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2013 IL App (4th) 121014-U  
NOS. 4-12-1014, 4-12-1085 cons.

FILED  
March 25, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

In re: E.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-12-1014)	)	No. 11JA72
MICHELLE B. CASTELLANO,	)	
Respondent-Appellant.	)	
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In re: E.C., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-1085)	)	Honorable
GINO CASTELLANO,	)	Michael D. Clary,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Pope and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's unfitness findings and best-interest determinations were not against the manifest weight of the evidence and it committed no error in terminating respondents' parental rights.

¶ 2 Respondent mother and father, Michelle B. and Gino Castellano, appeal the trial court's termination of their parental rights to their minor child, E.C. (born June 3, 2011). They filed separate appeals and each challenges the court's unfitness findings and best-interest determinations. Their cases were consolidated on appeal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record reflects Michelle and Gino are married and the parents of four

children. E.C. is their youngest child and was born at home on June 3, 2011. Michelle reported she had been unaware that she was pregnant with E.C. and received no prenatal care. At the time of E.C.'s birth, the couple's three oldest children were in foster care.

¶ 5 On June 6, 2011, the State filed a petition for adjudication of wardship, alleging E.C. was neglected on the basis that her environment was injurious to her welfare. Specifically, it alleged E.C.'s three older siblings were in foster care and the conditions which resulted in their removal from the home had not been corrected. On July 12, 2011, the trial court entered an adjudicatory order that found E.C. neglected as alleged in the State's petition. On August 11, 2011, the court's dispositional order was filed, adjudicating E.C. neglected, making her a ward of the court, and placing custody and guardianship of E.C. with the Illinois Department of Children and Family Services (DCFS).

¶ 6 On August 9, 2012, the State filed an amended petition to terminate Michelle and Gino's parental rights to E.C. Relevant to this appeal, it alleged Michelle and Gino were unfit for failing to (1) maintain a reasonable degree of interest, concern, or responsibility as to E.C.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) make reasonable efforts to correct the conditions that were the basis for E.C.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)); and (3) make reasonable progress toward E.C.'s return within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)). The State also alleged termination of Michelle and Gino's parental rights was in E.C.'s best interests.

¶ 7 On August 30 and September 26, 2012, the trial court conducted hearings regarding the unfitness portion of termination proceedings. The State presented the testimony of Taylor Vollmer, E.C.'s caseworker with the Center for Youth and Family Solutions. Michelle

and Gino also testified.

¶ 8 According to Vollmer, E.C. was taken into care at birth because of the family's involvement with DCFS due to allegations of neglect and failure to thrive with respect to E.C.'s older siblings. Vollmer noted both Michelle and Gino had cognitive disabilities and had been diagnosed as having either borderline intellectual functions or mild mental retardation. In September 2011, their parental rights to their three eldest children were terminated.

¶ 9 Vollmer testified regarding two client service plans that were prepared following E.C.'s birth and which covered June 2011 through November 2011 and November 2011 through May 2012. Each plan required Michelle and Gino to engage in parenting, counseling, mental-health, and visitation services. They were also required to maintain a source of income and appropriate housing. In connection with the June 2011 through November 2011 service plan, both Michelle and Gino received unsatisfactory ratings on parenting services. Although both completed parenting classes, Gino's counselor found him unwilling to accept suggestions regarding how to interact with E.C. during visitations and neither Michelle's counselor nor Vollmer felt Michelle engaged with E.C. during visits. Vollmer testified Michelle changed E.C.'s diapers but otherwise "pretty much s[at] in the background during visits." Vollmer acknowledged both parents "pretty much went to every visitation" with E.C. and held, fed, and changed her properly and without prompting. However, she testified E.C. cried throughout visitations and Michelle and Gino appeared frustrated because they did not know what to do.

¶ 10 Also during the June to November 2011 time frame, Michelle and Gino received unsatisfactory ratings with respect to counseling services. Vollmer testified the parties each received parenting, individual, and marriage counseling services. In September 2011, both

parents were unsuccessfully discharged from counseling for being unwilling to participate and lack of attendance. Michelle testified she was discharged due to transportation issues, noting she did not have a vehicle at that time. However, Vollmer testified she had been aware of Michelle's transportation issues and was willing to provide Michelle with transportation through her agency.

