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2014 IL App (3d) 140522-U

Order filed October 10, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> A.H.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-14-0522
	)	Circuit No. 12-JA-47
v.	)	
	)	
N.H.,	)	
	)	
Respondent-Appellant).	)	Honorable Peter W. Church,
	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's determination that respondent was unfit pursuant to sections 1(D)(m)(i) and (ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i), (ii) (West 2012)) was not against the manifest weight of the evidence.
- ¶ 2 Following an adjudicatory hearing in Rock Island circuit court on the State's petition, the trial court issued an order on June 19, 2012, finding the minor, A.H., neglected.

¶ 3 On February 3, 2014, the State filed supplemental petitions to terminate respondent's parental rights as to the minor. The State later amended its supplemental petition on April 8, 2014. On May 5, 2014, the court held a fitness hearing and found that the State proved, by clear and convincing evidence, that respondent was unfit. The court also held a hearing regarding termination of parental rights. The court found it to be in the best interest of A.H. for respondent's parental rights to be terminated on June 20, 2014.

¶ 4 Respondent appeals, arguing that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 5 We affirm.

¶ 6 **BACKGROUND**

¶ 7 Respondent, N.H., is the biological mother of A.H. (born November 16, 2008). On May 3, 2012, the State filed a juvenile petition, alleging that A.H. was neglected and seeking temporary custody. Specifically, the petition alleged that "the minor has been the subject of two prior investigations," the minor resides with respondent and respondent's mother, who is a "severe hoarder." Further, the petition alleged that the Department of Children and Family Services (DCFS) notified respondent that she and the minor could not reside at the home due to unsafe and unsanitary conditions. Respondent agreed to relocate the minor after both investigations. After living in a shelter for a few months, respondent and the minor returned to the home of respondent's mother. Finally, the State alleges that DCFS obtained access to the home and the investigator "observed the rooms in the home were piled high with clothes, boxes, trash, feces, dirty dishes, old food, empty pop cans, and many other items." The investigator noticed a strong odor throughout the house and found it difficult to breathe while in the house. The City of Moline Inspections indicated that the house is not suitable for habitation.

¶ 8 On May 22, 2012, respondent stipulated to the State's neglect petition. The matter proceeded to an adjudicatory hearing on June 19, 2012, at which A.H. was adjudicated neglected. A supplemental order was entered ordering respondent to attend and successfully complete parenting classes, obtain a psychological evaluation and follow all recommendations for treatment, obtain a psychiatric evaluation and follow all recommendations for treatment, including taking prescribed medication, cooperate with counseling, obtain and maintain appropriate housing and income, and successfully complete anger management cases.

¶ 9 The court held the first permanency review hearing on December 21, 2012, and found that respondent was not making reasonable efforts or progress toward returning A.H. home. The same findings were made at the permanency review hearings on June 28, 2013, September 24, 2013, and December 27, 2013. At the December 27, 2013, permanency review hearing, the goal changed from "Return home within (12) months" to "Substitute care pending determination of termination of parental rights."

¶ 10 The State filed a supplemental petition to terminate parental rights on February 3, 2014. The State amended its petition on April 8, 2014. The termination petition alleged that respondent was unfit as defined by sections 50/1(D)(m)(i) and (ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i), (ii) (West 2012)).

¶ 11 The petition alleged that respondent: "1. Failed to make reasonable efforts to correct the conditions that were the basis for removal of the child from the parent during the 9-month period following the adjudication of neglected under Section 2-3 of the Juvenile Court Act of 1987, said periods being June 19, 2012 through March 19, 2013, and March 19, 2013 through December 19, 2013;" and "2. Failed to make reasonable progress toward the return of the child to the parent during the 9-month period following the adjudication of neglect under Section 2-3 of the

Juvenile Court Act of 1987, said periods being June 19, 2012 through March 19, 2013, and March 19, 2013 through December 19, 2013."

