

NOS. 4-13-0574, 4-13-0576, 5-13-0577, 4-13-0578, 4-13-0579 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

NOTICE
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circumstances
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In re: C.H., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0574))
SHARON PHILLIPS,)
Respondent-Appellant.)

Appeal from
Circuit Court of
Macon County
No. 08JA112

In re: C.H., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0576))
LAVERNON PORTER,)
Respondent-Appellant.)

No. 08JA112

In re: D.H., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0577))
SHARON PHILLIPS,)
Respondent-Appellant.)

No. 08JA113

In re: D.H., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0578))
LAVERNON PORTER,)
Respondent-Appellant.)

No. 08JA113

In re: J.H., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0579))
SHARON PHILLIPS,)
Respondent-Appellant.)

No. 08JA114

Honorable
Thomas E. Little,
Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* Where respondents were unfit and it was in the minors' best interest that respondents' parental rights be terminated, the trial court's decision on termination was not against the manifest weight of the evidence.

¶ 2 In May 2008, the State filed petitions for adjudication of wardship with respect to D.H. and C.H., the minor children of respondents, Sharon Phillips and Lavernon Porter, as well as with respect to J.H., the minor child of respondent mother. The trial court adjudicated the minors wards of the court and placed custody and guardianship with the Illinois Department of Children and Family Services (DCFS). In March 2013, the State filed motions to terminate respondents' parental rights. In May 2013, the court found respondents unfit. In June 2013, the court determined it was in the minors' best interest that respondents' parental rights be terminated.

¶ 3 On appeal, respondents argue the trial court erred in finding them unfit and terminating their parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2008, the State filed petitions for adjudication of wardship with respect to D.H., born in 1999; C.H., born in 2000; and J.H., born in 2006. Sharon Phillips is the mother of all three children, and Lavernon Porter is the father of D.H. and C.H. The petitions alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)) in that they resided in an injurious environment and were not

receiving the proper or necessary care because of Sharon's long-standing substance abuse and being left with inappropriate caregivers. The trial court found probable cause to believe the minors were neglected and placed temporary custody with DCFS.

¶ 6 In October 2008, the trial court found the minors were abused or neglected based on Sharon leaving them with inappropriate caregivers and her substance-abuse issues. In its November 2008 dispositional order, the court found respondents unfit. The court also made the minors wards of the court and placed custody and guardianship with DCFS.

¶ 7 In March 2013, the State filed motions to terminate respondents' parental rights. The State alleged respondents were unfit because they failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)). The State also alleged respondent mother was unfit because she (1) is deprived in that she has been convicted of three felonies (750 ILCS 50/1(D)(i) (West 2012)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) failed to make reasonable progress toward the return of the minors to the parent within nine months after an adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) failed to make reasonable progress toward the return of the minors to the parent during any nine-month period after the end of the initial nine-month period following the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 8 In May 2013, the trial court held a hearing on the motions to terminate parental rights. Respondent mother did not appear personally, and respondent father appeared via telephone from federal prison. Steffannie Carlisle, the minors' former caseworker, testified Sharon's visits with the children were "somewhat sporadic." She made some of the visits, but

there were "times that she would lay in the middle of the living room floor as the children played around her." The last visit occurred in March 2013, when respondent mother tested positive for cocaine and marijuana.

¶ 9 Carlisle stated respondent father had been incarcerated during the time she conducted visitation with the children. She stated the children did occasionally speak to him on the phone. Carlisle stated these phone contacts occurred "maybe two to three times" in the three years since she became involved.

¶ 10 Monique Howell, the caseworker for D.H. and J.H., testified she took over the case in November 2011. She stated most of respondent mother's service plan goals had been accomplished. Howell stated Sharon was working, engaged in some substance-abuse programs and counseling, and had regular visitation. Howell stated Sharon was even allowed unsupervised weekend visits with the children for approximately three months. However, Howell stated Sharon did not show for a drug test in December 2012. She also did not pick up D.H. and J.H. the following week. Howell was unable to reach her until late January 2013, when Sharon called to say she had been laid off and was having "some personal life issues." Howell requested that Sharon take a drug test "about eight to ten times," but she only went once.

¶ 11 In March 2013, Sharon tested positive for cocaine and marijuana. Howell testified Sharon apologized to her and stated she was going to surrender her rights. She also stated she was thinking about moving to Atlanta to "clean herself up." Howell stated Sharon does well for a time but then relapses and disappears.

¶ 12 Howell testified she had no contact with respondent father since 2011. She knew of nothing to indicate Lavernon had provided any kind of financial or emotional support to the

children. Since Lavernon had not been provided any service plans, Howell stated it would take at least a year or two upon release from prison to properly deal with the children.

¶ 13 Respondent father testified he was currently incarcerated in the federal penitentiary in Wisconsin. He had been continuously incarcerated in jail or prison since October 2002. As of the time of the hearing, his outdate was October 2015 but he get could "another year off for the classes" he was taking. Lavernon stated he talked to C.H. at least once or twice a week. He had not talked to D.H. since the second to last visit he had with respondent mother. Lavernon stated he has a friend on Facebook, and D.H. has sent messages through the friend. Lavernon signed up for a manufacturing class and has completed a parenting class.

