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2013 IL App (4th) 130281-U
NOS. 4-13-0281, 4-13-0282, 4-13-0283 cons.

FILED
August 30, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: D.B., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v. (4-13-0281))	No. 11JA105
SHANTA BROWN, a/k/a SHANTAE BROWN,)	
Respondent-Appellant,)	
_____)	
)	No. 11JA106
In re: M.B., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (4-13-0282))	
SHANTA BROWN, a/k/a SHANTAE BROWN,)	
Respondent-Appellant,)	
_____)	
)	No. 11JA107
In re: S.B., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (4-13-0283))	Honorable
SHANTA BROWN, a/k/a SHANTAE BROWN,)	Thomas E. Little,
Respondent-Appellant.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the trial court's findings (1) respondent was unfit and (2) termination of her parental rights was in the best interests of the minors.
- ¶ 2 Following a fitness hearing on March 22, 2013, the trial court found respondent unfit to parent D.B. (born April 4, 2001), S.B. (born September 29, 1998), and M.B. (born

September 14, 1997). On April 5, 2013, the court held a best-interest hearing and thereafter terminated respondent's parental rights. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In October 2011, the State filed petitions alleging the minors were neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(a) (West 2010). The allegations related to unsafe electrical issues in the home; dog feces throughout the home; garbage piled 2½ to 3 feet throughout the home, with paths through the piles; no heat; and peeling and flaking lead-based paint. The State alleged respondent tested positive for cannabis and cocaine and there had been previous involvement with the Illinois Department of Children and Family Services (DCFS) involving substance abuse, domestic violence, and lack of supervision issues. In addition, the State alleged respondent allowed S.B. to visit with her father in Tennessee, despite his having been indicated for sexually molesting S.B.

¶ 5 The trial court defaulted respondent when she failed to appear in court on March 21, 2012. Adjudicatory and dispositional orders were entered on March 22, 2012, finding the minors neglected due to environmental neglect, domestic violence, substance abuse, and lack of supervision issues. The court made the minors wards and placed guardianship and "legal" custody with DCFS, while leaving physical custody with respondent.

¶ 6 On March 27, 2012, the State filed a petition to remove the children from respondent's home, alleging the home was infested with bugs; clothes and garbage were strewn throughout the residence; a broken window exposed the home to the elements; and shards of glass were still in the window, the hallway, and on the floor of the front porch. Custody was transferred to DCFS with the power to place the minors by order dated April 13, 2012.

¶ 7 The State filed a motion seeking a finding of unfitness and termination of respondent's parental rights on February 6, 2013. It alleged three separate grounds of unfitness as to respondent, *i.e.*, (1) failure to maintain a reasonable degree of interest, concern or responsibility for the minors' welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) failure to make reasonable efforts to correct the conditions that were the basis for removal of the minors from respondent (750 ILCS 50/1(D)(m)(i) (West 2010)); and (3) failure to make reasonable progress toward the return of the minors within nine months after adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 8 In March 2013, the trial court held the fitness hearing. Elizabeth McGarry, the program manager for addictions at Heritage Behavioral Health Center, testified respondent engaged in treatment from May 11, 2012, through August 3, 2012, when she was discharged unsuccessfully. During the period of July 11, 2011, through March 15, 2013, respondent was directed to submit to drug screening approximately 60 times. She actually submitted to drug screening only eight times and each time tested positive for cannabis and cocaine. Her last positive test was February 6, 2013.

¶ 9 Patricia Brown, a licensed clinical professional counselor, met with respondent on four occasions. Respondent had been referred for six sessions, but was a "no call, no show" after the fourth session. Brown closed respondent's case as unsuccessfully completed. Respondent showed no progress during those four sessions.

¶ 10 Virginia Karl taught the nurturing parenting classes at Webster-Cantrell Hall, where respondent was referred for the 16-session class. Respondent failed to complete the parenting classes, missing the last five sessions.

