

2014 IL App (2d) 142063-U  
No. 2-14-0263  
Order filed August 14, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MAUREYEAH H. and MARIO H., Minors	)	Appeal from the Circuit Court of Winnebago County.
	)	
	)	Nos. 10-JA-207
	)	10-JA-208
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Mario H., Respondent-Appellant).	)	Honorable Mary Linn Green, Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices McLaren and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's finding that the father of two minors was unfit and that it was in the minors' best interests to terminate parental rights was not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Mario H., Sr. (Mario Sr.), the respondent, is the father of the two minor children involved in this appeal. Following the State's petition to terminate Mario Sr.'s parental rights, the circuit court held hearings on his fitness and the children's best interests on February 20, 2014. Focusing on the children's need for permanence and the father's failure to obtain a psychological evaluation, suitable housing, and address the children's special needs, the court found the father

unfit and that termination of parental rights was in the children's best interests. Accordingly, it entered an order terminating Mario Sr.'s parental rights. This appeal followed, and we affirm.

¶ 3

#### I. BACKGROUND

¶ 4 Mario Sr. is the father of Maureyeah H. (born January 5, 2004) and Mario H., Jr. (born April 7, 2008) (collectively "the children"). Their mother is Barbara H. The children had been living with Barbara in Rockford, Illinois, although they were originally from California. In June 2010, the Department of Children and Family Services (DCFS) received a call about Barbara and the children after a police officer conducted a welfare check at their home. The officer relayed that Barbara had told him that she would leave her children at home alone if he did not take the children away from her. DCFS took custody of the children that same day. Barbara was taken to the hospital because she seemed suicidal.

¶ 5 Mario Sr. was living in California at the time DCFS took the children into protective custody. He obtained a California court order granting him sole custody of Mario Jr. and Maureyeah because Barbara had traveled to Illinois in violation of California law. On June 21, 2010, the circuit court entered a temporary custody order concerning Maureyeah and Mario Jr., finding probable cause that they were neglected, and on September 22, 2010, the court entered an order finding the children neglected by way of Barbara's factual stipulation to that effect.

¶ 6 Mario Sr. knew of the Illinois proceedings concerning the children, and he agreed to engage in their cases and complete an integrated assessment. In an August 27, 2010, pre-trial conference report to the court, the case manager at the time reported that Mario Sr. had completed his integrated assessment, although she also reported that during his assessment, he denied any incidents of domestic violence with Barbara or physical abuse of the children. The worker had concerns about his honesty due to reports by Barbara and the children of past

incidents, including that Mario Sr. had pushed Barbara out of a car, knocked her teeth out, and choked her. Mario Sr. also reported a history of drug abuse. He was in prison for almost six years for the manufacture and delivery of methamphetamines. Mario Sr. had lived in Illinois with Barbara and the children until an arrest in April 2010 for interfering with a report of domestic violence, after which he moved back to California.

¶ 7 On April 17, 2013, the State filed a “Motion for Termination of Parental Rights and Power to Consent to Adoption.” In its motion to terminate parental rights, the State asserted that Mario Sr. had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children’s welfare, and that he failed to make reasonable progress toward the return of the children within nine months after the initial nine month period after an adjudication of neglect (as mentioned, the court entered an order that the children were neglected in September 2010).

¶ 8 At a September 5, 2013, hearing, Michelle Garnhart, the case worker for Mario Jr. and Maureyeah since December 2011, testified that Mario Jr. had epilepsy, and that both Mario Jr. and Maureyeah had been in counseling. They were in counseling because they had witnessed domestic violence and to aid in their transition in moving between Illinois and California. Maureyeah also had temper tantrums.

¶ 9 Hearings on Mario Sr.’s fitness and the best interests of Mario Jr. and Maureyeah took place on February 20, 2014 (Barbara’s parental rights had been terminated previously, and she is not a party on appeal). The court first noted that Mario Sr. had previously signed consent forms for the children’s placement, but the placement had asked that the children be removed, thus voiding the consents. Mario Sr.’s attorney informed the court that he was currently employed on a probationary period in California. Michelle Garnhart was the State’s only witness called at the hearings.

