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2014 IL App (3d) 130693-U

Order filed February 18, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> J.W., A.W., and B.W.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minors	)	Whiteside County, Illinois.
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-13-0693, 3-13-0694, and
	)	3-13-0695
Petitioner-Appellee,	)	Circuit Nos. 09-JA-31, 09-JA-32, and
	)	09-JA-33
v.)	
	)	The Honorable
Danielle W.,	)	William S. McNeal and
	)	Michael R. Albert,
Respondent-Appellant.)	)	Judges, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the circuit court's orders that denied the respondent's petition for substitution of judge, found the respondent to be an unfit parent, and terminated the respondent's parental rights.

¶ 2 The circuit court entered orders finding the respondent, Danielle W., to be an unfit parent and terminating her parental rights to the minors, J.W., A.W., and B.W. On appeal, the respondent argues that the court erred when it: (1) denied her motion for substitution of judge;

(2) found her to be an unfit parent; and (3) found that it was in the minors' best interest to terminate her parental rights. We affirm.

¶ 3

FACTS

¶ 4

On June 10, 2009, the State filed juvenile petitions alleging that the minors, J.W. (born June 17, 2008), A.W. (born September 20, 2005), and B.W. (born October 22, 2002) were neglected by reason of an injurious environment. The minors were taken into protective custody and were placed together in a foster home. On December 8, 2009, the respondent stipulated that the State could prove the allegations of the petitions. That stipulation included a factual account of an incident in which J.W. was taken to an emergency room on June 7, 2009, with certain injuries, which consisted mostly of bruising to her forehead and face. The respondent gave a partial explanation for the injuries, which was determined by a doctor the next day to be inconsistent with the type of injuries sustained by J.W. Other documents filed in this case indicated that the minors had initially been placed with the maternal aunt, but that placement changed in September 2009 after J.W. was readmitted to the hospital with similar injuries to those she sustained in June 2009.

¶ 5

On January 11, 2010, the circuit court entered orders finding the minors to be neglected, making them wards of the court, and granting guardianship with the right to place to the Department of Children and Family Services (DCFS). Over the life of this case, the respondent was ordered to complete numerous tasks, including: (1) cooperate with DCFS and its designees; (2) obtain employment and adequate housing; (3) complete a parenting class and address issues with her parenting style; (4) complete a domestic violence class and address issues she had with domestic violence in her relationships; (5) participate in individual, domestic violence, and

substance abuse counseling; (6) complete a substance abuse evaluation and follow any associated recommendations; (7) submit to drug screening; and (8) participate in visitation with the minors.

¶ 6 On August 6, 2012, the State filed a petition to terminate the respondent's parental rights to the minors. The petition alleged, *inter alia*, that the respondent failed to make reasonable progress toward the return of the minors to her care: (1) during the nine-month period following the adjudication of neglect; and (2) during the nine-month period between June 1, 2011, and February 29, 2012.

¶ 7 Numerous service-plan evaluations had been filed with the circuit court during the life of this case. With regard to the nine-month period between June 1, 2011, and February 29, 2012, three service-plan evaluations were filed with regard to the respondent's progress on her tasks. The first evaluation was performed on November 17, 2011, and was followed by an agency report compiled on November 28, 2011, for a permanency review hearing. The respondent was given an evaluation of unsatisfactory on her tasks to obtain employment and adequate housing. She had no employment history and was still unemployed. She had been living for a short time in her own apartment, which she did not pay for, but she moved back in with her mother in October 2011. The caseworker did not learn of this move until November 2011. Previous documentation filed with the court indicated that the unsatisfactory evaluation on housing was based on an assessment that B.W. had "highly emotional, negative reactions at times in the presence of her grandmother."

¶ 8 The respondent was given an evaluation of unsatisfactory on her tasks related to parenting. While the respondent had completed parenting education classes in March 2010, she was not applying what she learned. Due to the respondent's parenting issues, the agency also recommended that she engage in parent-coaching sessions; she attended five of six of these

sessions between June and September 2011. The clinician reported to the agency that during these sessions, the respondent showed a lack of a bond with the minors and that she tended to observe, rather than interact with, the minors. The caseworker also indicated that the respondent did not appear to have a maternal bond with the minors, did not appropriately engage with the minors during visits, and did not respond to the minors when they would seek the respondent's attention during visits. For these reasons, as well as the fact that she often arrived late to visits, the respondent was also given an evaluation of unsatisfactory on her visitation task. The agency further reported that the respondent had not been participating in visitation consistently over the past six months, that she appeared overwhelmed by having to care for all three children at one time, and that she tended to let other adults care for the minors during visits. Additionally, the therapist working with B.W. and A.W. reported that those girls "[had] become guarded and emotionally stunted due to their lack of permanency." Both girls had been having behavioral issues before and after visitation with the respondent.