¶ 12 Specifically, the State alleged that respondent: "a. Failed to maintain appropriate housing to which the minor could return, b. Failed to complete anger management evaluation or engage in any anger management services, c. Failed to complete a psychiatric evaluation or engage in any mental health services, and d. Failed to engage in counseling until April 18, 2013, and then did not attend counseling sessions after June 13, 2013." The State claimed that it was in the best interest of the minor that respondent's parental rights be terminated.

¶ 13 On July 11, 2014, the court held a hearing on the fitness portion of the State's termination petition. The State called the minor's caseworker, Cynthia Felske, a Child Welfare Specialist 2 assigned to the case. Felske assumed care of the minor in May of 2012. The State removed the minor while she was residing with respondent in respondent's mother's hoarded house. The home was unsafe and did not provide the child with a healthy or safe environment.

¶ 14 Felske created a service plan that required respondent to complete formal and informal parenting education, complete an anger management evaluation and classes, engage in counseling, complete a psychiatric evaluation and engage in services, and maintain income and housing. The court adopted and ordered these recommendations at the June 19, 2012, hearing.

¶ 15 Felske testified that in the first six months following adjudication, respondent had not taken formal parenting classes, but was open to suggestions from staff during visits. Respondent was observed becoming agitated with the minor during visits, but caught herself doing so. Respondent attended 22 out of 24 visits during the first six months, which Felske considered satisfactory. Respondent did complete a psychological evaluation and was diagnosed with

"[a]djustment disorder with depressive symptoms and mild mental retardation." Respondent was recommended to complete psychiatric services, counseling, anger management, and parenting.

¶ 16 Respondent failed to schedule an evaluation or engage in any services for counseling during this period. Felske testified that respondent was living with friends, but had to move back to her mother's house. Respondent could not afford housing during this period, but she did put her name on a waiting list for low-income housing. Respondent failed to schedule an evaluation or engage in services for anger management. During this period she obtained part-time employment at Burlington Coat Factory, a retail store. Respondent did not undergo a psychiatric evaluation or engage in services. At the first permanency hearing on December 21, 2012, the court found that neither parent had made reasonable efforts or progress toward returning the minor home.

¶ 17 The initial nine-month period following adjudication ended on March 19, 2013; Felske opined that neither parent had made reasonable efforts or progress during that period.

¶ 18 The next nine-month period spanned from March 19, 2013, through December 13, 2013. During this period, the court held three permanency hearings. Again, Felske opined that respondent had not made reasonable progress or efforts during that period.

¶ 19 On June 28, 2013, the court conducted a permanency hearing. Felske testified that during the review period from December 12, 2012, through June 28, 2013, respondent completed formal parenting classes and was attending visits on a regular basis. Respondent was open to suggestions from staff during these visits. In addition, Felske testified that respondent attended counseling at Bethany for Children and Families in April of 2013, but stopped attending sessions in June of 2013. Respondent continued to live at her mother's house and was still on a waiting list for low-income housing. Respondent's part-time employment became full-time employment

in early 2013 and she was earning enough to meet her basic needs. Respondent had not scheduled an evaluation for anger management or psychiatric services. The court found that neither parent had made reasonable efforts or progress toward returning the minor home.

¶ 20 At the permanency hearing in September of 2013, Felske testified that from June 28, 2013, through September 24, 2013, respondent attended visits regularly and was open to parenting education from staff during these visits, but respondent continued to struggle with the minor. Respondent lived with friends and remained on a waiting list for low-income housing. She maintained her full-time employment with Burlington Coat Factory. Respondent still had not undergone anger management or psychiatric evaluation. At the conclusion of the hearing, the court found that neither parent had made reasonable efforts or progress toward returning the minor home. However, the court did acknowledge that respondent made some efforts and progress.

