resulted from those assessments, maintaining

stable housing, and completing random drug tests. Brooke had not completed any of the services, although she would probably receive a mental health assessment as the result of her hospitalization. The State moved to admit the DCFS investigative packet and the caseworker's report, and both were admitted without objection. The court found the children neglected and granted DCFS custody and guardianship of the children.

¶ 11 The first permanency review was on February 13, 2012. Both parents were present. The case worker, Delores White, testified that Brooke had been asked to engage in individual counseling, obtain a drug and alcohol assessment, complete random drug tests, and obtain psychiatric services with medication monitoring. Brooke had gone through a substance abuse program at Rosecrance during the past month and was currently enrolled in an inpatient program there. She received a drug and alcohol assessment on January 25, 2012, as part of the earlier program. She was tested for drugs on that same date (testing positive for cannabis and benzodiazepines), but had not completed any random drug tests during the six-month period. As for psychiatric services, some appointments had been set up for her in October 2011 after she was discharged from the hospital, but she did not attend them. However, she would likely receive some services along these lines as part of her current program at Rosecrance. Ms. White commented that Rosecrance had "weaned [Brooke] off of" several of her medications, and as a result Ms. White had seen a "major difference" in her ability to focus, carry on a conversation, and think clearly. In Ms. White's opinion, the previous levels of medications had affected Brooke's ability to follow through on her service plan over the last six months, because "she wasn't able to truly focus in on what it [was] that she needed to do." As a result, one of the most important aspects of the service plan going forward would be monitoring her medications. Although Ms. White had recommended a finding of "no reasonable efforts" for the last

nine months, she would not be opposed to the court making no finding about this. At the close of the hearing, the court found no reasonable efforts had been made by either parent. It declined to make a finding as to reasonable progress because this was the first permanency review. It maintained the goal of return home within 12 months.

¶ 12 The next permanency review was on August 13, 2012. Neither parent was present. Ms. White had spoken to Brooke a few days before and had reminded her about the hearing. Ms. White presented her report and testified. Ms. White noted that Brooke had not completed the Rosecrance inpatient program following an outburst at the end of February 2012. Brooke had tested negative for cannabis (and positive for prescription drugs) on three occasions since her discharge from Rosecrance. She had been referred for outpatient counseling services, but the service provider had not followed through to set that up, and Ms. White needed to give them Brooke's new phone number. Regarding the monitoring of medications, Ms. White had repeatedly given Brooke the phone number to obtain such services, without any result. Brooke was currently homeless. Brooke told Ms. White on April 30 that she was attending daily Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings, but she had not given Ms. White any documentation of attendance since then. She did attend supervised, one-hour weekly visits with the children regularly, and was loving and fairly appropriate during the visits. At the close of the hearing, the trial court found that neither parent had made reasonable efforts or reasonable progress, but maintained the goal of return home within 12 months.

¶ 13 A third permanency review took place on November 5, 2012. Again, neither parent was present, and neither of their attorneys had been able to reach them recently. The new case worker, Pamela Miley, stated that she had last spoken to each of them a few weeks earlier to ask them to

attend a Child and Family Team meeting, but neither parent had attended that meeting. The parents' attorneys made an oral motion for a continuance in light of the fact that the case worker's report recommended a change of goal. The trial court denied the motion, commenting that even if the attorneys were not able to reach their clients, it was the parents' obligation to monitor the case proceedings, and they knew how to find out about scheduled court dates.

¶ 14 In its report for that hearing, CASA stated that the children were doing well in their foster care placement and recommended that the goal be changed from "return home" to substitute care pending adoption. Lutheran Social Services concurred with this recommendation. In her report, Ms. Miley noted that Brooke had refused to complete two drug tests in September and October, saying that she had been clean for nine months and indicating that she would not cooperate with further testing. She still had not contacted the service provider for individual counseling and was not receiving medication monitoring. Brooke regularly attended visits with her children, but one recent visit that was supposed to take place at her home had to be cancelled when the case worker arrived with the children to find a party going on (with alcohol being served). Ms. Miley testified that, although Heaven had always said that she wanted to go home, if that did not happen she wanted to be adopted by Mattie R. As for Dae'Sean, because he had been so young when he was removed from his parents' care, Mattie R.'s home was the only one he had really known. The trial court found that neither parent had made reasonable efforts or reasonable progress. It ordered that the goal be changed to substitute care pending termination of parental rights. It set February 15, 2013, for the trial on fitness.

