

NOTICE
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2013 IL App (4th) 130266-U
NOS. 4-13-0266, 4-13-0270 cons.

FILED
August 22, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: J.A., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0266))
JAMES ALLEN III,)
Respondent-Appellant.)

Appeal from
Circuit Court of
Macon County
No. 11JA92

In re: J.A., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0270))
JANNETT COVEY,)
Respondent-Appellant.)

Honorable
Thomas E. Little,
Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Appleton and Knecht 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 the court committed no error in terminating respondents' parental rights.

¶ 2 Respondent mother and father, Jannett Covey and James Allen III, appeal the trial court's termination of their parental rights to their minor child, J.A. (born August 31, 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 Jannett and James are the parents of J.A., who was removed

from their care shortly after her birth in August 2011. Jannett is also the parent of another child, D.C., who is J.A.'s older half sibling. In 2008, Jannett's parental rights to D.C. were terminated following allegations of sexual abuse by Jannett and her previous boyfriend.

¶ 5 On September 7, 2011, the State filed a petition, seeking to have J.A. adjudicated a ward of the court and alleging she was a neglected, abused, and dependent minor. On November 4, 2011, the trial court entered its adjudicatory order, finding J.A. dependent as alleged in the State's petition. The same date, the court entered its dispositional order, adjudicating J.A. dependent, making her a ward of the court, and placing custody and guardianship of J.A. with the Illinois Department of Children and Family Services (DCFS).

¶ 6 On December 12, 2012, the State filed a motion seeking a finding of unfitness and permanent termination of Jannett and James's parental rights. It alleged both parents were unfit because (1) each failed to maintain a reasonable degree of interest, concern, or responsibility as to J.A.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) each failed to make reasonable progress toward J.A.'s return within nine months after the dependency adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (3) Jannett "evidenced an inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation" (750 ILCS 50/1(D)(p) (West 2010)). The State further alleged that termination was in J.A.'s best interests.

¶ 7 On February 8, 2013, the trial court conducted the fitness hearing. Tracy Wickline, a foster care worker with Lutheran Child and Family Services, testified she was J.A.'s primary caseworker since the case was opened in September 2011. She had also been the

caseworker in the matter involving D.C., J.A.'s older half sibling. Wickline testified J.A. was brought into care shortly after her birth because Jannett (1) had a previous indicated report of sexual abuse to her first born child, and (2) tested positive for cannabis during a prenatal drug screen. Wickline recommended services for Jannett that included individual and domestic violence counseling, parenting services, a sexual abuse assessment, and substance abuse services. For James, Wickline recommended domestic violence, individual counseling, parenting, and substance abuse services. She testified both parents received unsatisfactory ratings on their service plans.

¶ 8 From the fall of 2011 until July 2012, Jannett's counselor was Marcia Nolte. Jannett received an unsatisfactory rating with respect to those services, which included domestic violence services. Jannett was also rated unsatisfactory on parenting services that she received during visits with J.A. Wickline testified Jannett was unable to demonstrate or fully understand instructions on how to approach various situations during visitations. She described an occasion when Jannett was angry and yelling about case-related matters while holding J.A. Wickline testified Jannett did not understand boundaries and appropriateness. She observed Jannett attempt to give Kool-Aid to J.A. when J.A. was under the age of nine months. Wickline testified Jannett did not understand why Kool-Aid was inappropriate for J.A. Jannett also had a difficult time maintaining a bond with J.A. and expressed that there was no point in visiting with J.A. if J.A. was going to be taken away. Jannett reported to Wickline that the only reason she was visiting J.A. was because of James.

¶ 9 Wickline described visitations as being "about 50/50" or "fair." She testified J.A. had issues with bonding and going to Jannett and James and stated J.A. would cling to the case

aide or caseworker. During the last couple of visits, James sat for 30 minutes without interacting with J.A. When approached by the caseworker, he reported that he had not had his coffee and he was "not really into it" that day. Wickline noted an ongoing issue in the case was Jannett's struggle to develop and maintain a bond with J.A. Wickline identified James as J.A.'s primary caregiver during visits for "pretty much the entire length of the case" until the last couple of months. She stated Jannett continued to state there was no reason for her to bond with J.A. if she was going to be taken away. Wickline believed Jannett's behavior represented a lack of interest rather than a lack of understanding.