¶ 11 Vollmer stated, from June to November 2011, Gino received a satisfactory rating for maintaining a residence and income. Michelle was living with Gino and also received a satisfactory rating with regard to her housing. However, Michelle was rated unsatisfactory for maintaining income because she did not have a job. Vollmer spoke with Michelle about obtaining social security benefits and applying for work at a McDonald's restaurant. Michelle applied for social security but to Vollmer's knowledge never received any benefits. Additionally, Michelle reported she was not qualified to work at McDonald's.

¶ 12 Michelle also received an unsatisfactory rating with respect to mental-health services. According to Vollmer, in July 2011, Michelle underwent an intake assessment at Crosspoint Human Services. Although Crosspoint recommended depression management and parenting services, Michelle did not follow up with those recommendations. At the unfitness hearing, Michelle explained she "got busy babysitting."

¶ 13 Regarding the second service plan, covering November 2011 through May 2012, Gino was, again, rated unsatisfactory in connection with parenting services. Vollmer testified Gino did not engage with E.C. as much as he should and did not follow up with the parenting skills he learned in parenting classes. Gino also received an unsatisfactory rating with respect to counseling services. Vollmer testified she rereferred Michelle and Gino for counseling services after their unsuccessful discharge in September 2011. In November 2011, Gino began individual

counseling but, in December 2011, he was unsuccessfully discharged for failing to participate. Vollmer testified Gino was unwilling to work with his new counselor. Thereafter, Vollmer made another rereferral for counseling services but Gino was placed on a wait list. In April 2012, he began individual counseling services.

¶ 14 Michelle also received an unsatisfactory rating with respect to her services for the November 2011 through May 2012 time period. Vollmer testified Michelle's services included mental-health treatment. In December 2011, she underwent a second mental-health assessment at Crosspoint and received recommendations for counseling related to depression and parenting issues. Michelle failed to follow up with Crosspoint's recommendations and testified she forgot to make a further appointment. Vollmer testified Michelle was required to follow through with Crosspoint services before she could begin marriage counseling. Because Michelle did not engage in mental-health services, she also could not engage in marriage counseling and was rated unsatisfactory for that service. However, at the unfitness hearing, Michelle testified she had recently seen a physician who prescribed medication for depression and, the day before the September 2012 hearing, began taking that medication.

¶ 15 Following May 2012, Gino engaged in counseling and visitation services. However, in June or July 2012, he moved to Peoria, Illinois, for approximately one month. During that time frame, he did not have contact with Vollmer and did not engage in any services, including counseling and visitation. After May 2012, Michelle did not participate in any sort of counseling nor had she returned to Crosspoint to engage in mental-health services. Vollmer testified Michelle consistently engaged in visitation with E.C. but, when Vollmer lost contact with Gino, she also lost contact with Michelle and Michelle did not attend visitations.

¶ 16 After July 2012, Michelle and Gino resided with Michelle's sister and neither were employed. According to Vollmer, E.C. could not be returned to Michelle and Gino at that residence. She testified it was a two-bedroom apartment and, also living in the home, were Michelle's sister, her sister's husband, and her sister's children. At that time, both Michelle and Gino were considered unsatisfactory with respect to housing and employment.

¶ 17 At the September 2012 hearing, Gino testified he was living at a friend's house. Although he and Michelle were working on their relationship, Michelle did not live with him because she did not get along with his friends. Michelle testified she was unemployed but babysat her sister's children. She stated she had applied for social security income but was denied.

¶ 18 At the conclusion of the unfitness hearings, the trial court found both Michelle and Gino unfit for failing to (1) maintain a reasonable degree of responsibility as to E.C.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) make reasonable efforts to correct the conditions that were the basis for E.C.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)); and (3) make reasonable progress toward E.C.'s return within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)). The court then set the matter for a best-interests hearing.

