

NOTICE
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2013 IL App (4th) 130383-U

NOS. 4-13-0383, 4-13-0384, 4-13-0385, 4-13-0386 cons.

FILED

September 13, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Ae. P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Menard County
v. (No. 4-13-0383)	)	No. 10JA2
TESSA MONTROSS,)	
Respondent-Appellant.)	
-----)	
In re: C.P., a Minor,	)	No. 10JA3
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0384))	
TESSA MONTROSS,)	
Respondent-Appellant.)	
-----)	
In re: J.P., a Minor,	)	No. 10JA4
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0385))	
TESSA MONTROSS,)	
Respondent-Appellant.)	
-----)	
In re: Aa. P., a Minor,	)	No. 10JA5
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0386)	)	Honorable
TESSA MONTROSS,	)	Thomas J. Brannan,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding respondent unfit based on her failure to maintain a

reasonable degree of interest, concern, or responsibility for the minor children's welfare was not against the manifest weight of the evidence.

¶ 2 In May 2012, the State filed motions for the termination of the parental rights of respondent, Tessa Montross, as to her minor children, Ae. P. (born in 2004), C.P. (born in 2005), J.P. (born in 2006), and Aa. P. (born in 2008). In February 2013, the Menard County circuit court found respondent unfit. After a May 2013 hearing, the court concluded it was in the minor children's best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, contending the trial court erred by finding her unfit. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2010, the State filed petitions for an adjudication of wardship, alleging (1) the minor children were abused under section 2-3(2)(ii) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(ii) (West Supp. 2009)), in that they were at "substantial risk of physical injury"; (2) neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West Supp. 2009)), in that their environment was injurious to their welfare based on respondent's mental-health problems for which she failed to take her prescribed medicine; and (3) neglected under section 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West Supp. 2009)), in that they were not receiving the proper medical care as their parents had not provided medicine as prescribed to them. At the March 1, 2011, adjudicatory hearing, the trial court found the children were neglected as alleged but did not find they were abused. After a March 29, 2011, dispositional hearing, the court found respondent and the minor children's father, Joseph Paradee, were unfit, unable, or unwilling to care for, protect, train, or

discipline the minor children. The court made the minor children wards of the court and placed their custody and guardianship with the Department of Children and Family Services. In February 2012, the trial court changed the permanency goal for the minor children from return home to substitute care.

¶ 6 In its May 2012 termination motions, the State asserted respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility for the minor children's welfare (750 ILCS 50/1(D)(b) (West Supp. 2011)); (2) make reasonable efforts to correct the conditions that were the basis for the minor children's removal from her care (750 ILCS 50/1(D)(m)(i) (West Supp. 2011)); (3) make reasonable progress toward the return of the minor children within the initial nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West Supp. 2011)); and (4) make reasonable progress toward the return of the minor children during a nine-month period after the initial nine-month period following the neglect adjudication (750 ILCS 50/1(D)(m)(iii) (West Supp. 2011)). Paradee surrendered his parental rights to the minor children, and thus he is not a party to this appeal.

¶ 7 At the fitness hearing, the State presented the testimony of Gennifer Taylor, a former caseworker with Catholic Charities, which is now known as the Center for Youth and Family Solutions; Amy Dralle, a supervisor at the Center for Youth and Family Solutions; and Jessica Laurence, a case manager at the Center for Youth and Family Solutions. Respondent testified on her own behalf and presented the testimony of her mother, Kim Montross.