¶ 9 The respondent was given an evaluation of unsatisfactory on her tasks related to domestic violence. While she did complete a domestic violence program in January 2011, she self-reported that she was in a domestically violent relationship with her boyfriend, whom the respondent had been dating since November 2010 and who was the father of a fourth child to whom the respondent gave birth in November 2011. The caseworker also noted that a police report from June 25, 2011, indicated that the respondent told police that there had been numerous incidents of domestic violence by her boyfriend that she had not reported.

¶ 10 The respondent was given an evaluation of unsatisfactory on her tasks related to substance abuse. While she was given a satisfactory evaluation on performing drug screening and while she was in substance abuse treatment at the time, she had not finished the treatment

and had not "fully engaged in a timely manner, as recommended by the agency." The respondent started treatment for a third time in June 2011 after two unsuccessful attempts over the past year. The respondent's substance abuse counselor reported that the respondent had been attending weekly sessions and had also begun attending a women's group that was recommended. The respondent had not followed through with a recommendation to attend a 12-step group, however.

¶ 11 With regard to mental health services, the respondent completed an initial intake session in June 2011. In September 2011, the respondent told the agency that she was not going to participate in individual counseling at the agency's recommended location; rather, she was going to continue seeing her substance abuse counselor. The agency did not deem this appropriate, though, given that the respondent's counselor worked mainly with substance abuse issues. The respondent eventually told the agency that she would return to the agency's recommended location; however, as of November 28, 2011, the agency had not received any word on whether the respondent had followed through. Further, the respondent did not show up for a scheduled psychological evaluation in October 2011.

¶ 12 The second evaluation was performed on January 12, 2012, and the evaluation reported essentially no change in the respondent's progress toward her tasks. The respondent completed a consultation with a psychiatrist in late November 2011; was diagnosed with Bipolar Disorder, Type II; and was prescribed medication. She failed to attend a follow-up appointment in early January 2012.

¶ 13 The third evaluation was performed on May 14, 2012, and the evaluation reported essentially no change in the respondent's progress toward her tasks. The evaluation noted that the case goal had been changed on February 7, 2012, from return home to substitute care pending termination of parental rights. As such, the agency was no longer providing paid services to the

respondent and her visitation was changed from weekly to monthly. Further, she had been discharged from her substance abuse treatment facility for the failure to complete the required hours.

¶ 14 During pretrial matters, on November 21, 2012, the respondent filed a "motion"¹ for substitution of Judge McNeal for cause, which alleged that Judge McNeal previously represented the respondent in a 2009 criminal case while the instant case was pending in the circuit court. No affidavit was filed with the "motion." The parties argued the matter in front of Judge Albert in December 2012. Counsel for the respondent argued that Judge McNeal, who was the Public Defender back in 2009, appeared with the respondent on August 5, 2009, to waive a preliminary hearing after she was charged with aggravated driving under the influence. Court records reflected that then-Public Defender McNeal also appeared in that criminal case on October 28, 2009, and on April 15, 2010. Counsel argued that the State would presumably use the respondent's aggravated DUI case against her in a termination of parental rights hearing, and, therefore, cause existed to remove Judge McNeal.

¶ 15 The circuit court noted that there was no affidavit from the respondent filed with the "motion" to indicate what type of contact she had with then-Public Defender McNeal. Counsel for the respondent stated that "the most substantive thing that was done on the case" was that then-Public Defender McNeal advised the respondent to waive a preliminary hearing. The State informed Judge Albert that then-Public Defender McNeal appeared on behalf of the respondent

¹ We use quotation marks when referring to the respondent's pleading because section 2-1001(a)(3)(ii) of the Code of Civil Procedure requires that applications for substitution of judge for cause shall be made by petition. 735 ILCS 5-1001(a)(3)(ii) (West 2010).

in another criminal case in 2010, at which a pending application for bond increase was allowed by agreement.

¶ 16 The circuit court then asked why the respondent was not in court, but counsel for the respondent said he did not know why she was absent. The court then said:

"Well, the burden is on the movant, and I can't tell from what's before me what extent, to any, Judge McNeal's involvement was in those cases and whether or not he would be privy to any information which would have a negative effect on any decision he might make relating to the mother in this case."