¶ 11 Nicki Bond, the family's caseworker, worked with respondent since October 2012. Despite a drug assessment indicating respondent needed treatment, she did not complete drug treatment. Bond testified respondent did not complete any of the recommended services, nor did she complete her service plan. Respondent gave an incorrect address to Bond. Despite weekly attempts to contact respondent, Bond had very little success and respondent never tried to contact Bond. Two family team meetings were held and respondent failed to attend either one. Respondent moved to a new home, but when Bond went there and knocked, no one answered. She had not been in the new home as of the date of the hearing.

¶ 12 Chalanda Woods testified she is a case assistant at Webster-Cantrell Hall and supervised the visits between respondent and the minors. Out of 16 scheduled visits, respondent only attended six. Four of the missed visits were "no call, no show." After the no-shows, M.B. refused to come back for visitation because he assumed respondent would not show. D.B. was upset after respondent failed to show because he would rather have stayed at school to attend his basketball game.

¶ 13 Lindsey Sykes, a foster care supervisor with Webster-Cantrell Hall, testified she was required to have quarterly family meetings and scheduled one with respondent for January 16, 2013. Respondent failed to show. Sykes was unsuccessful in getting inside respondent's home to observe its condition and had no telephone contact with respondent.

¶ 14 Respondent did not present evidence at the fitness hearing. The guardian *ad litem* (GAL) for the minors, together with the State, asked the trial court to find respondent unfit.

¶ 15 With the minors in the courtroom, the trial court gave its reasons for finding respondent unfit.

"THE COURT: So here are my thoughts and here's my analysis and the result that I have reached in this case. I've listened very closely to the evidence. The evidence just plainly and undeniably demonstrates that the mother has elected, sadly enough, not to basically complete any portions of her service plans. She's been given opportunities to assist with her drug issues, counseling issues. She's been given the opportunity, if I remember correctly, on [two] different occasions to attend and complete parenting classes. She's visited only 6 out of a possible 16 times. I mean, the evidence is just absolutely crystal clear that she has not complied with the terms of her service plans.

We had an adjudication and a disposition. The mother's been given months and months to address the issues that are of concern to us and she has seen fit not to do so. So it is with regret that I do find her unfit. It's sad. I mean, these kids want to go home. I've read the reports. They're basically saying, you know, I think they recognize that mom has a problem, but they still want to go home. So, it's a sad day when I have to find the parent in this situation unfit. But that's clearly what is required by the law and by the facts of this case. The most disturbing part of this case, in my view, is the fact that the reports tell me that the mother has told the children

throughout the case that she's doing what she needs to do to get them back. There is absolutely no evidence that she has come anywhere close to that. So it's with a very heavy heart that I find that she is unfit."

The court found the State proved respondent unfit by clear and convincing evidence.

¶ 16 On April 5, 2013, the trial court held the best-interest hearing. Bond, the caseworker, testified respondent's case started out as an intact family case prior to 2011. To date, respondent had made very little progress. M.B. and D.B. were placed with a maternal great aunt. S.B. was placed with a maternal cousin. Overall, the children were doing well and were healthy. There were some behavior issues, such as M.B. getting kicked off the school bus.

¶ 17 All of the children have special needs. M.B. is a diabetic and needs to check his blood sugar and take insulin. D.B. and S.B. both take psychotropic medications. The foster parents were willing to assume guardianship of the children. The minors told their GAL they did not want to be adopted. Bond recommended termination of respondent's parental rights.

¶ 18 The State asked the trial court to consider the best-interest report filed on March 14, 2013, and the court indicated it had read and would consider the report.

¶ 19 Respondent testified since the fitness hearing, she had started attending substance abuse classes and planned to follow up and complete her parenting classes. She admitted she started cooperating at the last minute, but she did not think she would lose her children. Respondent testified she had not used cannabis or cocaine since February 6, 2013.