¶ 15 At a pretrial held on January 16, 2013, the State filed motions in both children's cases to terminate both parents' parental rights. As to Brooke, the motions alleged that she was unfit to have

the care and custody of her children on five grounds: (1) she had failed to maintain a reasonable degree of interest, concern, or responsibility about her children's welfare, pursuant to 750 ILCS 50/1(b) (West 2012); (2) she had failed to protect her children from conditions in their environment that were injurious to their welfare, pursuant to 750 ILCS 50/1(g) (West 2012); (3) she had not made reasonable efforts, within nine months after the children were adjudicated neglected, to correct the conditions that were the basis for the children's removal from her care (750 ILCS 50/1(m)(i) (West 2012)); (4) she had not made reasonable progress, within nine months after the children were adjudicated neglected, toward the return of the children to her care (750 ILCS 50/1(m)(ii) (West 2012)); and (5) she had not made reasonable progress, within a nine-month period after the first nine-month period after the children were adjudicated neglected, toward the return of the children to her care (750 ILCS 50/1(m)(iii) (West 2012)).

¶ 16 That same day, Ms. Miley filed a report to the court. In it, she stated that she visited Brooke at her home on November 29, 2012. Ms. Miley asked Brooke to take a drug test and Brooke refused, saying that she did not want to complete any more services or drug tests and that she planned to sign consents for the children to be adopted at the next court date. Ms. Miley told her about the January pretrial date and the date for the fitness hearing. Since that time, the sole services provided to Brooke were weekly visits with the children, which alternated between her home and Mattie R.'s home.

¶ 17 At the February 15 hearing on fitness, neither parent was present, although both of their attorneys were there. Brooke's attorney stated that she had spoken with her client the previous evening, and Brooke had said that her keys were stolen and she had no way to get to court. Brooke also said that she intended to sign consents to adoption as soon as she could get to court. The

attorney asked for a continuance. The State and CASA objected, noting that Brooke had been aware of the January and February court dates, she had not attended either the November permanency hearing or the January pretrial, and she had not asked the case worker for help getting to court for the current fitness hearing. They also argued that the cases had been opened in 2010 and that it would not be in the children's best interests to further delay the hearing. Brooke's attorney noted that her client actually had attended the last court date, but she arrived late, after the case was called, and had to leave again before she could sign consents or have the case re-called. The trial court denied the request for a continuance on the basis that it would not be in the children's best interests.

¶ 18 The only witness at the fitness hearing was the case worker, Ms. Miley. She testified that she was appointed as the case worker in October 2012. Since that time, Brooke had been consistent with her weekly visits with the children, and she was loving and generally appropriate with the children during those visits, although at times her reminiscences about her own teen years appeared to provide a negative role model for Heaven. She displayed a greater bond with Heaven than Dae'Sean. Her home was clean and safe when Ms. Miley had visited. She was not participating in any other services. When Ms. Miley met with her on November 29, 2012, her eyes were glassy and her speech was slurred. She had not attended any meetings at Heaven's school related to Heaven's Individualized Education Plan (IEP), any parent-teacher meetings, or any medical appointments or therapy sessions for the children, although Ms. Miley acknowledged that she had not specifically encouraged Brooke to attend such meetings. Ms. Miley also testified regarding Brooke's compliance with past service plans, reiterating the events described above. During Ms. Miley's testimony, the State moved to introduce into evidence past service plans. There was no objection, and they were admitted. At the close of its case, the State voluntarily dismissed count 2 (alleging failure to protect

from injurious environment) and argued that it had established, by clear and convincing evidence, the remaining four grounds of unfitness. The court took the matter under advisement and set April 24, 2013, as the next court date, at which it would issue its ruling and then proceed to a best-interests hearing if necessary.

¶ 19 On April 24, once again neither parent was present. Brooke's attorney moved for a continuance, saying that she had spoken with Brooke the previous evening and Brooke had said she had no way to get to court. Ms. Miley testified that her agency would provide assistance with transportation to court and that Brooke had called her the night before, but Brooke had not asked for such assistance and instead said that she could not come to the hearing because she had another court date in Wisconsin at the same time. The trial court denied the motion to continue. It then found that the State had proved, by clear and convincing evidence, all four remaining grounds of unfitness.

¶ 20 At the best-interests hearing that followed, Ms. Miley was again the only witness. She testified that both children were doing well in foster care and were comfortable in the home. Dae'Sean had always had developmental difficulties. He was receiving occupational and speech therapy for these, and had made substantial progress. He was currently enrolled in an early education program, where he received special education services through an IEP. Heaven was in 7th grade and was struggling academically. She had recently been suspended twice, once related to her propensity to fall asleep, which Heaven said she did when she was sad. She had been excited to make the basketball team (although she was later removed from the team due to the suspensions), and was in a tutoring group. Heaven occasionally displayed behavioral problems, such as belligerence and stubbornness, but her foster mother could usually redirect her. Her foster mother also helped Heaven process her feelings after visits with Brooke, which often resulted in depression or melancholy.

