

NOTICE
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2013 IL App (4th) 120856-U
NO. 4-12-0856
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
January 23, 2013
Carla Bender
4th District Appellate
Court, IL

In re: I.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 10JA82
ELIZABETH JETT,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that respondent is an "unfit person" under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)) was not against the manifest weight of the evidence, and therefore the court's judgment is affirmed.

¶ 2 Following an evidentiary hearing, the circuit court of Adams County found respondent Elizabeth Jett an unfit parent under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)). The court subsequently terminated respondent's parental rights to her son. For the reasons set forth below, we affirm the judgment.

¶ 3 **I. BACKGROUND**

¶ 4 On December 3, 2010, the State filed a wardship petition, alleging the minor, I.H., born January 20, 2010, was neglected because his environment was injurious to his welfare when he resided with his mother (respondent) and grandmother. See 705 ILCS 405/2-3(1)(b) (West 2010).

Police found a methamphetamine lab in the home. Respondent was charged with several related felonies in Adams County case No. 10-CF-722. The grandmother was also charged. The minor's father was incarcerated on unrelated charges; he is not a party to this appeal.

¶ 5 The trial court entered a temporary custody order and appointed the Illinois Department of Children and Family Services (DCFS) as the child's temporary guardian. Due to her incarceration, respondent was denied visitation pending further court order. The minor was placed in a traditional foster home in Quincy.

¶ 6 On May 5, 2011, the trial court entered an adjudicatory order, finding I.H. to be a neglected minor based upon respondent's admitted use of methamphetamine. Respondent pleaded guilty to her felony charges and was sentenced to five years in prison. On June 7, 2011, the court entered a dispositional order, finding respondent unfit, unable, or unwilling to care for I.H. and adjudicating I.H. a ward of the court.

¶ 7 On January 27, 2012, the State filed a petition to terminate respondent's parental rights, alleging she was unfit for failing to make reasonable progress toward the return of I.H. within the initial nine-month period following adjudication, or between May 6, 2011, and February 5, 2012 (750 ILCS 50/1(D)(m)(ii) (West 2010)). On April 12, 2012, the State filed a document notifying the trial court that it would also present evidence of respondent's unfitness for the nine-month period between February 6, 2012, to November 5, 2012 (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 8 On August 27, 2012, the trial court conducted a hearing on the State's petition to terminate. Initially, the court took judicial notice of respondent's two drug-related convictions from Adams County (Nos. 10-CF-722 (manufacture of methamphetamine) and 11-CF-1116 (manufacture and delivery of a non-narcotic, schedule I and II)) and received a certified copy of her conviction

from Christian County (No. 10-CF-156 (possession of methamphetamine)). Respondent had been sentenced to concurrent sentences of five, three, and two years in prison, respectively.

¶ 9 First to testify for the State was Erin Baker, the DCFS caseworker. One of her duties was to prepare the client-service plans in this case. The first plan prepared for respondent was dated January 14, 2011, and included only one task, "cooperation," but included the following recommendations: (1) notify DCFS of the conditions of her sentences; (2) attend Alcoholics Anonymous or Narcotics Anonymous meetings; (3) successfully complete an alcohol and drug treatment program; (4) notify DCFS of the conditions of parole; (5) sign requested releases of information; (6) contact her Department of Corrections (DOC) counselor for list of treatment programs; and (7) comply with the provisions of parole. Respondent's task of cooperation remained the same for the subsequent case plans dated December 5, 2011, and June 11, 2012. On each plan, respondent was rated satisfactory in terms of her cooperation, but her overall progress was rated unsatisfactory due to her continued incarceration and lack of visitation.

¶ 10 Baker testified that respondent had forwarded certificates indicating her completion of a drug-abuse counseling program, a parenting class, and an anger-management class while in prison. However, because these programs were part of a DOC curriculum, Baker could not effectively evaluate the quality of each. Although respondent had not visited with I.H., she contacted him through Baker by sending cards, notes, and gifts.