¶ 10 At the fitness hearing, Garnhart testified to the following. She was the case manager for Maureyeah and Mario Jr. for the past two years. While Mario Sr. had made a few phone calls to her, he had not attempted to reengage in services in order to care for his children again. He had completed services early in the case,<sup>1</sup> but he never completed his requested psychological evaluation. He was unable to secure employment until January of 2014. His Interstate Compact on the Placement of Children (ICPC) home study was denied due to housing issues—he shared a two bedroom residence with four adults—and he had not been able to obtain better housing since. He had an outstanding warrant out for his arrest in Illinois, which prevented his return to the state.<sup>2</sup> He was not involved in the children’s education, such as parent-teacher conferences. While the children had been in Illinois preceding the hearing, he called to inquire about them “maybe” once a month. His contact with the case worker in 2012 and 2013 was minimal to none.

¶ 11 Garnhart continued that Mario Jr. had special needs. He had been diagnosed with epilepsy and attention deficit hyperactivity disorder (ADHD) while living in California. He had an individualized education program for a while as well. Mario Sr. had not taken steps toward educating himself about or involving himself with Mario Jr.’s medical issues.

¶ 12 Considering all the evidence, testimony, and arguments, the court found that the State

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<sup>1</sup> Per Garnhart’s May 21, 2013, report to the court, Mario Sr. had completed domestic violence counseling (anger management), although she reported that he had not taken responsibility for his past involvement in domestic disputes. He had also completed parenting classes and substance abuse treatment.

<sup>2</sup> Again, per Garnhart’s May 21, 2013 report to the court, the warrant was related to an offense of knowingly damaging property.

proved by clear and convincing evidence that Mario Sr. failed to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare, and that he failed to make reasonable progress towards the return of the child to him. The court explained as follows. There was one minor with medical needs, and Mario Sr. had not followed up on the medical needs. There was no evidence that he was taking measures to discuss the minors and their special needs. He had failed to comply with the case manager's request for a psychological evaluation. His housing situation in California was unfit for the children and had not been corrected. He had an outstanding warrant for his arrest in Illinois. He was still on supervised visitation. Thus, the court found Mario Sr. unfit.

¶ 13 Moving on to the best interests of the children, Garnhart was again the only witness. She testified as follows. Mario Jr. and Maureyeah had been placed in a traditional foster home, although three weeks before the hearing, Mario Jr. was removed and placed in a different foster home because of behavioral issues. Both foster families were open to adoption, and it was possible that Mario Jr. may be placed back with Maureyeah and her foster family in the future.

¶ 14 Garnhart opined that it would be in the children's best interests to terminate Mario Sr.'s parental rights. Despite not having specific adoptive homes set yet for the children, the case had been open since June 2010, and Mario Sr. was still not able to have the children return to live with him. The children, in her opinion, needed permanency, and they would not receive permanency with Mario Sr. She also believed that there were adoptive families available for Mario Jr. and Maureyeah. She further testified that the mother's parental rights had already been terminated. At the time, Mario Jr. was five years old, and Maureyeah was 10, which were adoptable ages.

¶ 15 The court, stating that it had considered the statutory best interest factors as well as the

evidence and arguments of counsel, found that the State proved by a preponderance of the evidence that it was in the children's best interests to terminate Mario Sr.'s parental rights. The court agreed "it was a sad case." The court reasoned that the children needed permanence. They did not need more years of foster care. They had already changed foster homes and states. Having "more doors open to them for adoption" weighed "heavily in their favor as opposed to more time in foster care." Accordingly, the court terminated Mario Sr.'s parental rights in a February 26, 2014, order.

¶ 16 Mario Sr. timely appealed.