¶ 10 Wickline acknowledged Jannett successfully completed a substance abuse assessment and had clean drops while the case was pending. Additionally, Jannett was identified as a lower risk in connection with her sexual abuse assessment because she was not currently using drugs. Wickline testified, however, that Jannett's risk would go up if she began using again.

¶ 11 Wickline testified James also received an unsatisfactory rating with respect to domestic violence counseling. Although he attended and completed classes, he did not fully engage or participate in the program. She stated he actually participated and was verbal "[j]ust 1 week out of the 26" weeks of classes. Wickline stated the "biggest concern" was James's controlling behavior toward Jannett. Wickline noted he would answer questions for Jannett or tell her what to say. She testified such behavior was concerning because of Jannett's relationship with her previous paramour who was very controlling and forced Jannett to sexually abuse D.C.

¶ 12 James was further rated unsatisfactory on his counseling services. Wickline testified he completed the domestic violence program in July 2012 and was to attend individual

counseling thereafter but made only one or two visits thereafter out of six possible sessions. Wickline stated James also completed parenting classes. He was assessed as being in the medium-risk category because he had expectations that exceeded the developmental capabilities of children. She stated he lacked an understanding of normal childhood growth and development. Wickline acknowledged that James received a satisfactory rating for substance abuse services and was not recommended for any treatment.

¶ 13 Wickline testified Jannett and James were in a relationship and living together. In November 2012, she observed the couple's home and found it unsatisfactory because bugs, dog feces, and garbage were inside the home. Wickline attempted visits in December 2012 and January 2013 but was unable to enter the home. During the January 2013 visit, she observed cockroaches crawling on the door and dog feces on the porch as she was standing outside the home. Wickline further testified Jannett received social security income and James had recently reported that he was unemployed.

¶ 14 Wickline testified Jannett would have to do extensive work to have J.A. returned to her care. She believed information obtained from service providers and observations from visitations between Jannett and J.A. showed it would be unsafe to return J.A. to Jannett's care at that time "or anywhere in the near six months to a year future." Wickline believed it would similarly take "extensive time" for J.A. to be returned to James, noting his failure to address the control issues in his relationship with Jannett.

¶ 15 The State also presented the testimony of Debbie Cox-Schwalbe, a licensed therapist, who began working with James in December 2011. Cox-Schwalbe stated James was referred to her by his caseworker for individual and group counseling and she recommended a

domestic violence program. James completed a 26-week domestic violence program and had steady attendance. However, Cox-Schwalbe testified he showed "minimal progress" throughout the time she worked with him and was unable to put what he learned into practice. She stated he was attentive to other members of the program but his own participation was minimal.

¶ 16 During individual counseling sessions, James discussed some of his family-of-origin issues. However, Cox-Schwalbe testified his counseling sessions never went beyond that and described sessions as otherwise "superficial." She stated James made "successful enough progress" over the course of the case but she continued to have concerns and believed James's past affected his ability to parent appropriately. Once James completed domestic violence classes, Cox-Schwalbe recommended that he continue with therapy but James attended only two sessions thereafter.

¶ 17 Diane Pleasant testified she was a licensed clinical professional counselor and, beginning in July 2012, provided individual counseling services for Jannett. She stated Jannett was supposed to work on parental concerns from her past; acceptance of substance abuse issues; and relational dynamics with James. Pleasant testified Jannett progressed in some, but not all, aspects of her counseling. Jannett was successful at processing concerns about D.C.'s abuse and had taken responsibility for her role in the abuse. Pleasant felt confident that Jannett "had learned her responsibility regarding that prior abuse" and was establishing boundaries so that a similar situation would not occur in the future. Jannett also demonstrated progress in her self-control when dealing with anger issues.