¶ 11 The State rested and respondent presented no evidence. After considering recommendations of counsel, the trial court found as follows:

"Some of the evidence that has been presented has related to certain service plans, which were prepared in this case, service plans

which were set up with goals and tasks for each of the parents. There's also been evidence presented regarding evaluations which were given to those service plans periodically, approximately, every 6 months, rating certain parts of them or all of them as satisfactory or unsatisfactory.

That evidence is properly admissible regarding the service plans. The court has to decide what weight to give to it, but the law is clear that the court cannot rely solely on evaluations which are given to service plans in an attempt to decide whether or not there has been proof of unfitness. The overall focus of the court is required to be that on a parent's progress relative to a child's needs to determine if there's been fitness or unfitness, and not simply rely on an evaluation of part or all of a service plan, and that's what the court has done here in evaluating the evidence to determine whether or not the people's burden has been met on the issue of unfitness.

The people have alleged, along with their motion for termination, an amended 9-month periods of time that are being dealt with here on this motion. The first 9-month period alleged by the state was from May the 6th, 2011, through February 5, 2012, and the second 9-month period being alleged is February 6th, 2012, up to November 5 of 2012. So those are the two 9-month periods that the court is evaluating here today.

* * *

With regard to the minor's mother, the record in this case shows that the minor was born January 20, 2010, that the petition in this case was filed December 3, 2010, and there was a shelter care order entered on December 3, 2010, and then the case proceeded on from there, encompassing the two 9-month periods, as the court has already described as being in the people's amended pleading here today.

During that entire time that this case has been pending and during the entire time of the two 9-month periods, the minor's mother has been incarcerated at various places, first at the Adams County Jail, and then was transferred to the Illinois Department of Corrections, where she still is today. The record shows that the minor's mother has been incarcerated during those time periods because of certain criminal convictions which she has obtained, two in Adams County and one in Christian County, involving manufacture and possession of methamphetamine, and also delivery of a controlled substance. She received sentences in each of those cases, which are being served concurrently.

The record also shows that during the time that the minor's mother has been at the Department of Corrections, she has completed certain course—courses in the areas of substance abuse, parenting

skills, anger management, as shown by the exhibits which have been introduced into evidence here today.

In the motion for termination that had been filed by the people, the ground of unfitness, which is alleged as to the minor's mother, is alleged that she has failed to make reasonable progress toward the return of the minor within 9 months after an adjudication of neglect. The court is making the finding today that that allegation of unfitness has also been proven by clear and convincing evidence here today.

The mother has done some things while she's been incarcerated, attending the classes that she has attended and receiving those certificates that she has. The law with regard to an allegation of unfitness, such as the one that's been made here today with regard to the minor's mother, contemplates reasonable progress being made toward the return of the minor child. And the law is also very clear that, in cases such as this, that there may be efforts which are made on the part of a parent which do not always translate into the type of reasonable progress that is contemplated by the statute, and that appears to be what the situation is here.

The visits between the minor and the minor's mother had been suspended during the two 9-month periods that are alleged here, partly because of the minor's age, partly because of the distance

between where the minor was located and where the mother was at, the Department of Corrections, and also because of the lack of a proper environment for a child of that age to be visiting a parent at the Department of Corrections.

We also have the situation where the minor's mother, even though she's been able to achieve these certificates which have been brought into court today, has not been able to make the type of reasonable progress which is contemplated by the statute simply because of her being incarcerated, which severely limits her abilities to parent effectively or to demonstrate her abilities to have a child be returned into her care.

So based upon all those things, the court is making the finding that [the] allegation of unfitness has been proven by clear and convincing evidence by the testimony and by the exhibits presented here today."

¶ 12 The trial court immediately proceeded to the best-interest hearing. Baker testified that I.H., who was two years old, has resided with the same foster family in Quincy since being taken into protective custody in December 2010. The minor has bonded with the family, calling the foster parents "Mom" and "Dad," and the other child in the home, who currently attends preschool, his "brother." The parents discipline the minor using a time-out method and have done well teaching him manners. Initially, I.H. participated in therapy for issues related to separation anxiety from the foster mother. Those issues have resolved and I.H. has been successfully discharged from treatment.