Heaven had been in weekly counseling since March 2012 that focused on anger management, setting healthy boundaries, and processing her feelings about her removal and the termination of her parents' rights. That counselor believed that it would be in Heaven's best interest to terminate parental rights. In the previous month, Heaven had switched to a different counselor to address her depression and behavioral issues. When asked, Heaven said that she wanted to be adopted by her foster mother and did not wish to leave her foster home. The State asked the court to take judicial notice of past court orders, the evidence submitted at the fitness trial, and Ms. Miley's most recent report. There were no objections and the court granted these requests.

¶ 21 CASA argued that termination of parental rights was in both children's best interests, as both children had special needs of various kinds that Brooke would not be capable of providing for, due to her own mental health and substance abuse issues. CASA also pointed out that Brooke had failed to address her own parenting capacity through services and had never been permitted unsupervised visits. CASA asked that the court take judicial notice of its reports that had been filed with the court on November 5, 2012, January 16, 2013, and the day of the best-interests hearing, and (without objection) the court granted that request. Brooke's attorney argued that she had a close bond with Heaven and had been diligent in her visits, and had also introduced the children to extended family members. Brooke had mentioned some concern that Mattie R. was spanking Dae'Sean, and said Heaven had told her that she wanted to return to Brooke and not be adopted by Mattie R. Mattie R. was permitted to make a statement to the court, in which she denied ever hitting Dae'Sean. At the close of the hearing, the trial court found by a preponderance of the evidence that it would be in the best interests of the children to terminate parental rights, and it entered an order doing so. Thereafter, Brooke filed a timely notice of appeal.

¶ 22

ANALYSIS

¶ 23 On appeal, Brooke argues that: (1) the State did not meet its burden of proving, by clear and convincing evidence, any of the grounds for finding her unfit; (2) the State did not prove, by a preponderance of the evidence, that it would be in the best interest of the children to terminate her parental rights; and (3) the trial court abused its discretion in denying her requests for a continuance of the fitness and best-interests hearings and proceeding in her absence. We begin with the latter argument.

¶ 24

Denial of Continuances and Absence from Hearings

¶ 25 In juvenile proceedings, due process requires only that parents be given notice of court dates, not that they must be present at those court dates. *In re C.L.T.*, 302 Ill. App. 3d 770, 778 (1999) (although “a parent has the right to be present at a hearing to terminate parental rights, it is not mandatory that she be present, and the trial judge is not obligated to wait until she chooses to appear”). Because delay in juvenile proceedings can cause harm to minors, there is no absolute right to a continuance in such proceedings even when a parent is not present. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 36. Any continuance is within the discretion of the trial court, and we will not reverse because a continuance was denied unless the appellant can show that the denial resulted in prejudice. *Id.* Such prejudice must be shown by demonstrating a fair probability of a different outcome if the case had been continued until the parent could be present. See *id.*, ¶ 37 (parent must show how he or she could have challenged the evidence presented by the State); *cf. People v. Blalock*, 239 Ill. App. 3d 830, 841 (1993) (when defendant complains that he and his counsel were absent when trial court responded to jury question, defendant must show prejudice—that their presence would have affected the outcome).

¶ 26 Here, Brooke has not identified any evidence that she could or would have presented, had she been present. Instead, she simply argues that she was “prejudiced” by the denial of a continuance because the outcome of the hearings was negative—her parental rights were terminated. This, however, is not the applicable standard. Accordingly, we reject her argument that the trial court’s denial of continuances was a procedural error that should result in reversal.

¶ 27 Proof of Unfitness

¶ 28 Brooke next argues that the State did not establish, by clear and convincing evidence, any of the four grounds of unfitness alleged in its motion to terminate parental rights.

¶ 29 Termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. First, the trial court must find, by clear and convincing evidence, that the parent is unfit. *Id.*, ¶ 63. Second, the court must determine, by a preponderance of the evidence, whether termination of parental rights is in the minors’ best interests. *Id.*

¶ 30 Because the termination of parental rights constitutes a complete severance of the relationship between the parent and child, proof of parental unfitness must be clear and convincing. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 88. The trial court is in the best position to assess the credibility of witnesses, and a reviewing court may reverse a trial court’s finding of unfitness only where it is against the manifest weight of the evidence. *Id.* ¶ 89. A decision regarding parental unfitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010).

¶ 31 In this case, the trial court found Brooke unfit on four grounds. Although section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) sets forth several grounds under which a parent may

be deemed unfit, any one ground, properly proven, is sufficient to sustain a finding of unfitness.

*Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89.

