

NOTICE  
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2013 IL App (4th) 130151-U

NO. 4-13-0151

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
June 26, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: P.D., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 11JA89
CORY A. DAVIS,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In December 2012, the State filed a petition to terminate the parental rights of respondent, Cory A. Davis, as to his daughter, P.D. (born October 23, 2008). Following a February 2013 fitness hearing, the trial court entered a written order finding respondent unfit. Immediately thereafter, the court conducted a best-interest hearing that resulted in the termination of respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We disagree and affirm.

¶ 4

## I. BACKGROUND

¶ 5

### A. The Circumstances Preceding the State's Petition To Terminate Respondent's Parental Rights

¶ 6

In September 2011, the State filed a petition for adjudication of wardship pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 to 17 (West 2010)), alleging that P.D. was abused in that respondent inflicted or allowed to be inflicted upon P.D. injuries by other than accidental means (705 ILCS 405/2-3(2)(i) (West 2010)). Following a November 23, 2011, hearing on the State's petition, the trial court entered an adjudicatory order, finding that respondent had abused P.D. by beating her with a coat hanger. After a December 2011 dispositional hearing, the court adjudicated P.D. a ward of the court and appointed the Department of Children and Family Services (DCFS) as her guardian.

¶ 7

### B. The State's Petition To Terminate Respondent's Parental Rights

¶ 8

In December 2012, the State filed a petition to terminate respondent's parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2010)). Specifically, the State alleged that respondent was an unfit parent in that he had (1) abandoned P.D. (750 ILCS 50/1(D)(a) (West 2010)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility for P.D.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); (3) deserted P.D. for more than three months preceding the filing of the termination petition (750 ILCS 50/1(D)(c) (West 2010)); (4) failed to make reasonable efforts to correct the conditions that were the basis of P.D.'s removal from his care (750 ILCS 50/1(D)(m)(i) (West 2010)); and (5) failed to make reasonable progress toward the return of P.D. to his care within nine months after the court's abuse adjudication (November 23, 2011 to August 23, 2012) (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 9

### C. Respondent's Fitness Hearing

¶ 10 We note that at the February 2013 fitness hearing, the parties presented evidence concerning P.D. and her three half-siblings. (Respondent was not the biological father of P.D.'s half-siblings.) Where appropriate, we limit the following discussion to the pertinent evidence presented concerning respondent and P.D.

¶ 11

#### 1. *The State's Evidence*

¶ 12 Cherylanda Trice, a DCFS caseworker, testified that she managed P.D.'s case from September 2011 through March 2012. In October 2011, she authored and implemented a client-service plan for respondent based on an integrated assessment conducted by a clinical screener. Respondent's client-service-plan goals required him to (1) attend individual therapy to develop "positive coping skills," (2) complete a domestic-violence assessment and comply with treatment recommendations, (3) obtain and maintain employment, (4) complete parenting classes, (5) exhibit learned parenting skills during weekly visits with P.D., and (6) comply with the terms of his parole.

¶ 13

In March 2012, Trice rated respondent's overall progress in completing his client-service-plan goals as unsatisfactory, noting that respondent (1) was discharged from his individual therapy sessions for nonattendance; (2) did not satisfy his domestic-violence goal, which was to be addressed during his therapy sessions; (3) remained unemployed during Trice's tenure; (4) did not complete parenting classes; (5) stopped visiting P.D. after September 2011 because he (a) could not also visit with P.D.'s half-siblings, and (b) had suffered a broken arm; (6) was arrested in October 2011 for domestic battery involving P.D.'s biological mother, Cynthia Merrill; and (7) stopped maintaining appropriate contact with DCFS after October 2011 because he could not

visit with P.D.'s half-siblings. Trice added that after October 2011, respondent was "vague" regarding his residence and did not provide an address. (The record shows that Trice was also managing P.D.'s half-siblings and that the biological fathers of those children had client-service-plans that required visitation with their respective child.)