¶ 8 Taylor testified she was the case manager for the minor children's case from October 2010 to December 2011. She prepared the March 2011 dispositional hearing report, which was admitted into evidence. The report indicated respondent had not completed her first

goal, which was to obtain a substance-abuse assessment and follow any recommended treatment. Respondent had left her inpatient substance-abuse treatment program at the Triangle Center in December 2010, claiming the staff tried to force her to go to classes when she was sick. She was readmitted to the Triangle Center and was kicked out of the program in March 2011 for not complying with the rules and not taking her medication. Thus, respondent was also unsatisfactory with her second goal of taking all of her prescribed medications. The report noted respondent was currently prescribed Paxil for depression and clindamycin for an infection. In addition to her failure to take her medications at the Triangle Center, Paradee reported he was not able to get respondent to take her medication at home. As for the third goal of attending counseling to address the reasons for the children's placement in foster care, the report attached a note from respondent's counselor, who had been supervising couple's counseling with respondent and Paradee. The counselor stated not much progress had occurred in therapy because respondent and Paradee avoided addressing the reasons why the children were placed in care. Respondent also avoided talking about her alcohol consumption and how it had negatively affected her marriage. Regarding the goal of attending parenting classes, respondent's therapist was to be working on parenting with respondent but was unable to do so because of the difficulty in keeping respondent on task. Taylor was going to refer respondent to a parenting class. The fifth goal required respondent to demonstrate appropriate budgeting and money-management skills. The report stated respondent showed no will to budget her money and had a hard time distinguishing between a necessity and a want. With the final goal, respondent was to participate in and complete a psychological evaluation. At the time of the report, Taylor was working on a referral for an evaluation. As to visitation, the report noted respondent did not do well parenting

during her visits with the minor children. She usually sat on the couch and did not engage the children. Taylor opined that, in March 2011, respondent was not doing well with her goals.

¶ 9 Taylor also authored an August 2011 permanency hearing report, which was also admitted into evidence. As to substance-abuse treatment, the report noted respondent denied having a substance-abuse problem. The Triangle Center was willing to take respondent back, but the staff there felt it was not the most beneficial place for respondent. Triangle Center staff said the Wells Center would be better for respondent because it had more supervision and structure. At the time of the report, respondent was on a waiting list at the Wells Center. Moreover, on July 13, 2011, police confiscated drug paraphernalia from respondent's residence. That same month, respondent told Taylor she smoked and drank so much she went into a convulsion. As to respondent's prescription medication usage, respondent was admitted to McFarland Mental Health Center (McFarland) on July 14, 2011, after a suicide attempt. Since her July 26, 2011, release from McFarland, respondent had been taking her prescribed medication of Paxil and lithium. Respondent had failed to cooperate with couple's counseling and would not comply with budgeting. Taylor had decided one-on-one parenting education would be better for respondent than classes. Respondent would have some good visits with the children but have other visits where she would not engage the children. Taylor was working on setting up a psychological evaluation, and respondent was willing to participate in the evaluation.

¶ 10 Taylor also authored a December 2011 permanency hearing report, which was also admitted into evidence. Taylor concluded respondent had made no progress toward the service plan. Respondent still denied a substance-abuse problem. She refused to go to the Wells Center and wanted to go to the Triangle Center, despite knowing the staff there did not think the

program would be beneficial for her. From August to November 2011, respondent had been hospitalized three times for suicide attempts. Respondent's doctor had stopped prescribing medication for respondent because respondent refused to take the medication correctly. Respondent was still uncooperative with counseling services and inconsistent in her involvement with the children during visits. Respondent's financial situation had declined, and she was living with a friend. Respondent did participate in the psychological evaluation. The psychologist concluded respondent's mental-health issues rendered respondent unable to minimally parent her minor children. Respondent's primary diagnosis was severe borderline personality disorder. The psychologist's report was attached to the permanency hearing report. Taylor's December 2011 report recommended the goal be changed to substitute care.

¶ 11 Dralle testified she has been the supervisor in this case and completed some of the reports. She completed a report in January 2011, which was admitted into evidence. Dralle gave respondent an overall unsatisfactory on all of her goals. At that time, the psychological evaluation was not a goal. As to substance-abuse treatment, respondent had left inpatient treatment at the Triangle Center before she had completed the program and still struggled with alcohol and drug use. Respondent also admitted not taking her prescription medication all of the time. Moreover, respondent had been inconsistent in attending counseling sessions and had trouble staying focused on the goals of the counseling sessions. While respondent was willing to participate with parenting instruction, she had not been able to utilize the staff's direction to engage her children during visits. Respondent tended to observe the children rather than engage them. Respondent also admitted spending all of her money as soon as she got it on alcohol and frivolous items.

