

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (3d) 120775-U

Order filed February 21, 2013

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

<i>In re</i> J.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-12-0775
	)	Circuit Nos. 10-JA-329
v.	)	
	)	
Jaclyn M.,	)	Honorable
	)	Chris L. Fredericksen,
Respondent-Appellant).	)	Judge, Presiding.

---

JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and O'Brien concurred in the judgment.

---

**ORDER**

- ¶ 1 *Held:* The trial court's findings that the respondent failed to make reasonable progress toward the return home of her child and that it was in the child's best interest to terminate her parental rights were not against the manifest weight of the evidence.
- ¶ 2 The trial court found the respondent, Jaclyn M., unfit to parent the minor, J.P. Following a best interest hearing, the trial court determined that it was in J.P.'s best interest to terminate the

respondent's parental rights. The respondent appeals, arguing that (1) the trial court committed reversible error by finding her unfit; and (2) the trial court's finding that it was in J.P.'s best interest to terminate her parental rights was against the manifest weight of the evidence. We affirm.

¶ 3

#### FACTS

¶ 4 J.P. was born on November 2, 2010. On November 17, 2010, the State filed a juvenile petition alleging that J.P. was neglected in that his environment was injurious to his welfare because: (1) he was born with cocaine in his system; (2) the respondent has a history of substance abuse with cocaine and prescription medication; (3) the respondent has mental health problems, has been diagnosed as bi-polar and she attempted suicide in January 2010 by overdosing on Depakote; (4) on August 5, 2010, when the respondent was pregnant, J.P.'s father committed domestic violence against the respondent in the presence of the respondent's two older children; (5) on May 25, 2010, while the respondent was pregnant with J.P., she broke windows in J.P.'s father's van; (6) the respondent has a prior 2007 DUI; (7) J.P.'s father has a criminal history that includes convictions for possession of a controlled substance, domestic battery, resisting police and possession of cannabis; (8) the respondent was previously indicated by DCFS on October 15, 2008, for risk of harm – substance abuse and domestic violence; (9) the respondent and J.P.'s father reside in the same home.

¶ 5 On February 28, 2011, the trial court adjudicated J.P. neglected. One month later, the trial court found both parents dispositionally unfit, made J.P. a ward of the court and named DCFS as his guardian. The court ordered the respondent to perform two random drug drops per month, submit to a psychiatric examination, participate in and successfully complete counseling, participate in and successfully complete a parenting course, participate in and successfully complete a domestic

violence course, obtain and maintain stable housing, and visit J.P., as scheduled.

¶ 6 On December 13, 2011, the State filed a petition to terminate the respondent's parental rights, alleging that the respondent was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act (Act) (750 ILCS 50/1(D)(m)(ii) (West 2010)) in that she failed to make reasonable progress toward the return of J.P. within nine months following the adjudication of neglect on February 28, 2011. At the hearing on the State's termination petition, the trial court took judicial notice of the case file, and the State entered into evidence (1) a certified copy of the respondent's conviction for retail theft on October 19, 2011; (2) records from the Center for Prevention of Abuse; (3) counseling and visitation records from the Center for Youth and Family Solutions; and (4) records from White Oaks Center.

¶ 7 The respondent testified that between February 28, 2011, and November 28, 2011, the relevant nine-month period, she submitted to a psychiatric evaluation and completed a parenting class. She offered into evidence a certificate of completion from her parenting class. During the relevant time period, she received drug treatment from New Leaf in an intensive outpatient program. She completed the first intensive outpatient program and moved on to the next level. She did not successfully complete the next level of treatment. She did not remember telling anyone at New Leaf that she relapsed in September 2011, but said that she may have done so. Her drug drops were positive for cocaine in March 2011 and September 2011.

¶ 8 The respondent testified that she completed seven domestic violence classes and thought that she had "attended as many classes as necessary to teach me what I needed to know." She admitted that she was charged with retail theft in October 2011, and was convicted of that crime.

¶ 9 The trial court found that the respondent did not make reasonable progress in the specified nine-month period. The case proceeded to a best interest hearing.

¶ 10 Before the best interest hearing, a best interest report was filed with the court. The report indicated that J.P. has lived in his current foster home since March of 2011, when he was approximately four months old. At the time of the report, J.P. was 20 months old and described as a "very active and happy child." The caseworker observed J.P. smiling and playing with his foster siblings during foster home visits. He is affectionate with his foster parents and looks to them for assistance and reassurance. Other children of the foster parents identify J.P. as part of their family.

