

NOTICE
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2013 IL App (4th) 130559-U

NO. 4-13-0559

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 6, 2013
Carla Bender
4th District Appellate
Court, IL

In re: K.C., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 11JA47
JAMES MALLET, a/k/a JAMES VALENTINE,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment finding respondent was unfit and it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence and is affirmed.

¶ 2 In December 2011, the State filed a second amended petition for adjudication of abuse and neglect as to K.C. (born April 28, 2004), as well as four other minors who are not involved in this appeal, adding James Mallett as a respondent. Paternity testing established respondent is the biological father of K.C. K.C. was adjudicated abused in November 2011 as the result of excessive corporal punishment by her mother and stepfather.

¶ 3 On October 17, 2012, the State filed a motion to terminate respondent's parental rights. The trial court terminated respondent's parental rights on July 2, 2013. Respondent appeals, challenging the court's findings he was unfit. (This case was originally consolidated

with case No. 4-13-0558, but because the respondents are different and raised different issues, we have unconsolidated the cases for disposition.)

¶ 4

I. BACKGROUND

¶ 5 On November 9, 2011, K.C.'s mother admitted she inflicted excessive corporal punishment on K.C. when she struck her with electrical cords, pursuant to section 2-3(2)(v) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(v) (West 2008)). We affirmed the judgment of the trial court on appeal. *In re An.C.*, 2012 IL App (4th) 120004-U.

¶ 6 On October 17, 2012, the State filed a motion seeking a finding of unfitness and the termination of respondent's parental rights to K.C. The State alleged respondent was unfit in that he (1) failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal (750 ILCS 50/1(D)(m)(i) (West 2010)); (2) failed to make reasonable progress toward the minor's return within nine months of adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)); (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2010)); and (4) was depraved (750 ILCS 50/1(D)(i) (West 2010)).

¶ 7 The trial court heard evidence of unfitness on January 29, March 5, April 10, and April 18, 2013. On May 8, 2013, the court found respondent unfit on all grounds. At the fitness hearing on March 5, 2013, Anita Faulkner testified she was a foster care case manager for the Department of Children and Family Services (DCFS) and worked on K.C.'s case. According to Faulkner, K.C.'s mother told her respondent was present for K.C.'s first Christmas and first birthday, but he had not seen K.C. since then. K.C. believed her stepfather, Joshua Thomas, was her father. Respondent, his mother, and grandmother told Faulkner he was involved with K.C.

until she was 2½ or 3 years old. Faulkner spoke on the phone with respondent, who was incarcerated in California with an earliest release date of July 2016. Respondent had been arrested in California in July 2008 for assault with a deadly weapon. In a letter written to DCFS in November 2011, respondent admitted he had stopped all communication with K.C. and her mother for the past five years.

¶ 8 The best-interest report, dated June 26, 2013, indicated respondent remained incarcerated through the California Department of Corrections, but he was housed at Tallahatchie County Correctional Center in Mississippi. Because of his out-of-state incarceration, respondent had not participated in services. He called and wrote to Lutheran Social Services of Illinois (LSSI) expressing a desire to be in contact with K.C.

¶ 9 The best-interest report reflected K.C. was in a traditional foster placement where she had lived since June 14, 2012. While K.C. exhibited behavioral issues, they had decreased over time in frequency and severity. K.C. appeared happy and was responding well to the specialized foster home's structured environment. K.C. told her foster parent she did not want to live with her mother because she did not want to be hit. K.C. wanted to be adopted. K.C. had a strong attachment to her foster mother and all of her needs were being met. K.C. did not know respondent, had not see him in over five years, and believed her stepfather was actually her father. K.C. was healthy and doing well in school.

¶ 10 At the June 26, 2013, hearing, respondent appeared by telephone. The trial court accepted as evidence his statement he had completed a parenting class while in prison.

¶ 11 The court appointed special advocate's (CASA) report reflected the following. K.C. had between 70 and 100 cord marks and scars on her body, including the neck, temple,

buttocks, chest, legs, and inner-thigh area at the time the abuse was reported. K.C. had many different caretakers before coming into substitute care. She felt safe, secure, and loved in her foster placement. The CASA recommended the trial court terminate respondent's parental rights, as did LSSI. In addition, the minor's guardian *ad litem* (GAL) recommended termination of respondent's parental rights.

¶ 12 After hearing the arguments and recommendations of counsel, the trial court found it was in K.C.'s best interest to terminate respondent's parental rights. The court found there would be no opportunity for any type of permanent or custodial relationship with respondent. The court noted K.C. spent the majority of her life without having a relationship with respondent. Further, respondent was to remain incarcerated until July 2016 and thus would not be in a position in the near future to parent K.C. The court further found termination was clearly in K.C.'s best interest given she had an opportunity for permanency with her foster parent.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Respondent challenges the trial court's finding he was unfit to parent K.C.

¶ 16 A. Fitness Determination

¶ 17 A parent will be deemed unfit if the State proves, by clear and convincing evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). See *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d

908, 913 (2005).

¶ 18 In this case, respondent was found unfit on four grounds listed in section 1(D): he (1) failed to make reasonable efforts to correct the conditions that were the basis for K.C.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)); (2) failed to make reasonable progress toward K.C.'s return within nine months of the abuse adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)); (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2010)); and (4) was depraved (750 ILCS 50/1(D)(i) (West 2010)).

¶ 19 We begin with respondent's argument the trial court erroneously found him unfit for failing to make reasonable progress toward the return of K.C. within nine months of the adjudication of abuse. Respondent basically maintains he could not make progress because he was incarcerated.

¶ 20 This court judges reasonable progress according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 21 Here, because of respondent's criminal conduct and lengthy incarceration, he made no progress, much less reasonable progress, toward being able to parent K.C. Further, he

admittedly had no contact with K.C. for at least five years prior to the filing of this case.

¶ 22 Because we find the trial court did not err in concluding respondent was an unfit parent on one ground listed in section 1(D) (see 750 ILCS 50/1(D)(m)(ii) (West 2010)), we need not address the other fitness findings. We note, as respondent and the State both point out, no evidence was introduced to support the court's finding of depravity. However, the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006).

¶ 23 B. Best-Interest Finding

¶ 24 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's best interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interests stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interests those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. We will not disturb a decision terminating parental rights unless it is against the manifest weight of the evidence. *T.A.*, 359 Ill. App. 3d at 961, 835 N.E.2d at 914.

¶ 25 Respondent does not challenge the trial court's best-interest finding. We find, however, respondent cannot provide any stability or permanency for K.C. in the near future. He is incarcerated until July 2016. He has had no contact with K.C. for at least five years prior to the filing of this case. In contrast, K.C. is in a loving, stable, safe, and secure foster placement. She is doing well in school, and her medical needs are being met. K.C. is attached to her foster mother.

¶ 26 Based on the evidence and reports presented to the trial court, its decision to terminate respondent's parental rights was clearly not against the manifest weight of the evidence.

¶ 27 III. CONCLUSION

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

¶ 29 Affirmed.