¶ 12 Dralle also evaluated respondent in January 2012. She again gave respondent an overall unsatisfactory rating on all of her goals. She noted the same matters raised by Taylor in the December 2011 permanency hearing report.

¶ 13 Laurence testified she had been assigned the minor children's case in March 2012 and met with respondent twice that month. Laurence discussed with respondent the need for respondent to complete services, specifically in regard to respondent's substance abuse. Respondent denied having a problem with alcohol. At the time of the fitness hearing, respondent had still not completed substance-abuse treatment. Except for when respondent was in jail in February 2012, respondent had attended all of her visits with the minor children. Laurence prepared a July 9, 2012, status alert that was admitted into evidence. The report indicated respondent continued to deny having a substance-abuse problem. Respondent was noncompliant with her medication and believed marijuana was the only thing that could help her. Respondent had not attempted suicide since her release from jail on March 6, 2012. Respondent also had not attended counseling since December 13, 2011. Respondent received parenting instruction during her visits with the minor children but was very inconsistent in her willingness to listen to the instructions. The report did state that, since the visits had been reduced to once a month and respondent and Paradee had separated, respondent attempted to interact with the children more and be more open to instruction. As to her financial problems, respondent still owed \$4,000 to social security and \$1,100 to Menard County housing. She had been living with a friend since March 2012. The report also noted the results of respondent's psychological evaluation.

¶ 14 Laurence further testified she prepared a September 2012 status alert and service plan. Respondent again was, overall, noncompliant with her goals. The report noted respondent

maintained she had not consumed alcohol since April 2012. Respondent had tested positive for marijuana in both July and August 2012.

¶ 15 Respondent testified that, during her visits with the minor children, she brings drinks and snacks for the children as well as arts and crafts. She does the projects with the children and plays with them. Respondent stated she cannot correct the minor children because the staff do not give her a chance to do so. She denied having any mental-health problems since she left Paradee in "December 2010." Respondent had last seen a psychiatrist in August 2012, and the doctor did not think she needed any medication. She had not consumed alcohol since April 2012. She had a negative marijuana test in September 2012. According to respondent, Laurence and prior case managers had not discussed budgeting with her. Respondent also stated she did not like her counselor and her case managers had not given her a different one. Respondent testified she did everything she was asked to do.

¶ 16 Kim testified respondent's mental health had improved since respondent left Paradee. Kim had attended some of the visits with the minor children and observed respondent playing with the children. Before the children were removed, respondent was with the children all of the time and provided all of their care. In Kim's opinion, respondent was a good mother and never harmed her children.

¶ 17 At the conclusion of the hearing, the trial court found respondent was unfit. The termination order suggests the court's unfit finding was based on all four grounds alleged in the State's termination motions.

¶ 18 After an April 19, 2013, best-interests hearing, the trial court found termination of respondent's parental rights was in the minor children's best interests. On May 6, 2013, respon-

dent filed a notice of appeal from the termination of her parental rights in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency proceedings). (We note the notice of appeal failed to comply with the special caption provision of Illinois Supreme Court Rule 311(a)(1) (eff. Feb. 26, 2010), but that deficiency does not affect our jurisdiction.) Accordingly, we have jurisdiction over this appeal under Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 19

II. ANALYSIS

¶ 20 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2012)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West Supp. 2011)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the trial court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the children's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). Here, respondent challenges the trial court's finding her unfit.

¶ 21 Since the trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the trial court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a trial

court's conclusion a parent's unfitness has been established by clear and convincing evidence unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). A trial 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.

¶ 22 Respondent first contends clear and convincing evidence does not exist showing she failed to maintain a reasonable degree of interest, concern, or responsibility for her minor children's welfare. Respondent notes she regularly exercised visitation in the year prior to her termination of parental rights. However, the State presented evidence respondent would sit to the side and watch the minor children play during their visits. Even when prompted by case aides, she had little interaction with the minor children. The case managers and their supervisor all testified others in the room, not respondent, were the ones to address safety issues with the minor children. During visits, respondent also failed to implement the parenting skills being taught to her.