Accordingly, the court denied the "motion."

¶ 17 On January 29 and March 19, 2013, the circuit court held a hearing on the petition to terminate the respondent's parental rights. The State presented the testimony of the caseworkers who worked on the minors' case, all of whom testified in accord with the aforementioned service-plan evaluations. A clinical therapist testified that she had met with the respondent four times between September 2011 and January 2012. The respondent canceled one other session and missed five other sessions. The respondent did not comply with the therapist's recommendation for bi-weekly therapy. The respondent's substance abuse counselor testified, *inter alia*, that the respondent failed to complete substance abuse treatment for a third time after being allowed back into the program in June 2011. She completed a total of nine hours of sessions on her third attempt; the counselor testified that the respondent had been required to complete 75 hours. The counselor also testified that the respondent attended 12 of 20 women's group sessions, but did not complete that program or a 12-step program. The counselor's agency eventually closed the respondent's case and referred her to another agency for services.

¶ 18 The respondent testified, *inter alia*, that she did engage and play with the minors at visits. She believed that she had a bond with the minors. She also claimed that she had been working part-time as a personal aide between December 2011 and August 2012.

¶ 19 At the close of the hearing, the circuit court stated that it considered the fact that the minors had been placed a significant distance from the respondent, but it found that the respondent did not make reasonable progress under the circumstances. The court found that the State's witnesses were generally more credible than the respondent, and it highlighted the marked problems the respondent had with employment and visitation, including the lack of a bond between the respondent and the minors. The court also found that the evidence showed that the respondent was no closer toward having the minors returned to her care than she was three years ago when the minors were adjudicated neglected. Accordingly, the court found that the respondent was unfit for the failure to make reasonable progress toward the return of the minors to her care during both of the nine-month periods alleged in the termination petition.

¶ 20 The case proceeded to a best-interest hearing, which was held on July 16 and August 20, 2013. Child therapist Wendy Shankman testified that she had been working with B.W. since 2009. The services she had provided for the minors included parent-child sessions, which included the foster mother and which were aimed at strengthening their bond and at improving B.W.'s communication skills. Shankman testified that B.W. had a limited attachment to the respondent and that B.W. demonstrated "an avoidance type of attachment." That limited attachment had lessened over time as well. In contrast, B.W. had a growing attachment to her foster family and a strong attachment to her community. Shankman also testified that she worked with A.W. between 2009 and May 2013. Shankman testified that A.W. had verbalized her desire to stay with the foster family. A.W. also spoke negatively about her relationship with

the respondent. Shankman also stated that A.W.'s issues with "meltdowns and temper tantrums" increased before and after the visits with the respondent took place. When visitation with the respondent was ended in the summer of 2012, it appeared that A.W. became more stable.

¶ 21 Shankman also testified that A.W. was moved to a specialized foster home in April 2013. The separation of B.W. and A.W. did create some sadness for B.W., but it also made B.W.'s environment calmer, more stable, and more conducive to developing an identity, as A.W. was very aggressive toward B.W. Shankman testified that A.W. had no significant attachment to the respondent, although she admitted that she was asked to observe the respondent with the minors on only one occasion in 2011.

¶ 22 Foster-care supervisor Jaida Nagengast testified that she had been supervising the minors' cases since October 2009. Currently, the agency she worked for still had the cases involving B.W. and J.W., but not A.W., as that case had been transferred to another agency in April 2013.

¶ 23 Nagengast stated that B.W. had been in the same foster home for the past three years. She lived there with the foster parents and their 12-year-old son. The foster mother was a stay-at-home mother, and the foster parents were fully committed to continuing B.W.'s therapy to address her issues. B.W. played with kids in the neighborhood and was involved in different community groups, including Girl Scouts. B.W. talked about herself as being a part of that family, and the foster parents were committed to continuing the relationships B.W. had with her sisters. The foster parents also expressed the desire to adopt B.W.