¶ 18 However, Pleasant did not believe Jannett clearly understood the correlation between her prior substance abuse and her inability to appropriately parent her children.

According to Pleasant, Jannett admitted using cannabis while pregnant with D.C. and did not understand how cannabis use could have been detrimental to D.C.'s developmental growth or how it would inhibit her parenting ability after the child's birth. Pleasant also noted Jannett's extensive use of crack cocaine in the year preceding D.C.'s removal from her care. Pleasant testified she was not confident that Jannett understood how her drug use interfered with her ability to care for her child.

¶ 19 Pleasant additionally noted concerns regarding Jannett's housing. In October 2012, Jannett reported her home was infested with cockroaches. As of February 6, 2013, the infestation continued.

¶ 20 Pleasant testified Jannett continued to see her and had not completed her therapy. She was unsure how long Jannett would continue to need therapy but testified Jannett "would likely *** require services for an extensive period of time." Pleasant also believed that, if Jannett were to get custody of J.A., she would need to maintain services with some type of supervising agency to ensure that she was properly caring for the child.

¶ 21 At the State's request, the trial court took judicial notice of the abuse case involving D.C. In particular, the State directed the court to a report detailing a psychological evaluation performed on Jannett by Dr. Richard Kujoth. The report, dated August 9, 2009, stated Jannett's evaluation resulted in several DSM-IV diagnoses, including (1) history of sexual abuse of a child (as victim); (2) sexual abuse of child (as perpetrator); (3) neglect of child (as perpetrator); (4) physical abuse of adult (as victim); (5) adjustment disorder, with depressed mood; (6) history of cannabis dependence; (7) history of cocaine dependence; (8) parent-child relational problem; (9) antisocial personality disorder; and (10) borderline intellectual functioning. Dr.

Kujoth determined Jannett's antisocial personality disorder prevented her from providing minimally appropriate parenting to D.C. at that time. Dr. Kujoth recommended counseling for Jannett but determined that, due to her long-standing history of abusive relationships, counseling would take an extended period of time and her long-term prognosis would have to be considered guarded.

¶ 22 At the unfitness hearing, James testified on his own behalf. He noted his participation in services and that he completed parenting classes and a domestic violence program. James reported he also continued to engage in individual counseling and had recently been referred to Charles Beard, whom he had contacted to begin services. James testified that, until October 2012, he worked as a lead operator at NSR Technologies. He stated the plant was shut down but was supposed to be restarting. Currently, he was receiving unemployment benefits and was looking for work. James further testified that he was addressing his housing issues. He contacted different exterminators and spoke with his landlord about getting rid of the cockroaches. He reported garbage in the home had been cleaned up.

¶ 23 James testified he was being proactive about having J.A. returned to his care and was trying to keep up with housework and comply with services to get her back. He acknowledged that visits were "back and forth" and there were times that J.A. would cry and not want anything to do with him or Jannett. Other times, J.A. would initially be wary but then start crawling around, playing, and having fun. James believed J.A.'s reluctance was because he did not get to see her enough. He testified he would be able to properly care for J.A.

¶ 24 Jannett did not testify but presented the testimony of her cousin, Paula LeeAnn Moyer. Moyer observed Jannett in the hospital with J.A. and felt Jannett did very well. She

stated both parents were attentive to J.A. and noted Jannett changed J.A.'s diapers and gave her a bottle. Moyer believed Jannett was a good mother and would be able to take care of J.A.

¶ 25 On February 28, 2013, the trial court entered an order finding Jannett and James unfit as alleged in the State's petition. Specifically, it determined both James and Jannett failed to maintain a reasonable degree of responsibility as to J.A.'s welfare, finding Wickline's testimony credible and that both parents failed to comply with the directives of their service plans. The court also found both parents failed to make reasonable progress within nine months of J.A.'s dependency adjudication. It identified the relevant nine-month period as November 4, 2011, to August 4, 2012, and, again, noted James and Jannett failed to comply with service plans. The court concluded J.A. could not be returned to them in the near future. Finally, based on the psychological report prepared by Dr. Kujoth and the testimony of Jannett's counselor, the court determined Jannett suffered "from a mental impairment, mental illness, or mental retardation sufficient to prevent the discharge of normal parental responsibilities, and that such impairment, illness, or retardation will extend beyond a reasonable period of time."