¶ 17 **II. ANALYSIS**

¶ 18 Section 2-29 of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-29 (West 2010)) provides a two-step process for the involuntary termination of parental rights. *In re Addison R.* 2013 IL App (2d) 121318, ¶ 10; see 705 ILCS 405/2-29(2) (West 2010). First, the court must find that a parent is unfit by clear and convincing evidence. *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Second, if the parent is found unfit, the court must find by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 10.

¶ 19 The standard of review for a finding of parental unfitness is whether the trial court's finding was against the manifest weight of the evidence. *In re Cornica J.*, 351 Ill. App. 3d 557, 566 (2004). "A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonable, arbitrary, and not based on the evidence presented." *Id.* In deciding whether the trial court's unfitness finding is against the manifest weight of the evidence, we must be "mindful that every matter concerning parental

fitness is *sui generis*.” *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Therefore, we must review each case on the particular facts and circumstances presented. *Id.*

¶ 20 Likewise, the trial court’s finding that termination of parental rights is in a child’s best interest is reviewed against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App 3d 883, 891-92 (2004).

¶ 21 1. Parental Unfitness

¶ 22 Section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2010)) provides various grounds for unfitness, and any one of the grounds listed (with one noted exception) is sufficient to find a parent unfit. *Id.* at 889. Among the grounds for unfitness are:

“Failure to maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare” (750 ILCS 50/1(D)(b) (West 2010)), and “[f]ailure by a parent \*\*\* to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor \*\*\*. If a service plan has been established \*\*\* to correct the conditions that were the basis for the removal of the child from the parent \*\*\* then ‘failure to make reasonable progress toward the return of the child to the parent’ includes the parent’s failure to substantially fulfill his or her obligations under the service plan” (750 ILCS 50/1(D)(m)(ii) (West 2010)).

The trial court found Mario Sr. unfit under sections 1(D)(b) and 1(D)(m)(ii) of the Act. Only one was necessary to find Mario Sr. unfit, and therefore he must prove both findings were against the manifest weight of the evidence. See *In re Tiffany M.*, 353 Ill. App at 889.

¶ 23 A. Reasonable Degree of Interest

¶ 24 Mario Sr. argues that the court’s finding that he failed to maintain a reasonable degree of interest, concern, or responsibility toward the children was against the manifest weight of the

evidence. He argues as follows. He engaged in and completed his initial service requests, including anger management and parental classes. He was consistent with his supervised visitation, which DCFS noted, yet this was at odds with DCFS's claim that they had trouble contacting him. After completing recommended services, DCFS "inexplicably required" that he undergo a psychological evaluation. The fact that DCFS was considering placing the children with him made the requirement for a psychological exam "questionable." Moreover, while his residence was deemed unfit for him and his children, the children had lived before with his relatives in a four-bedroom home with nine people.

¶ 25 Moreover, DCFS did not know that he could not provide for his children. They merely believed he was unemployed and therefore concluded he could not provide for the children. He initially had trouble seeing his children because they lived in another state, but he maintained consistent phone visitation. When the children were in California, he maintained consistent in-person visitation.

¶ 26 The only issues that DCFS had with him were: his parental capacity evaluation,<sup>3</sup> that they did not like his living situation, and that he was unable to work because he was busy performing classes required by DCFS. He found work eventually, but it was not verified where he was employed or whether he maintained employment. He claims that the DCFS worker failed to call to ascertain the information that she needed.

¶ 27 The State responds as follows. DCFS requested that Mario Sr. undergo a psychological evaluation to determine his level of parenting skills for children with special needs and to see if

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<sup>3</sup> We assume he means the psychological evaluation, which is what Garnhart testified to at the hearing, and what the trial court based its decision on, in part, at the fitness hearing.

he required additional services. He never completed the psychological assessment. He also did not make attempts to reengage in services after the children returned to Illinois.