¶ 24 With regard to B.W.'s attachment to the respondent, Nagengast stated:

"I've described it as conflicted. [B.W.] seeks attention from her mother, but when that's not reciprocated, she then rejects. So, for example, she will say, we're playing restaurant, do you want me to take your order? And if her mother doesn't

want to order anything, then she says, well, you're not playing and I'm not playing this game anymore and she'll turn and do something else. She is conflicted about -- when visits were occurring she was conflicted about going to them, often she would not want to go. She was frustrated when visits were late. When she didn't know when Danielle was going to be arriving for visits. She doesn't run to greet her mother. At times she appears happy or she did appear happy that the visits were occurring, she was glad to be there but she often gets bored and asking when the visits were going to end. She's -- she doesn't ask about her mother. She doesn't ask to call her mother even when the foster parents ask if she wants to call Danielle, she never is asking for the phone to do that. Again, she doesn't talk about her."

B.W. also did not ask to see the respondent after the visits were ended in the summer of 2012.

¶ 25 With regard to J.W., Nagengast testified that she had been in the same foster home for nearly three years. The foster parents were fully committed to J.W. continuing therapy to address her issues. The foster parents also had three biological children and J.W. was treated equally as family. The family did many activities together and J.W. was in daycare at times when the foster mother was working her part-time job. The foster parents were committed to continuing the relationships J.W. had with her sisters. Nagengast also testified that J.W. had no attachment to the respondent, as J.W. lacked any understanding that the respondent was her mother.

¶ 26 With regard to A.W., Nagengast testified that A.W. had marked behavioral issues before and after visits. Initially, when visitation began, A.W. appeared to be happy and excited for the visits. However, by early 2010, A.W. expressed that she did not want to go for visits. During visits with the respondent, A.W. would say that the respondent was not her mommy. While

A.W. knew that the respondent was her mother, she had "very little attachment" to the respondent. To Nagengast's knowledge, A.W. did not ask to call the respondent or to have any visits with the respondent after visitation ended in the summer of 2012.

¶ 27 Nagengast also testified that she was involved in the decision to transfer A.W. to a specialized foster home. A.W. had been engaging in destructive behaviors, including biting, scratching, and kicking. For the safety of everyone involved, the decision was made to place A.W. in another foster home.

¶ 28 Lastly, Nagengast stated that the foster parents had always been rated satisfactory on their service plan goals.

¶ 29 Hephzibah Children's Association caseworker Tori Bates testified that she had been A.W.'s caseworker since April 2013. The case came to Hephzibah because of A.W.'s specialized needs related to her tantrums and aggression. Bates stated that specialized foster parents are required to undergo more training to address the additional needs presented by specialized cases. A.W. had been in a psychiatric hospital before she was placed in her current specialized foster home in April 2013. She has been doing well in that home, as she was bonding with the foster parents and their four children². A.W. was able to be calmed quicker in that new home, and even had some days on which she did not have any tantrums at all. The foster parents were willing to adopt A.W., but Bates stated that adoption could not occur until the placement went six months without any disruption, which meant "no psychiatric hospitalizations or removals from the home."

² The four children were all adopted and all lived in the home; the two sons were in their early pre-teens and the two daughters were in their early 20s.

¶ 30 Two of the foster fathers also testified. B.W.'s foster father, William O'Brien, testified that B.W. had relationships with the O'Brien's extended family. He also stated that since A.W. was moved to a new foster home, B.W. had relaxed, had opened up, and had become more affectionate. J.W.'s foster father, Dave Goetz, testified that J.W. was very close to the Goetz's three children. J.W. also had relationships with the Goetz's extended family.

¶ 31 The respondent testified with regard to her current situation. She stated, *inter alia*, that she had been living in an apartment for the last four months, that she was employed as a housekeeper at a hotel, and that she was taking college classes. She also stated she was dating the father of I.H. The respondent's sister testified that the respondent was "getting herself together" and had learned how to stand up for herself. I.H.'s father also testified that the respondent was doing well and was more self-confident.

¶ 32 At the close of the hearing, the circuit court announced its ruling. In its discussion of the statutory best interest factors (705 ILCS 405/1-3(4.05) (West 2010)), the court summarized the testimony presented at the hearing and noted that it was currently in the best interest of B.W. and A.W. to be in separate homes. The court also commended the respondent for making improvements in her life, but noted that the minors had been in foster care since 2009 and that they were not any closer to returning home now than they were back then. Accordingly, the circuit court found that it was in the minors' best interest to terminate the respondent's parental rights. The respondent appealed.

¶ 33 ANALYSIS

¶ 34 First, the respondent argues that the circuit court erred when it denied her "motion" for substitution of judge.

¶ 35 Section 2-1001(a)(3)(ii) of the Code of Civil Procedure provides that "[e]very application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant." 735 ILCS 5/2-1001(a)(3)(ii) (West 2010).