¶ 19 On October 25, 2012, the best-interests hearing was held. The State presented the testimony of Kristen Larkin, E.C.'s most recent caseworker with the Center for Youth and Family Solutions. Larkin stated that, since birth, E.C. resided in a relative foster home with her maternal grandmother. E.C.'s three older siblings were also in the home and in the process of being adopted by their grandmother. Larkin described E.C. as doing very well in the home and having a bond with both her foster parents and her siblings. E.C. identified her foster parents as "mom

and dad." Larkin testified E.C. was excited to see her foster parents and became upset when removed from their care. The foster parents were willing to provide E.C. with permanency through adoption.

¶ 20 Chiquita Oglesby testified she was a site supervisor at the Center for Youth and Family Solutions and was the supervisor on E.C.'s case. She reviewed notes regarding E.C.'s visitations with Michelle and Gino but did not personally observe any visits. Oglesby testified there was a lack of interaction between E.C. and her parents during visits. She stated Michelle and Gino watched and observed E.C. but did not actually interact with her.

¶ 21 Gino testified on his own behalf. He disagreed with testimony the State presented regarding his visitations with E.C. Gino stated he brought toys to visits with E.C. and would sit on the floor and play with her or watch her play with the toys. He testified E.C. no longer cried during visits and would come up to him and sit on his lap. She also called him "dad." Gino gave E.C. snacks during visits with age appropriate food and changed her diapers. He testified E.C. smiled and giggled around Michelle and referred to her as "mom." Gino stated E.C. would become upset and start crying at the end of visits.

¶ 22 Gino testified he continued to reside with friends and lived separately from Michelle. However, he and Michelle were married and intended to continue their relationship. Gino planned to get his own place to live and stated he worked "odds-and-end jobs," earning \$300 to \$400 per week.

¶ 23 Michelle testified she was unemployed and continued to reside with her sister. Six people lived in her sister's three-bedroom residence. Michelle agreed that, although she did not live with Gino, she intended to maintain a relationship with him. Michelle stated she was

taking medication for depression. She felt like the medication was working and her mood was "happier." Michelle described her visits with E.C. as being good, noting she walked with E.C., brought her toys, changed her diaper, and fed her snacks. She stated E.C. only cried when she left visits. E.C. would also hug and kiss Michelle and called Michelle "mom." Michelle agreed that she was not yet ready to have E.C. returned to her care.

¶ 24 At the conclusion of the hearing, the trial court determined termination of Michelle and Gino's parental rights was in E.C.'s best interests. In so holding, it noted the parties' lack of participation in, or completion of, required services; the parties' lack of stability with respect to income and housing; and that E.C. had been living in the same relative foster home since birth with her older siblings.

¶ 25 These appeals followed.

## ¶ 26 II. ANALYSIS

¶ 27 On appeal, Michelle and Gino each challenge the trial court's unfitness findings as well as its best interest determinations. They argue the court's determinations were against the manifest weight of the evidence.

¶ 28 To involuntarily terminate parental rights, the trial court must find (1) that a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) and (2) termination of parental rights is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). The State has the burden of proving unfitness by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516 (2005). On review, the trial court's unfitness determination will not be disturbed unless it is contrary to the manifest weight of the evidence. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 516-17. "A

court's decision \*\*\* is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 29 "Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness." *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006).

Here, the trial court found Michelle and Gino unfit based upon three grounds alleged by the State. First, the State alleged, and the court found, Michelle and Gino unfit pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2010)). Pursuant to that section, a parent may be found unfit for failing "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2010). Because section 1(D)(b)'s language is in the disjunctive, any of the three listed elements (interest, concern, or responsibility) may be considered on its own as grounds for unfitness. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004).