¶ 14 Trice acknowledged that during September 2011, respondent, accompanied by Merrill, visited P.D. and her half-siblings twice but that DCFS stopped the joint visits after respondent's October 2011 arrest for domestic violence involving Merrill. That same month, Trice informed respondent that he could visit only with P.D. and not her half-siblings, which caused respondent to become upset. Trice stated that respondent believed that DCFS' decision was "punishing all the children." Trice noted that sometime later, respondent visited P.D. in the hospital after P.D. underwent a surgical procedure. After P.D.'s surgery, respondent informed Trice that he would not be able to visit P.D. because he was scheduled to undergo "multiple surgeries" to repair a broken wrist. Trice documented that from January through March 2012—when she relinquished her management—respondent had not visited P.D.

¶ 15 Autumn Jackson, the DCFS caseworker who acquired the management of P.D.'s case from Trice, testified that in March 2012, she implemented a second client-service plan for respondent that contained the same goals as Trice's initial plan. In April 2012, Jackson learned that respondent had married Merrill the previous month. In September 2012, Jackson rated respondent's overall progress in completing his client-service-plan goals as unsatisfactory, noting that in June 2012, respondent and Merrill had moved to Wisconsin. Jackson also noted that in April 2012, respondent was arrested for domestic violence involving Merrill and was returned to prison for violating the terms of his parole.

¶ 16 Following his June 2012 release from prison, respondent and Merrill moved to Wisconsin until November 2012, when he returned to Illinois and was residing "home-to-home" in Chicago. Jackson documented a visit respondent had with P.D. in April 2012, just prior to his incarceration, followed by one visit in July and one visit in October 2012. During respondent's time in Wisconsin, DCFS' support ceased. Although respondent voluntarily enrolled in services offered by Wisconsin, he failed to complete those services or maintain employment. When respondent returned from Wisconsin, Jackson referred respondent to services in Chicago. Before those services began, however, respondent moved to Minneapolis, Minnesota.

¶ 17 Jackson acknowledged that prior to relocating to Minneapolis, respondent informed DCFS that he was contemplating such a move because he (1) could not find employment in Chicago, (2) did not feel safe in Chicago, and (3) believed better employment opportunities existed in Minneapolis.

¶ 18 *2. Respondent's Evidence*

¶ 19 Respondent testified that he could not complete his client-service-plan goals because he broke his wrist in November 2011 and had to undergo multiple surgeries. Respondent then recounted his April 2012 arrest for domestic violence, his subsequent incarceration, his June 2012 move to Wisconsin upon his release from prison, and his November 2012 return to Chicago, where he lived temporarily for six weeks with friends and family. Thereafter, respondent moved to Minneapolis, where he lived with his uncle and worked full-time at a cleaning service. While there, respondent enrolled in a Domestic Violence Abuse Program offered by the "Father Project" but had yet to attend his first session. Respondent admitted that on August 23, 2012, he had not successfully completed any of his client-service-plan goals.

¶ 20

### *3. The Trial Court's Fitness Finding*

¶ 21 Following the presentation of evidence and argument at respondent's February 2013 fitness hearing, the trial court found—by clear and convincing evidence—that respondent (1) failed to maintain a reasonable degree of responsibility for P.D.'s welfare and (2) failed to make reasonable progress toward the return of P.D. to his care within nine months after the court's November 23, 2011, abuse adjudication. The court also found that the State had failed to meet its clear and convincing burden with regard to the remaining allegations.

¶ 22

#### *D. Respondent's Best-Interest Hearing*

¶ 23 A summary of the evidence presented at respondent's February 2013 best interest hearing showed the following.

¶ 24

##### *1. The State's Evidence*

¶ 25 Testimony provided by Jackson showed that in March 2012, DCFS placed P.D. with a foster-care parent in Danville, which was also home to one of P.D.'s half-siblings as well as another child. Jackson observed that P.D. was adjusting well and had bonded with her foster parent, who had just moved into a bigger home. Jackson had no concerns about P.D.'s placement, noting that P.D. attends preschool and does not require any DCFS services. P.D.'s foster parent not only expressed a willingness to provide permanency for P.D., she also coordinated monthly visits with the foster-care parent of P.D.'s remaining half-siblings. Jackson noted that the foster parents have become friends and routinely contact each other—sometimes daily—to update the children.

¶ 26

##### *2. Respondent's Evidence*

¶ 27 Respondent testified that (1) it would be hurtful if his parental rights were

terminated and (2) P.D. loves him.