¶ 36 In this case, the respondent's "motion" for substitution of judge for cause was not accompanied by an affidavit, despite the clear requirement set forth in section 2-1001(a)(3)(ii). Accordingly, there was no error in the denial of the respondent's "motion." See *In re Estate of Wilson*, 238 Ill. 2d 519, 553 (2010) (discussing section 2-1001(a)(3)(ii)'s threshold requirements).

¶ 37 Second, the respondent argues that the circuit court erred when it found her to be an unfit parent.

¶ 38 The State must prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2010); 750 ILCS 50/1(D) (West 2010); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Only one statutory ground is necessary to prove that a parent is unfit. 750 ILCS 50/1(D) (West 2010); *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003). One of the statutory grounds is the "[f]ailure by a parent *** (iii) 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 under Section 2-3 of the Juvenile Court Act of 1987 ***." 750 ILCS 50/1(D)(m)(iii) (West 2010). The failure to make reasonable progress can include "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 50/1(D)(m)(iii)(II) (West 2010). We will not disturb a circuit court's unfitness determination unless that ruling is contrary to the manifest weight of the evidence. *In re Gwynne*

P., 215 Ill. 2d 340, 354 (2005). An unfitness determination is contrary to the manifest weight of the evidence when "the opposite conclusion is clearly apparent." *Gwynne P.*, 215 Ill. 2d at 354.

¶ 39 Initially, we note that the respondent's argument on this issue does not refer to any particular time period, but rather refers generally to some of the aspects of the respondent's tasks with which she complied. Contrary to the respondent's general claims, a review of the evidence presented with regard to the specific nine-month period of June 1, 2011, to February 29, 2012, reveals no error in the circuit court's unfitness determination. During that nine-month period, the respondent was given numerous tasks to complete, yet the service-plan evaluations and caseworker testimony reflected that the respondent made little to no progress on those tasks. She did not secure employment or adequate housing. She had completed a parenting class prior to the relevant nine-month period and had attended some parent-coaching sessions during the period, but she did not apply any of those skills during visitation. The evidence showed that the respondent had no bond with the minors and that she struggled to engage with the minors and to supervise them during visits. While she did complete a domestic-violence class prior to the relevant nine-month period, she self-reported to be in a domestically violent relationship during the period. She failed to complete substance abuse treatment. In addition, while she did attend some individual counseling sessions, she missed numerous sessions and did not comply with a recommendation for bi-weekly therapy. Under these circumstances, we hold that the circuit court's ruling that the respondent failed to make reasonable progress during the nine-month period between June 1, 2011, and February 29, 2012, was not contrary to the manifest weight of the evidence.

¶ 40 Third, the respondent argues that the circuit court erred when it found it was in the minors' best interest to terminate her parental rights.

At a best-interest hearing, the issue to be determined is whether it is in the best interest of the children to terminate parental rights (705 ILCS 405/2-29(2) (West 2010)). Section 1-3(4.05) of the Juvenile Court Act of 1987 provides:

"Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age 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; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2010).

¶ 42 "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). We will not disturb a circuit court's best-interest determination unless it was contrary to the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 43 Our review of the record in this case reveals no error in the circuit court's best-interest determination. The evidence presented at the hearing reflected that the minors were all doing well in their respective foster homes. All three children were in placements conducive to addressing their various issues. Both B.W. and J.W. had been in their respective foster homes for approximately three years, were bonded to their foster families, were tied to their communities, and had relationships with their foster families' extended families. Their respective foster parents were also willing to adopt. While A.W. had only been in her specialized foster home for a few months, she had been stabilizing in that home. Her foster family could not be considered for adoptive purposes until A.W. had been there for at least six months without disruption, but the family was already expressing the intent to adopt her as soon as it was possible. Moreover, given her special issues, she was in a type of placement best suited for her chances to thrive and the agency in charge of her case was committed to finding her that type of placement even if the current placement did not work out. In contrast, there was nothing to suggest that the respondent could provide that type of environment for A.W. Furthermore, and significantly, there was no evidence of any type of bond between the respondent and the

minors. Under these circumstances, the minors' best chance to achieve permanence and to thrive was for the respondent's parental rights to be terminated and the path cleared for adoption. Accordingly, we hold that the circuit court's best-interest determination was not contrary to the manifest weight of the evidence.

¶ 44

CONCLUSION

¶ 45

The judgment of the circuit court of Whiteside County is affirmed.

¶ 46

Affirmed.