¶ 11 The caseworker described J.P.'s relationship with the respondent as "minimal." The respondent visited J.P. once in July 2012, but had no visits with him from November 2011 to June 2012. Prior to that, the respondent's visitation with J.P. was inconsistent. The caseworker recommended termination of the respondent's parental rights.

¶ 12 On August 29, 2012, at the best interest hearing, the respondent testified that she was recently incarcerated from April to June 2012, for unlawful delivery of a controlled substance. While she was incarcerated, she completed a 14-week substance abuse class. She is currently engaged in an intensive outpatient substance abuse treatment program at White Oaks. She has completed four weeks of the program and has eight weeks until she is finished. Since she has been released from jail, she has not used any illegal substances.

¶ 13 The respondent testified that she did not visit J.P. from late October 2011 until July 2012. Prior to that, she regularly visited with him. During her visits with J.P., he sits on her lap, lets her hold him and lets her kiss him. She thinks J.P. knows who she is. She believes she can be a positive influence in J.P.'s life and wants to continue to have a parental relationship with J.P.

¶ 14 The court found that it was in the best interest of J.P. that the respondent's parental rights be terminated. The court found that J.P. is in a "very safe and secure environment" with his foster

parents and questioned whether the respondent could provide a safe environment for J.P. because of her long history of substance abuse.

¶ 15

#### ANALYSIS

¶ 16 On appeal, the respondent argues that the State failed to prove that she was an unfit parent and that it was in J.P.'s best interest to terminate her parental rights.

¶ 17

#### I. Fitness

¶ 18 Section 1(D) of the Adoption Act (Act) defines an unfit person as "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." 750 ILCS 50/1(D) (West 2010). Pursuant to section 1(D)(m)(ii) of the Act, a parent will be found unfit for failing to make reasonable progress toward the return of the child within nine months after an adjudication of a neglected or abused minor. 750 ILCS 50/1(D)(m)(ii) (West 2010).

¶ 19 Reasonable progress is an objective standard that requires demonstrable movement toward the goal of reunification. *In re C.N.*, 196 Ill. 2d 181, 211 (2001). The benchmark for measuring a parent's progress toward the return of the child 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 any other conditions that later become known and would prevent the court from returning custody of the child to the parent. *Id.* at 216. A parent has made reasonable progress when the court can conclude that the parent's progress in complying with directives given for the return of the child is of such quality that the court will be able to order the child returned to the parent in the near future. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 20 A finding of unfitness must be by clear and convincing evidence. *In re Joshua S.*, 2012 IL

App (2d) 120197, ¶ 44. We review the trial court's unfitness determination under the manifest weight of the evidence standard. *In re Adoption of Syck*, 138 Ill. 2d 255, 274 (1990). A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 21 Here, the trial court found the respondent unfit for failing to make reasonable progress from February 28, 2011, to November 28, 2011. During that nine-month period, the respondent tested positive for cocaine on two occasions, was convicted of retail theft, and stopped visitation with J.P. Based upon this record, the trial court's finding that the respondent failed to show a demonstrable movement toward reunification with J.P. and that the respondent was unfit for failure to make reasonable progress was not against the manifest weight of the evidence.

¶ 22 II. Best Interest

¶ 23 Once the trial court has found the parent to be unfit, all considerations must yield to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Accordingly, at the best interest hearing, the focus shifts from the parent to the child's interest in a stable, loving home life. *Id.* At the best interest stage, the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interest. *Id.* at 366.

¶ 24 In considering a minor's best interest, the trial court must consider certain statutory factors in light of the minor's age and developmental needs, including: (1) the physical safety and welfare of the minor; (2) the development of the minor's identity; (3) the familial, cultural and religious background of the minor; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with her parental figures; (5) the wishes of the minor; (6) the minor's

community ties; (7) the minor's need for permanence, including stability and continuity of relationships; and (8) the preferences of persons available to care for the minor. 705 ILCS 405/1-3(4.05) (West 2010). A trial court's determination that it is in a child's best interest to terminate the rights of a parent will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008).

¶ 25 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in J.P.'s best interest to terminate the respondent's parental rights. At the time of the best interest hearing, J.P. had been in his current foster home for 17 of the 21 months of his life. He is safe and secure in that home and looks to his foster parents to provide for his needs. J.P.'s foster parents are willing and able to adopt J.P. As described by J.P.'s caseworker, J.P.'s relationship with the respondent is "minimal." The respondent's visitation with J.P. has been inconsistent, with the respondent not visiting J.P. for a period of seven months.

¶ 26 Based on the foregoing, we find that the circuit court's determination that it was in J.P.'s best interest to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 27

#### CONCLUSION

¶ 28 The judgment of the circuit court of Peoria County is affirmed.

¶ 29 Affirmed.