Based on Baker's observations of I.H. in the home, she felt the parents were meeting all of I.H.'s needs. The foster mother was compiling a "life book" for I.H. by gathering photographs and noting milestones. I.H. appeared "happy, healthy" and his gross motor skills were "very advanced." The foster parents expressed their willingness to adopt I.H. The State rested. No other evidence was presented.

¶ 13 After considering the recommendations of counsel, the trial court found it was in I.H.'s best interests to terminate respondent's parental rights. The trial court entered a written order terminating respondent's parental rights to I.H. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 According to the State's petition for termination of parental rights, respondent was an "unfit person" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) due to her "[f]ailure *** to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected *** minor." 750 ILCS 50/1(D)(m)(ii) (West 2010). The trial court found, by clear and convincing evidence, that respondent had failed to make reasonable progress during this initial nine-month period, and respondent argues that this finding is against the manifest weight of the evidence. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001) ("In order to reverse a trial court's finding that there was clear and convincing evidence of parental unfitness, the reviewing court must conclude that the trial court's finding was against the manifest weight of the evidence.").

¶ 16 The supreme court has explained that "[a] finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *C.N.*, 196 Ill. 2d at 208. Evidently, in this context, "the opposite conclusion" is the conclusion opposite to that stated in the "finding."

The trial court's finding is as follows: the State proved, by clear and convincing evidence, that respondent failed to make reasonable progress during the initial nine months after the adjudication of neglect. That finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident, namely, that the State did not prove, by clear and convincing evidence, that respondent failed to make reasonable progress during the initial nine months after the adjudication of neglect. See *C.N.*, 196 Ill. 2d at 208.

¶ 17 "[T]he date on which to begin assessing a parent's *** progress is the date the trial court enters its order adjudging the minor neglected ***." *In re D.F.*, 208 Ill. 2d 223, 243 (2003). In the present case, May 6, 2011, was when the trial court adjudged I.H. to be neglected. Therefore, the initial nine-month period was from May 6, 2011, to February 5, 2012.

¶ 18 The initial nine-month period encompassed two service plans. The first service plan began in January 2011, and ended in June 2011. The second service plan began in June 2011, and ended in December 2011. DCFS gave respondent an overall rating of unsatisfactory on both service plans because, although she had cooperated with DCFS by signing releases and remaining in contact with the caseworker, she had not made progress toward the return of I.H. due to her incarceration and her inability to demonstrate she could discharge her parental responsibilities. The trial court agreed with these conclusions, most notably because respondent had not "been able to make the type of reasonable progress which is contemplated by the statute simply because of her being incarcerated, which severely limits her abilities to parent effectively or to demonstrate her abilities to have a child returned into her care."

¶ 19 Respondent was incarcerated during the life of this case, between December 2010 and August 2012. She was serving sentences in multiple criminal cases. It would not be in I.H.'s best

interests to keep him in the limbo of foster care until respondent was released, whereupon he would remain in limbo even longer, awaiting the final result of the services: whether they yielded a substantially changed or unchanged parent. For this reason, the supreme court has held that "time spent in prison does not toll the nine-month period." *In re J.L.*, 236 Ill. 2d 329, 341 (2010). "In order to show progress toward the return of [her] child, the respondent needed to show that [she] could function as a law-abiding citizen and responsible parent in an unstructured, real world, environment." *In re S.E.*, 296 Ill. App. 3d 412, 415 (1998). Respondent never made this showing during the initial nine-month period, and hence the trial court did not make a finding that was against the manifest weight of the evidence when it found she failed to make reasonable progress during that period.

¶ 20 We affirm the trial court's judgment, finding the evidence sufficiently proved respondent was an unfit parent as alleged in the petition to terminate respondent's parental rights. Respondent does not challenge the trial court's best-interest finding, and thus, we affirm the court's order of termination.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the trial court's judgment.

¶ 23 Affirmed.