¶ 26 On April 1, 2013, the best-interest hearing was conducted. Wickline testified adoption was in J.A.'s best interests. She stated James and Jannett had "a lengthy way to go *** to be able to provide a safe home to even begin unsupervised contact" with J.A. Additionally, J.A. was "doing great" in her foster home, which was a prospective adoptive home. J.A. was 1 1/2 and had been in her foster home since leaving the hospital after her birth. Her foster parents also adopted D.C. Wickline testified J.A. loved D.C. and was "very well bonded to both foster parents, especially the foster mom." J.A.'s foster mother worked 15 hours a week but was otherwise a stay-at-home mother. When the foster mother was working, she was able to take

J.A. to work with her. Wickline testified J.A. cried a lot and was clingy prior to and during visitations with Jannett and James but was happy upon returning to her foster parents.

¶ 27 James presented the testimony of his counselor Charles Beard. Beard testified James was "doing fine" in counseling and estimated he would require six more months of counseling services.

¶ 28 At the conclusion of the hearing, the trial court found it was in J.A.'s best interests to terminate Jannett and James's parental rights. On April 4, 2013, the court entered its written order.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On appeal, Jannett and James challenge the trial court's unfitness findings and best interest determinations. They argue the court's decisions as to those issues were against the manifest weight of the evidence.

¶ 32 A trial court may involuntarily terminate parental rights upon findings that (1) a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) and (2) termination 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 must prove parental unfitness by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516 (2005). A trial court's unfitness determination "will not be disturbed on review unless it is contrary to the manifest weight of the evidence" and 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 516-17. "[T]he trial court's findings must be given great deference because of its superior opportunity to

observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004).

¶ 33 "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 State alleged multiple grounds for unfitness. Because we find the trial court committed no error in finding Jannett and James unfit for failing to maintain a reasonable degree of responsibility as to J.A.'s welfare pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2010)), we need not address the remaining grounds alleged by the State and found proved by the court.

¶ 34 Pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2010)), a parent may be found unfit for failing "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." Section 1(D)(b)'s language is in the disjunctive and, as a result, any of the three listed elements 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).

¶ 35 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. Ultimately, the trial court's unfitness finding is accorded great deference. *Jaron Z.*, 348 Ill. App. 3d at 259-60, 810 N.E.2d at 125.

¶ 36 As stated, the trial court found Jannett and James unfit pursuant to section 1(D)(b) for failing to show a reasonable degree of responsibility as to J.A.'s welfare. Jannett and James argue the court's findings of unfitness under section 1(D)(b) were against the manifest weight of the evidence because they maintained consistent visitation with J.A. and attended to the tasks in their service plans. We disagree.

¶ 37 Wickline testified both Jannett and James received unsatisfactory ratings on service plans. Specifically, each was rated unsatisfactory for counseling and domestic violence services. Wickline and Cox-Schwalbe, James's counselor, testified James attended substance abuse classes but failed to meaningfully participate. Wickline stated he participated and was verbal "[j]ust 1 week out of the 26." James was described as being unable to put what he learned into practice and failing to address his control issues. Evidence further showed he failed to attend all required individual counseling sessions. Pleasant, Jannett's counselor, testified Jannett had not progressed regarding issues of how her substance abuse affected her children and her ability to parent. She believed Jannett "would likely *** require services for an extensive period of time." Wickline believed it would similarly take "extensive time" for J.A. to be returned to James's care. Evidence also showed Jannett and James's home environment was not fit for J.A.'s return and the couple had continued issues with bug infestation and cleanliness.

