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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re S.H., a minor,)	Appeal from the Circuit Court
)	of Lake County
)	
)	No. 13-JA-39
)	
)	Honorable
(The People of the State of Illinois, petitioner-)	Valerie Boettle-Ceckowski,
Appellee, v. O. H., Respondent-Appellant.))	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that respondent was an unfit parent due to his repeated incarcerations is not contrary to the manifest weight of the evidence, the propriety of the other grounds upon which the trial court determined respondent was unfit is moot, and the trial court's determination that it was in the minor's best interests that respondent's parental rights be terminated was not erroneous.

¶ 2 I. INTRODUCTION

¶ 3 The circuit court of Lake County determined that respondent, O.H, is an unfit parent and that it is in the best interest of the minor S.H. to terminate respondent's parental rights. He now appeals. For the reasons that follow, we affirm. We will first address respondent's arguments regarding fitness and then turn to his argument concerning the minor's best interests.

¶ 4

II. FITNESS

¶ 5 The trial court found respondent unfit on five separate grounds. First, it determined that he is depraved. 750 ILCS 50/1(D)(i) (West 2012). Second, it found that respondent did not make reasonable efforts to correct the conditions that lead to the removal of the minor. 750 ILCS 50/1(D)(m)(i) (West 2012). Third, it concluded that respondent failed to make reasonable progress toward the return of the minor during a nine-month period following the initial nine-month period after the adjudication of abused or neglected minor. 750 ILCS 50/1(D)(iii) (West 2012). Fourth, the trial court found that respondent was unfit in that he failed to visit the minor for a 12-month period. 750 ILCS 50/1(D)(1)(i) (West 2012). Fifth, it determined that respondent's repeated incarcerations prevented him from fulfilling his parental duties. 750 ILCS 50/1(D)(s) (West 2012).

¶ 6 Any one of these five grounds, standing alone would be sufficient to support a finding of unfitness. *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000). Thus, to prevail here, respondent must show that the trial court's rulings were in error on each individual ground of unfitness. See *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. Hence, if we determine that the trial court's ruling as to one ground of unfitness is not contrary to the manifest weight of the evidence, we need not consider its rulings on the remaining grounds. *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004). Moreover, to show that these findings are erroneous, respondent must show that they are against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is contrary to the manifest weight of the evidence only if an opposite conclusion to the trial court's is clearly apparent. *Id.* We note that at trial, it was the State's burden to prove respondent's unfitness by clear and convincing evidence. *In re D.C.*, 209 Ill. 2d 287, 296 (2004). However,

as the State prevailed at trial, it is now respondent's burden before this court, as the appellant, to demonstrate that the trial court erred. *TSP Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008).

¶ 7 Here, the trial court's ruling on the fifth ground it relied upon in finding respondent unfit is plainly not contrary to the manifest weight of the evidence. The trial court found that respondent's repeated incarcerations prevented him from fulfilling his parental duties. Section 50/1(D)(s) of the Adoption Act (Act) defines "unfit person," in pertinent part as follows:

"The child is in the temporary custody or guardianship of the Department of Children and Family Services [(DCFS)], the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child." 750 ILCS 50/1(D)(s) (West 2012).

This statutory subsection contains four conditions: that the minor is in the custody of DCFS; that respondent was incarcerated at the time the petition to terminate his parental rights was filed; that respondent has been repeatedly incarcerated; and that respondent's repeated incarcerations have prevented him from discharging his parental duties. *In re Gwynne P.*, 215 Ill. 2d 340, 355 (2005). Respondent concedes the first three elements; however, he contends that the trial court's decision that his multiple incarcerations prevented him from fulfilling his parental duties is contrary to the manifest weight of the evidence.

¶ 8 Repeated incarcerations, standing alone, are insufficient to support an unfitness finding. *Id.* However, as we have previously explained, "A finding of unfitness under subsection (s) is warranted where repeated incarceration has prevented the parent from providing his or her child

with the necessary emotional and financial support and stability required of a parent.” *In re Andrea D.*, 342 Ill. App. 3d 233, 246-47 (2003). Furthermore, a finding pursuant to this section is proper “regardless of the parent’s efforts, interest in his child, or satisfactory attainment of goals.” *Id.* at 247. Moreover, “[b]ecause this standard looks to the effects of repeated incarceration, there is no requirement that all of the incarcerations have occurred during the child’s lifetime.” *Gwynne P.*, 215 Ill. 2d at 356. Therefore, “[i]ncarceration that predates the child’s birth can also be considered under section 1(D)(s) if it has impeded a parent’s ability to acquire appropriate life skills or provide the types of physical, mental, moral, material and emotional support children require.” *Id.*

¶ 9 Here, respondent began serving a four-year sentence for residential burglary in May 2004 when S.H. was three weeks old. He was released on March 16, 2006, when S.H. was almost two-years old. On September 14, 2006, respondent was incarcerated for aggravated discharge of a firearm, the sentence for which was approximately nine years. He was discharged in January 2011. In October 2011, respondent was again incarcerated. He pleaded guilty to felony possession of a firearm and is eligible for release in September 2014. Outside of the first three weeks of her life and two periods—the longest being about ten months—respondent has been incarcerated for S.H.’s entire life.