¶ 23 A parent will not be found fit simply because she has demonstrated some interest in or affection for her children. *In re M.J.*, 314 Ill. App. 3d 649, 657, 732 N.E.2d 790, 796 (2000). "The interest, concern, or responsibility must be objectively reasonable." *M.J.*, 314 Ill. App. 3d at 657, 732 N.E.2d at 796. Further, "the failure to comply with the directives of a service plan with the stated goal of returning a child home is tantamount to objectively unreasonable interest, concern, or responsibility as to the child's welfare." *M.J.*, 314 Ill. App. 3d at 657, 732 N.E.2d at 796. Thus, "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." *M.J.*, 314 Ill. App. 3d at 657, 732 N.E.2d at 796-97.

¶ 24 Here, the evidence showed respondent did not comply with most of the requirements in her service plans that had a goal of returning the children. In her reply brief, respondent challenges the trial court's March 1, 2011, finding the children were neglected based on her mental-health issues and failure to give the minor children their prescribed medication. However, this court lacks jurisdiction over the neglect findings. The dispositional order on the challenged neglect findings of abuse and neglect was entered on March 29, 2011, and the dispositional order was a final and appealable order (see *In re Leona W.*, 228 Ill. 2d 439, 456, 888 N.E.2d 72, 81 (2008)). Respondent did not file a notice of appeal from the dispositional order within 30 days of the order's entry. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008); R. 660(b) (eff. Oct. 1, 2001). Thus, we do not address respondent's scrutiny of the neglect findings.

¶ 25 The focus of our analysis is on the evidence presented at the fitness hearing regarding respondent's compliance with her service plans when the goal was to return the minor children. Taylor testified that, when it came to doing services, respondent had an excuse for everything and did not see anything wrong with what she had done. Respondent had twice attempted substance-abuse treatment at the Triangle Center but did not complete the program. She then refused to go to the Wells Center for treatment. Instead, she insisted on returning to the Triangle Center, despite being told that program was not appropriate for her. She continually denied having a substance-abuse problem. However, the psychiatrist that evaluated respondent diagnosed respondent with, *inter alia*, "alcohol dependence, in short-term remission, per report"

and ongoing marijuana dependence. The psychiatrist noted a relapse with alcohol would be "strongly likely" if respondent's court date would "go in an unfavorable direction." Respondent had also failed to consistently take her medication for her mental-health problems to the extent her physician refused to give her any more prescriptions because she would not take them as prescribed. Respondent was hospitalized for mental-health reasons several times when the goal was to return the minor children home. Moreover, the psychiatrist concluded respondent's mental-health issues rendered her unable to parent her children. Respondent refused to appropriately participate in her counseling sessions. When the goal was to return the minor children home, respondent admitted drinking alcohol in excess and using marijuana, which was clearly illegal at the time. Respondent never met the goal of taking responsibility for why the minor children were in care. This was not a case where respondent had just one goal she could not accomplish. Here, respondent struggled with all of her goals. Respondent also takes issue with the trial court giving more weight to the case managers' and their supervisor's testimony. As stated, the trial court had the responsibility of determining the witnesses' credibility and the weight to be given their testimony. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. In this case, the State presented ample evidence respondent did not make any real progress on her service plans when the goal was to return the minor children home.

¶ 26 Accordingly, the trial court's finding respondent unfit based on her failure to maintain a reasonable degree of interest, concern, or responsibility for her minor children's welfare was not against the manifest weight of the evidence. Since we have determined the State presented sufficient evidence to satisfy one statutory ground, we need not address the trial court's other findings of parental unfitness. See *M.J.*, 314 Ill. App. 3d at 657, 732 N.E.2d at 797.

III. CONCLUSION

¶ 27

¶ 28

For the reasons stated, we affirm the Menard County circuit court's judgment.

¶ 29

Affirmed.