¶ 30 Under section 1(D)(b), "a trial court must focus on a parent's reasonable efforts and not her success, and must consider any circumstances that may have made it difficult for her to visit, communicate with or otherwise show interest in her child." *Jaron Z.*, 348 Ill. App.3d at 259, 810 N.E.2d at 125. "However, \*\*\* a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern and responsibility must be reasonable." *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125. "Noncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under subsection (b)." *Jaron Z.*, 348 Ill. App. 3d at

259, 810 N.E.2d at 125. Further, "consistent attendance at scheduled visitations alone does not demonstrate objectively reasonable interest, concern, or responsibility as to the children's welfare where a parent otherwise fails to substantially comply with the other directives of the service plan in the face of knowing that substantial compliance is necessary in order to have children returned home." *In re M.J.*, 314 Ill. App. 3d 649, 657, 732 N.E.2d 790, 796-97 (2000).

¶ 31 In this instance, the trial court found each parent failed to maintain a reasonable degree of responsibility as to E.C.'s welfare. Michelle and Gino argue the court's findings were against the manifest weight of the evidence because they showed a reasonable degree of responsibility as to E.C. by maintaining visitation with her. However, although the record shows Michelle and Gino consistently exercised visitation with E.C., it also shows each parent's noncompliance with required services.

¶ 32 During the pendency of the case, both parents received unsatisfactory ratings on service plans. In September 2011, they were unsuccessfully discharged from counseling for being unwilling to participate and lack of attendance. In December 2011, Gino was, again, unsuccessfully discharged from counseling and evidence showed he was unwilling to work with his new counselor. Michelle failed to follow through with recommended mental-health services and evidence showed she could not begin marriage counseling services until she followed through with mental-health recommendations. In April 2012, Gino began counseling services for a third time; however, for approximately one month around June 2012, neither parent had contact with their caseworker and both failed to engage in any services, including counseling and visitation. While the case was pending, Michelle never maintained a consistent source of income and, at the time of the unfitness hearing, both parents were unemployed and neither had

stable housing. Finally, although Michelle and Gino consistently visited with E.C., concerns were expressed regarding whether they appropriately engaged or interacted with her during visits.

¶ 33 Michelle and Gino's noncompliance or, at the most, minimal compliance with the services that were necessary for E.C.'s return to their care established their lack of responsibility as to her welfare. As a result, the evidence presented supported the trial court's decision that each parent was unfit and its unfitness determinations were not against the manifest weight of the evidence. As stated, the court also found Michelle and Gino unfit based upon two additional grounds. However, because the evidence presented was sufficient to prove Michelle and Gino's unfitness pursuant to section 1(D)(b), it is unnecessary to address those remaining grounds.

¶ 34 On appeal, Michelle and Gino also argue the trial court erred in finding termination of parental rights was in E.C.'s best interests. They both argue the court's decision was against the manifest weight of the evidence because they rarely missed visits with E.C. while the case was pending.

¶ 35 "After a finding of parental unfitness, the trial court must give full and serious consideration to the child's best interest." *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009).

"When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love,

security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

On review, the court's best-interest determination will not be reversed unless it was against the manifest weight of the evidence. *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 36 At the best-interest hearing, evidence showed E.C. was removed from Michelle and Gino's care at birth and, since that time, resided in a foster home with her maternal grandmother. E.C.'s older siblings were also in the home and in the process of being adopted. Evidence showed E.C. was doing well in the home and had a bond with her foster parents and siblings. She identified the foster parents as "mom and dad" and the foster parents were willing to provide her with permanency through adoption.

¶ 37 Evidence further showed Michelle and Gino continued to lack stability in their housing or income situations. Although they were married and planned to continue their relationship, they lived separately with friends and family. Gino planned to get his own place but was working "odds-and-end jobs." Michelle agreed that she was not yet ready to have E.C. returned to her care.

¶ 38 Here, E.C. was living in a stable environment where she had been since birth. She had bonded with her foster family and had the opportunity for permanency through adoption. By contrast, Michelle and Gino's situation was unstable and they were in no position to have E.C. returned to their care either at the time of the best-interest hearing or in the foreseeable future. Given the evidence presented, the trial court's best-interest determinations were not against the manifest weight of the evidence. The court committed no error in terminating Michelle and Gino's parental rights.

¶ 39

### III. CONCLUSION

¶ 40

For the reasons stated, we affirm the trial court's judgment.

¶ 41

Affirmed.