¶ 28 Mario Sr. did not obtain suitable housing or maintain employment. He resided with his sister and two others in a two-bedroom apartment, which was deemed too small for him to have custody of the children. It was only in January 2014 that he reported any consistent employment. His contact with the DCFS caseworker was inconsistent and minimal. He only participated in one administrative case review, although he was free to participate in any via phone. He also never inquired about Mario Jr.'s medical issues.

¶ 29 At the fitness hearing, Garnhart testified that he had not been engaged in the children's care over the last two years. Accordingly, as he failed to complete his psychological evaluation, gain and maintain suitable housing and employment, inquire about the children's well-being, or attend administrative case reviews, he failed to show a reasonable degree of interest, care, or responsibility toward the children.

¶ 30 We agree with the State. Mario Sr.'s children have special needs. Mario Jr. has had medical conditions (epilepsy and ADHD) and both children required counseling in the past, in part for witnessing domestic abuse between Mario Sr. and Barbara. Mario Sr. did not inquire or take steps toward addressing those special needs. He completed services up to a point. However, he failed to obtain a psychological evaluation, which would have determined whether he needed additional services or whether he was ready to take custody of children with special needs. A prior case worker to Garnhart also noted that he did not take responsibility for prior domestic abuse.

¶ 31 Furthermore, Mario Sr. did not show that he improved his living situation. He was living with his sister and two others in a two-bedroom apartment. He can quibble with the housing

determination by comparing it to the children's prior living situations, but it does not change the fact that his housing situation was deemed unfit in September 2011 and yet it is 2014 and he has failed to improve his housing situation. His employment was probationary and unspecified. Although he has been employed since January 2014, the record does not reflect the nature of the employment, its hours, pay, or likelihood of continuation. Garnhart had trouble reaching him at times, and he rarely contacts her. He was unable to visit Illinois due to his outstanding warrant in the state.

¶ 32 Mario Sr.'s minimal contact with Garnhart showed his lack of interest, and his failure to obtain a psychological evaluation or take steps to understand and address his children's special needs showed a lack of concern and responsibility. His failures to obtain better housing and secure employment, standing alone, do not show a lack of interest or concern, but if he is to have the children, he is responsible for their well being. It is difficult to be a responsible provider without suitable housing and a secure source of income. Although he obtained a probationary job in 2014, he has failed to describe the job. Accordingly, the trial court's finding that Mario Sr. was unfit under section 1(D)(b) of the Act (750 ILCS 50/1(D)(b) (West 2010)) was not against the manifest weight of the evidence.

¶ 33 B. Reasonable Progress

¶ 34 Each ground set forth in section 1(D) provides a discrete basis for a finding of unfitness, and therefore a finding of any one ground is sufficient to support a subsequent termination of parental rights. *In re C.W.*, 199 Ill. 2d 196, 217 (2002). As we have held that the trial court's finding under section 1(D)(b) of the Adoption Act was not against the manifest weight of the evidence, this is sufficient to uphold the unfitness order.

¶ 35 However, we note briefly that the trial court's other finding of unfitness was also not against the manifest weight of the evidence. Under section 1(D)(m)(ii) of the Act, " 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care." 750 ILCS 5/1(D)(m)(ii) (West 2010). Part of the services requested by DCFS was that Mario Sr. would undergo a psychological evaluation. Given his prior involvement with substance abuse, domestic abuse, and a lack of knowledge about the children's special needs, it was reasonable to request that he undergo a psychological evaluation to establish whether he needed more services before taking back the children. His failure to comply with this part of his service plan demonstrated a lack of reasonable progress towards the return of the children, as he has had since 2011 to undergo his psychological evaluation and yet has failed to do so. Accordingly, we hold that the trial court's finding that Mario Sr. failed to make reasonable progress under section 1(D)(m)(ii) was not against the manifest weight of the evidence.

¶ 36

## 2. Best Interests

¶ 37 Under the Juvenile Act (705 ILCS 405/1-2 *et seq.* (West 2010)), the best interest of the minor is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). A child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the minors involved. *Id.* at 50.