¶ 32 For the purposes of this appeal, we focus on count 5 of the State's petition to terminate parental rights, which alleged pursuant to 750 ILCS 50/1(m)(iii) (West 2012) that Brooke had not made reasonable progress, within a nine-month period after the first nine-month period after the children were adjudicated neglected, toward the return of the children to her care. The children were adjudicated neglected on April 27, 2011, and the State timely filed a notice that it intended to rely upon the nine-month period beginning about one year later, from April 26, 2012, to January 26, 2013.

¶ 33 During that period, Brooke's service plan required her to attend visits with her children; attend individual counseling; obtain management of her prescribed medications through a psychiatrist; comply with random drug tests; attend at least three sessions weekly of 12-step programs such as AA and NA, and provide documentation of her attendance to the case worker; and, once she had begun receiving treatment for her own mental health and substance abuse issues, attend family counseling. Although she had regular visits with her children, Brooke did not comply with any of the remaining requirements of her service plan. She told her case worker that she was attending AA and NA meetings, but provided no documentation of that. She did complete one random drug test during the nine-month period (on May 22, 2012), but then refused to complete any others, and stated that she did not plan to comply with future requests for random testing. She did not contact any service providers to receive either psychiatric assistance or individual counseling, despite two referrals by the case worker, and was unable to start family counseling because she had not yet addressed her own mental health needs. In light of all of this evidence, the trial court's

finding that the State had proved Brooke unfit on this ground was not against the manifest weight of the evidence. See 750 ILCS 50/1(D)(m) (West 2012); *In re C.N.*, 196 Ill. 2d 181, 217 (2001) (failure to substantially fulfill the requirements of a service plan constitutes evidence of failure to make reasonable progress toward reunification).

¶ 34 Brooke argues that the evidence considered by the trial court in connection with count 5 (and the other counts) consisted of testimony by a case worker (Ms. Miley) who had personal knowledge of events only in the four months since she had been appointed, and hearsay evidence (case worker and CASA reports, and service plans). However, service plans and other documents (such as reports) generated in the ordinary course of business by service providers and agencies are not hearsay; rather, pursuant to section 2-18(a)(4) of the Juvenile Court Act (705 ILCS 405/2-18(a)(4) (West 2012)), they are admissible as business records. *Id.*; see also *In re A.B.*, 308 Ill. App. 3d 227, 235-36 (1999). Thus, there is no merit to Brooke's argument that the trial court should not have considered these documents. Brooke also argues that she was unable to obtain transportation to the psychiatric service provider, but the record does not contain any evidence that transportation issues were in fact the reason she failed to obtain these services.

¶ 35 In light of our determination that the trial court's finding of unfitness on count 5 was not against the manifest weight of the evidence, we need not address Brooke's remaining arguments regarding the other grounds of unfitness. *Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89.

¶ 36 Best Interests

¶ 37 The last argument Brooke raises on appeal is that the trial court erred in finding that termination of her parental rights was in the best interests of the children. The State must prove by a preponderance of the evidence that it is in the children's best interests to terminate parental rights.

*In re D.T.*, 212 Ill. 2d 347, 366 (2004). We review a trial court's best-interest determination deferentially due to its superior ability to observe the witnesses, and will reverse only if that determination is against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶¶ 65, 66.

¶ 38 Under the Juvenile Court Act of 1987, the best interests of the minors is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). In other words, a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child involved. *Id.* at 50.

¶ 39 The Juvenile Court Act sets forth the factors to be considered whenever a best-interests determination is required, all of which are to be considered in the context of a child's age and developmental needs: the physical safety and welfare of the child; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the "risks attendant to entering and being in substitute care"; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). Other relevant factors in best-interests determinations include the nature and length of the minors' relationships with their present caretaker and the effect that a change in

placement would have upon their emotion and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 40 Brooke argues that an application of these factors favors placing the children with her because Heaven has a strong bond with her, the foster home may be crowded (there is some evidence that Mattie R. and her adult son care for other children as well), and the children both face difficulties (Heaven with behavioral and academic problems, and Dae'Sean through his speech and developmental delays). This argument ignores the evidence that Heaven also has a bond with Mattie R. and would like to be adopted by her if she could not be with Brooke, and Dae'Sean's only real experience of a home and family has been in Mattie R.'s home. There was no evidence of overcrowding in the foster home. Most importantly, Mattie R. has shown herself to be willing and able to ensure that the children's difficulties (many of which predate their placement in her home) are addressed through services, unlike Brooke, who has shown neither the interest nor the ability to ensure this. Indeed, at the time of the best-interests hearing, Brooke had not even reached a point in her own stability that she could have unsupervised visitation with her children. After viewing all of the evidence in the record, we conclude that the trial court's determination of the children's best interests was not against the manifest weight of the evidence.

¶ 41

#### CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County terminating the parental rights of Brooke with respect to Heaven R. and Dae'Sean R.

¶ 43 Affirmed.