¶ 10 Respondent contends, nevertheless, that it was not his repeated incarcerations that prevented him from discharging his parental responsibilities. He notes that his case workers testified that he consistently expressed concern for his daughter and he attempted to stay in contact with her. While admirable, this is not a sufficient basis to disturb the trial court’s decision. See *Andrea D.*, 342 Ill. App. 3d at 246-47. Respondent points out that, on certain

occasions, he made arrangements for others, including his mother, to care for S.H. when the minor's mother was unavailable. We agree that this weighs in respondent's favor.

¶ 11 However, we note that other considerations weigh against respondent. For example, the trial court noted that the minor had to be placed in a foster home following a domestic incident between the minor's mother and paternal grandmother because respondent was incarcerated and not available to care for the minor. The trial court noted that there were periods in which respondent could not visit the minor because he was in prison. It then noted that it "was his choice to commit the acts which resulted in his incarceration." The court found that respondent's incarceration, as well as the the minor's mother's incarcerations, "showed their lack of caring and concern for their daughter." Moreover, prior to sentencing, respondent also spent a considerable amount of time in the county jail. However, the trial court expressly recognized that respondent sent letters and gifts to the minor, but it further noted he was prevented from visiting by a court order entered based on the recommendation of the minor's therapist that contact with respondent was not in the minor's best interests.

¶ 12 In sum, while there is some evidence that supports respondent's argument, in light of the evidence to the contrary, we cannot say that an opposite conclusion to the trial court's is clearly evident. Respondent has not established that it is clearly apparent that his incarcerations have not rendered him incapable of fulfilling his duties as a parent, which is now his burden on appeal. Accordingly, we cannot hold that the trial court's judgment is contrary to the manifest weight of the evidence. Furthermore, as we have determined that the trial court did not err in finding respondent an unfit parent on this ground, we need not consider whether respondent is also an unfit parent on another ground as well.

¶ 13

III. BEST INTERESTS

¶ 14 Respondent also challenges the trial court’s determination that it was in S.H.’s best interests that his parental rights be terminated. At this stage of the proceedings, the focus is on the minor’s best interests, as the fitness of the parent has already been adjudicated. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Relevant considerations include:

“(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; (4) the child’s sense of attachment, including love, security, familiarity, continuity of relationships with parent figures; (5) the child’s wishes and goals; (6) community ties; (7) the child’s need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child.” *B.B.*, 386 Ill. App. 3d at 698-99, citing 705 ILCS 405/1-3(4.05) (West 2006).

We review this issue using the manifest-weight standard, so we will disturb the judgment of the trial court only if an opposite conclusion is clearly apparent. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008). At trial, the burden was on the State to prove that it was in the minor’s best interests to terminate respondent’s parental rights. *Id.* at 366. Of course, here, on appeal, the burden is on respondent to show error in the proceedings below. *TSP Hope, Inc.*, 382 Ill. App. 3d at 1173.

¶ 15 The trial court found that it was in S.H.’s best interests that respondent’s parental right be terminated. It first noted that respondent has done “the appropriate thing as best he could with making poor decisions in regard to his incarceration situation.” It further observed that the foster mother “is caring for” S.H. The trial court found that S.H. was “very well cared for.” She has children close to her age in her foster home, she has a sense of security and attachment, and she

needs to know that she can remain there. S.H. is involved in school activities. She calls her foster mother “mom.”

¶ 16 Respondent argues, nevertheless, that the trial court failed to consider that he made attempts to communicate with the minor, that he sent letters to S.H.’s therapist, that he spoke with the foster mother, and that he sent S.H. gifts. Respondent asserts that he has a bond with S.H., and she has a bond with him. We note that the trial court expressly stated that respondent did stay in contact with S.H. and acknowledged that this was a positive factor for respondent. Hence, respondent’s contention that the trial court did not consider this evidence is contradicted by the record. Moreover, we do not doubt that respondent has a bond with S.H. However, the record also indicates that S.H. has a bond with her foster mother, and there is other evidence in the record supporting the trial court’s decision as well. Quite simply, the trial court weighed the evidence, both for and against respondent, and determined that terminating respondent’s parental rights was in S.H.’s best interests. Given the state of the record, we simply cannot say that a conclusion opposite to the position taken by the trial court is clearly apparent. As such, we must affirm its judgment.

¶ 17

IV. CONCLUSION

¶ 18 In light of the foregoing, the judgment of the circuit court of Lake County is affirmed.

¶ 19 Affirmed.