¶ 38 The Juvenile Act sets forth the factors to be considered whenever a best interest determination is required, and they are to be considered in the context of the minors' ages and developmental needs:

“(a) the physical safety and welfare of the child, including, food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care;

(j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3(4.05)

(West 2010).

Also relevant in a best interests determination is the nature and length of the minors' relationships with their present caretaker and the effect that a change in placement would have upon their emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 39 Mario Sr. argues as follows. Concerning factor (a), the children were safe and doing well while living with relatives in California. Under (b), the children enjoyed being with their father. Under (c), their home ties are to California, which is where they spent the majority of their lives so far. Under (d), all factors favor a return to their father in California because they have no familiarity with or reason to be in Illinois, nor any connection with their current foster parents. Under (e), the children enjoyed California when they were there, and that is where their familial and community ties are. Under (g), the children need permanence, and they will not get it in Illinois where they are currently in different foster homes, removed from their family in California. Adoption, at the time of the hearing, was speculative. Under (h), the children are unique and identify with their family, including their father, and under (i), there are always inherent risks, and there is no evidence that the current foster parents will likely adopt the children.

¶ 40 The State responds as follows. While several of the factors would point to a placement of the children in California, placement there is not currently available. Mario Sr. is not ready to take the children. What the children need is a "stable and loving home," and Mario Sr. cannot provide that now or in the near future. Accordingly, the trial court did not err in finding the best interests of the children were termination of Mario Sr.'s parental rights.

¶ 41 We agree with the State that the trial court properly found that the children's best interests were in finding permanence, and the best way to achieve permanence was to terminate

Mario Sr.'s parental rights and put the children up for adoption. The primary factor for the trial court's consideration was factor (g): the children's need for permanence. We have held that even when a child was not in a pre-adoptive home, termination of parental rights was proper when it would more likely lead to a permanent placement with an adoptive family than would a decision to continue parental rights of a parent that had been "out of the picture" for several years. *In re Deandre D.*, 405 Ill. App. 3d 945, 956 (2010). Although some factors may favor a California placement—*e.g.*, familial ties to California—residence in California is wholly dependent on Mario Sr., who, as we have discussed, has failed to take many necessary steps toward providing the children with stability and permanence over the course of almost four years, including providing a stable home, both via housing and income, and educating himself concerning their special needs.

¶ 42 Moreover, Mario Sr.'s arguments are mostly conclusory and without support in the record. For instance, it is assumed that the ten and six year old children have attachment and an affinity for California, but the only evidence offered is that they lived in California longer than in Illinois. He asserts that the children are unique, but does not say how they are unique or why that affects our decision in this case. And he speculates that the children cannot receive permanence in Illinois.

¶ 43 The trial court focused on permanence for good reason. The children have lacked it, and they need it to be able to develop personal ties, familiarities, long-term goals, and a sense of love and identity. The State showed that Mario Sr. was unable to provide permanence, at least by a preponderance of the evidence. His housing situation was deemed unfit for the children, he was unemployed until January 2014 (and his employment is probationary and unspecified), and he has not been involved or educated in the children's special needs.

¶ 44 Garnhart testified that the children will be listed for adoption, the children are adoptable, and the current foster parents are at least open to adoption themselves. The trial court is correct that this is a “sad case,” and the most likely route to a happy ending for the children is to find a stable, adoptive family. The children are already ten and six years old. It is unfair to have them wait even longer for their father to be ready to take care of them when he already has had years to do so. Therefore, the trial court’s finding that it was in the children’s best interests to terminate Mario Sr.’s parental rights was not against the manifest weight of the evidence.

¶ 45

### III. CONCLUSION

¶ 46 For the aforementioned reasons, we affirm the Winnebago County circuit court’s order terminating Mario Sr.’s parental rights.

¶ 47 Affirmed.