¶ 20 M.B., age 15, testified he wanted to live with his mother and S.B. had told him she also wanted to live with respondent.

¶ 21 The GAL argued against termination, contending the children were bonded to respondent and guardianship could be accomplished without terminating respondent's rights.

¶ 22 The trial court terminated respondent's parental rights, explaining as follows:

"First of all, in this case, as I do in most cases, I begin my analysis at the statutory provision that defines the best interest factors that I am to consider. That appears in the statute at 705 ILCS 405/1-3. There is a series of factors listed there. The factors that I believe apply most significantly to this case include the child's sense of attachment, the child's sense of security, the child's sense of familiarity. Continuity is a very important factor. I've also considered that I attribute great weight to the child's need for permanence, including the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives."

The court found the children were in need of a permanent and stable placement, all three minors had adjusted well to their foster homes, the children were doing well in school, and all of their physical, emotional, mental and educational needs were being met. The court noted their medical needs were also being appropriately met. The foster parents made sure the children saw each other at least once a week and they attended the same church every Sunday. The court pointed out it had admonished respondent as many as nine times if she failed to cooperate and complete her services, she could lose her rights to her children. He found respondent not credible when she testified she did not realize her rights could be terminated. He found her

starting services after the February hearing to be "too little too late."

¶ 23 The trial court then noted the focus at the best-interest hearing was on the children, not on respondent. The court said it gave very serious attention to M.B.'s testimony and said "as much as I would like to honor that request, I simply do not believe that that is in the children's best interest." The court felt failing to terminate respondent's rights would give the children false hope they would someday go home to respondent. As respondent had completed no services and had not shown any evidence of compliance with the provisions of the service plans, the court, in order to provide stability to the minors, found it was in the minors' best interests to terminate respondent's parental rights.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Respondent contends the trial court's findings regarding her unfitness and terminating her parental rights were against the manifest weight of the evidence. We disagree and affirm.

¶ 27 A. The Trial Court's Fitness Determination

¶ 28 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the

finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 29 Here, the trial court found respondent unfit for, *inter alia*, failing to make reasonable progress during the nine-month period following adjudication, *i.e.*, March 22, 2012, through December 22, 2012. Reasonable progress is an objective standard which focuses on the amount of progress toward the reunification goal that can reasonably be expected. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999); *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). Respondent did not complete a single goal of her service plans. She did not complete substance abuse treatment and continued to use cocaine and cannabis throughout the entire relevant time period. Although she had moved to different housing, none of the people assisting her had ever been inside. She did not stay in contact with her workers. She only visited the children during 6 of 16 scheduled visits. She made literally no progress at all and, in fact, her conduct was detrimental to the minors during this period. They were repeatedly disappointed by respondent's failure to show up for visits. The evidence clearly and convincingly demonstrated respondent's failure to make reasonable progress during the nine months following adjudication. The court's finding of unfitness was not against the manifest weight of the evidence.

¶ 30 B. The Trial Court's Best-Interest Determination

¶ 31 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2010); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best interest hearing using a preponderance of the evidence standard of proof. *In re*

D.T., 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs[.]" 705 ILCS 405/1-3(4.05) (West 2010). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-] disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

The trial court's best-interest determination is reviewed under the manifest-weight-of-the-evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 32 The trial court found the children were in stable relative placement and all of their

needs were being met appropriately. Having given due weight to M.B.'s stated preference to return home, the court nevertheless found the need for stable placement meant returning home was not an option. The evidence made it clear respondent was unlikely ever to complete services to be in a position to parent these children. The court recognized failing to terminate respondent's rights would raise false hopes of returning home in the children. When those hopes would be most certainly dashed, the children would repeatedly be subject to demoralization and frustration.

¶ 33 The trial court's finding it was in the minors' best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 We affirm the trial court's finding of unfitness and its decision to terminate respondent's parental rights.

¶ 36 Affirmed.