¶ 14 The State placed into evidence certified copies of Sharon's multiple felony convictions and Lavernon's federal conviction. Following closing arguments, the trial court found respondents unfit.

¶ 15 In June 2013, the trial court conducted the best-interest hearing. The best-interest report indicated D.H. and J.H. are adjusting very well in their foster home. Howell testified D.H. and J.H. are doing well in foster placement "for the most part." They had been in the placement for three years, and their foster mother had agreed to adopt them if parental rights are terminated. C.H. is residing with her paternal aunt and her foster parent is willing to adopt her.

¶ 16 Monique Porter, C.H.'s aunt and guardian, testified she would be able to care for all three children. She and her grandmother had obtained a bigger apartment and attended parenting classes. Ruth Grant, the great-grandmother of D.H. and C.H., testified she once lived with Monique Porter in Chicago. She tried to get all of the children together and obtained a larger apartment. She believed the children should be raised together.

¶ 17 Respondent father testified his projected release date was October 2015. He stated he had maintained contact with D.H. and C.H. via telephone, e-mails, and having friends pick them up and bring them to prison for visits. His last visit was in 2009. He believed it was in the minors' best interest that they grow up together and stay with his sister.

¶ 18 Following closing arguments, the trial court found it in the minors' best interest that respondents' parental rights be terminated. Both respondents appealed, and this court consolidated those appeals.

¶ 19 II. ANALYSIS

¶ 20 A. Unfitness Findings

¶ 21 Respondents argue the trial court's finding that they were unfit was against the manifest weight of the evidence. We disagree.

¶ 22 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877.

¶ 23 In the case *sub judice*, the trial court found both respondents unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare.

Before finding a parent unfit on this ground, the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185. "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202.

¶ 24 As to respondent father, the evidence indicates Lavernon was in prison during the five years following the adjudication of neglect. During that time, he provided no financial support for his children and the only contact he had with them was through a few e-mails and telephone calls. Although Howell stated Lavernon had not been provided with a service plan, no evidence indicates he tried to contact the caseworkers to inquire about his children. Respondent father argues he completed a parenting class and maintained contact with his children without the help of a caseworker. However, "a parent is not fit merely because [he] has demonstrated some interest or affection toward [his] child; rather, [his] interest, concern[,] and responsibility must be reasonable." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004) (citing *In re E.O.*, 311 Ill. App. 3d 720, 727, 724 N.E.2d 1053, 1058 (2000)). Given his lengthy prison sentence, respondent father placed himself in a situation where his contact with his children was minimal. The trial court's finding that he was unfit for failing to maintain a reasonable degree of

interest, concern, or responsibility was not against the manifest weight of the evidence.

¶ 25 As to respondent mother, the evidence indicates she had been doing well for a period of time and even had a job and unsupervised weekend visits with her children. However, Sharon took a turn for the worse. Howell testified Sharon's visitation was "somewhat sporadic." She tested positive for marijuana and cocaine at the last visit in March 2013. Howell testified she had difficulties contacting Sharon and states she does well for a time but relapses and disappears. Howell also stated Sharon told her she wanted to surrender her rights.

¶ 26 Respondent mother's inconsistent visitation, drug use, and failure to stay in contact with the caseworker evinces a failure to maintain a reasonable degree of interest, concern, or responsibility. Thus, the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because the grounds of unfitness are independent, we need not address the remaining grounds as to respondent mother. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds of 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.").

¶ 27 B. Best-Interest Findings

¶ 28 Respondents argue the trial court erred in finding it in the minors' best interest that their parental rights be terminated. We disagree.

¶ 29 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the

child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). 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 2012). 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).

See also 705 ILCS 405/1-3(4.05)(a) to (4.05)(j) (West 2012).

¶ 30 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the

evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 31 Here, the best-interest report indicated D.H. and J.H. were adjusting well in their foster home, where they had been for three years. Their foster mother indicated a desire to adopt them. C.H. had been residing with her paternal aunt and her foster parent indicated a willingness to adopt her.

¶ 32 Respondent father, however, remains in prison and is not expected to be released until October 2015. He has been in prison since 2000 and has had limited contact with his children. Given that it would take even more time after his release to ensure Lavernon could adequately parent his children, the evidence clearly demonstrates he would be unable to provide the stability and permanence the minors need in their formative years. The trial court's decision that termination was in the minors' best interest was not against the manifest weight of the evidence.

¶ 33 As to respondent mother, the evidence indicates she failed to contact the case-workers, relapsed into using illegal drugs, and would not be able to take immediate custody of her children. Moreover, at the best-interest hearing, Sharon's counsel indicated Sharon was willing to surrender her parental rights because she "wanted the children to have some stability." Considering this, and as the children are in stable homes, the trial court's order terminating respondent mother's parental rights was not against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.