¶ 38 Additionally, although both Jannett and James consistently attended visitations

with J.A., issues also arose during visits. Wickline described the parties' visitations as being "about 50/50" or "fair." J.A. would cry and cling to caseworkers. Jannett's parenting services took place during visits with J.A. but Wickline described Jannett as unable to demonstrate appropriate parenting skills. Jannett was observed to be angry and yelling over case-related issues while holding J.A. She also had difficulty bonding with J.A. and expressed that there was no point to visitation and she was only visiting with J.A. because of James. Jannett received an unsatisfactory rating on parenting services. Similarly, instances occurred when James did not interact with J.A. during visits, reporting that he had not had his coffee and was "not really into it."

¶ 39 The record showed Jannett and James failed to comply or minimally complied with required services, failed to demonstrate what they had learned through services, and were no closer to having J.A. returned than when she was initially removed from their care. We find the evidence presented was sufficient to support the trial court's finding that Jannett and James were unfit pursuant to section 1(D)(b) and an opposite conclusion is not clearly apparent. The court's unfitness findings were not against the manifest weight of the evidence.

¶ 40 Although we find the trial court properly determined Jannett and James were unfit pursuant to section 1(D)(b) of the Adoption Act and need not address any other ground found proved by the court, we choose to address the propriety of the court's admission of Dr. Kujoth's report. To support its allegation that Jannett was unfit pursuant to section 1(D)(p) of the Adoption Act (750 ILCS 50/1(D)(p) West 2010)), the State asked the court to take judicial notice of the abuse case involving D.C. and, in particular, a report authored by Dr. Kujoth in connection with that case, detailing a psychological evaluation he performed on Jannett. For the reasons that

follow, the court's admission of that report was error.

¶ 41 The civil rules of evidence apply to parental fitness hearings. *In re J.G.*, 298 Ill. App. 3d 617, 629, 699 N.E.2d 167, 175 (1998). Although "[a] court may take judicial notice of matters generally known to the court and not subject to reasonable dispute," a court's decision to take judicial notice "cannot result in admitting hearsay evidence where it would otherwise be prohibited." *In re A.B.*, 308 Ill. App. 3d 227, 237, 719 N.E.2d 348, 356-57 (1999). Here, the report the State sought to admit was not authenticated and contained hearsay. The State offered no applicable exception to the rule against hearsay and the report should not have been admitted into evidence. Although Jannett raised no objection to the report's admission and any error was harmless because Jannett and James were properly found unfit pursuant to section 1(D)(b), we address this issue to remind the parties of the proper standards for the admission of evidence in the context of a parental fitness hearing. As this court has previously stated "[a]bove all, the trial court's decision as to whether a parent is unfit should be based only upon evidence properly admitted at the unfitness hearing." *J.G.*, 298 Ill. App. 3d at 629, 699 N.E.2d at 175-76.

¶ 42 As stated, Jannett and James also challenge the trial court's best-interest determinations. They argue the court's findings that termination of their parental rights was in J.A.'s best interests were against the manifest weight of the evidence. Specifically, Jannett and James contend they maintained consistent visitation with J.A. while the case was pending and continued to be actively engaged in services.

¶ 43 "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). "At the best-interest stage *** the State bears the burden of proving by a

preponderance of the evidence that termination is in the child's best interest." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 290-91.

"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 trial 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.

¶ 44 Here, evidence showed J.A. had been in the same foster home since shortly after her birth. The foster home was a prospective adoptive home and J.A.'s foster parents had also adopted D.C., J.A.'s older sibling. Wickline testified J.A. loved D.C. and was "very well bonded

to both foster parents." By contrast, the record showed J.A. was not similarly bonded with either Jannett or James and they were unlikely to have J.A. returned to their care in the foreseeable future.

¶ 45 Again, the evidence presented supported the trial court's decision. Its best-interest findings were not against the manifest weight of the evidence.

¶ 46 III. CONCLUSION

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

¶ 48 Affirmed.