¶ 28 *3. The Trial Court's Best-Interest Finding*

¶ 29 After considering the evidence and counsels' arguments, the trial court terminated respondent's parental rights as to P.D. In so doing, the court noted P.D.'s "stable placement" with her foster parent that occurred over a "sufficient period of time in which to form a bond" with her foster parent. (The court also terminated Merrill's parental rights as to P.D., but Merrill is not a party to this appeal.)

¶ 30 This appeal followed.

¶ 31 II. THE TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 32 Respondent argues that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We address respondent's arguments in turn.

¶ 33 A. The Trial Court's Fitness Finding

¶ 34 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 35 Section 1(D)(m)(ii) of the Adoption Act provides, in pertinent part, as follows:

"D. 'Unfit person' means 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. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

\* \* \*

(m) Failure by a parent \*\*\* (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act[.]" 750 ILCS 50/1(D)(m)(ii).

¶ 36 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act 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 other conditions which later become known and which would prevent the court from returning custody of the child to the parent."

¶ 37 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

" 'Reasonable progress' \*\*\* exists when the [trial] court \*\*\* can

conclude that \*\*\* the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent \*\*\*." (Emphases in original.)

The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d at 1068, 808 N.E.2d at 605; *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 38 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011), quoting *In re Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129.

¶ 39 *2. Respondent's Claim That the Trial Court's Fitness Finding Was Against the Manifest Weight of the Evidence*

¶ 40 In support of his argument that the trial court's fitness finding was against the

manifest weight of the evidence, respondent contends that he "had transportation issues and scheduling conflicts caused by his broken wrist, which prevented him engaging in services and attending visitation." We are not persuaded.

¶ 41 Mindful of our aforementioned benchmark, P.D. was removed from respondent's care because he beat P.D. with a coat hanger. In addition, the evidence showed that respondent had unresolved anger-management issues in that he engaged in domestic violence with Merrill in October 2011 and April 2012. Despite DCFS' assignment of appropriate client-service-plan goals—goals that were designed to address respondent's anger-management issues and his appropriate interaction with P.D.—respondent admitted that he had not successfully complied with any of those goals within nine months after the trial court adjudicated P.D. an abused minor. Thus, we reject respondent's argument because of the lack of evidence that he took any measurable step—that is, reasonable progress—toward acquiring custody of P.D. by complying with his client-service-plan goals such that P.D. could have been returned to his care in the near future.

¶ 42 Accordingly, we conclude that the trial court's finding that respondent is an unfit parent was not against the manifest weight of the evidence.

¶ 43 Having so concluded, we need not consider the trial court's other finding of parental fitness against respondent. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental fitness).

¶ 44 B. The Trial Court's Best-Interest Finding

¶ 45 1. *The Standard of Review*

¶ 46 At the best-interest stage of parental termination proceedings, the State bears the

burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 47 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 48 *2. Respondent's Claim That the Trial Court's Best-Interest Finding Was Against the Manifest Weight of the Evidence*

¶ 49 Respondent also argues that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondent contends that despite his "difficulties attending visits with P.D.," when he did visit with P.D. he acted appropriately and brought her gifts. These actions, respondent claims, show the bond he had with P.D. We disagree.

¶ 50 In this case, a brief synopsis of the evidence presented at respondent's best interest hearing concerned (1) P.D.'s bond with her foster parent, who was providing stability for her; (2) respondent's testimony that P.D. loved him; and (3) respondent's feelings if his parental rights were terminated.

¶ 51 Following the presentation of that evidence at respondent's February 2013 best-interest hearing, the trial court, referring to the factors enumerated in section 1-3(4.05) of the Juvenile Court Act of 1987, found that P.D.'s need for permanence and stability (705 ILCS

405/1-3(4.05)(g) (West 2010)) was being met by her foster parent.

¶ 52 We conclude that this evidence was more than sufficient to support the trial court's decision to terminate respondent's parental rights. Accordingly, we disagree with respondent that the facts clearly demonstrated that the court should have reached the opposite result.

¶ 53 III. CONCLUSION

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

¶ 55 Affirmed.