¶ 21 The final permanency hearing, prior to the goal being changed, was on December 27, 2013. Felske testified that between September 24, 2013, and December 27, 2013, respondent was still attending visits and remained open to parenting education from staff. Felske testified that respondent had become withdrawn during visitations. Respondent was not engaged in counseling, anger management, or psychiatric services. She continued to be employed at Burlington Coat Factory. Respondent lived with friends during this period. The court found that neither parent had made reasonable efforts or progress at the December 27, 2013, review hearing. The goal was changed from the minor returning home within 12 months to "Substitute care pending determination of termination of parental rights." At the conclusion of the second nine-month period following adjudication, Felske opined that neither parent had made reasonable efforts or progress.

¶ 22 Respondent testified on her own behalf that she has been living at Deerfield Wood Apartments in East Moline since January 13, 2014. She was living with her mother when the minor was taken into care. Respondent verified that she had been employed at Burlington Coat Factory and her part-time employment became full-time employment. She acknowledged that she did not complete anger management, but had completed parenting classes.

¶ 23 Respondent testified that she was on the waiting list for low-income housing for a long time. She frequently checked on her status, but the housing authority did not provide information to her. Respondent finally had an interview and found out that one of the secretaries was not doing her job and that there were plenty of apartments available. She concluded by testifying that living with friends was temporary, but the social worker never determined whether that would have been appropriate housing.

¶ 24 After hearing both parties' arguments, the court found respondent unfit, by clear and convincing evidence, on both grounds alleged in the State's termination petition.

¶ 25 The court held a hearing concerning the issue of whether it was in the minor's best interest to terminate respondent's parental rights on June 20, 2014. The State called Felske as its only witness. Felske had prepared the "best interest" report filed on June 6, 2014. Felske indicated that the minor was moved from her original foster care home to a different foster care home. The original foster parents' were unwilling to provide permanency for the minor due to the minor's behavioral issues. The minor was diagnosed with attention deficient hyperactivity disorder (ADHD) and was on medication. While at her first foster care placement, the minor was aggressive, destroyed and stole property, and hoarded.

¶ 26 Since being in the traditional foster care, Felske testified that the minor has adjusted well, and sometimes calls the foster parents "mom" and "dad." Felske also stated that the minor's

behavior problems were improving and the parents were willing to provide her permanency. A.H. will attend kindergarten this fall and receives weekly play therapy through Bethany. While at her former placement, A.H. was engaged in family therapy through Robert Young Center, which the current foster parents intended to continue.

¶ 27 The foster mother worked for the Veteran's Administration and the foster father was going back to school. A.H. is the only child living in the one-story home, which was appropriate for the child. The foster parents included the minor in the family's church and extended family activities and intended to maintain contact with A.H.'s extended family. The foster parents were unsure if they would keep contact with the biological parents. Felske opined that the foster home would be an appropriate place for the minor to live.

¶ 28 Respondent did not provide evidence on her own behalf.

¶ 29 After hearing the arguments, the court found that it was in the best interest of the child that respondent's parental rights be terminated. The court entered its written order to that effect on June 20, 2014.

¶ 30 This timely appeal followed.

¶ 31 ANALYSIS

¶ 32 Respondent appeals, claiming that the trial court's finding that she was unfit was against the manifest weight of the evidence. The involuntary termination of parental rights involves a two-step process. First, the trial court must find, by clear and convincing evidence, that the respondent is unfit. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Once the State proves unfitness, the court will then consider whether it is in the best interest of the child to terminate the parental rights. *Id.* at 363-64. In the present case, respondent only challenges the finding that she is unfit, claiming that said finding is against the manifest weight of the evidence.

¶ 33 A court's determination that the State proved, by clear and convincing evidence, that respondent was unfit will not be disturbed unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *Id.* (citing *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)).

¶ 34 Any ground alone may support a finding of unfitness, thus the reviewing court does not need to consider whether other grounds were proven if any one ground was proven. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). In the instant case, the State alleged two grounds for respondent's unfitness which included:

"1. Failed to make reasonable efforts to correct the conditions that were the basis for removal of the child from the parent during any 9-month period following the adjudication of neglected \*\*\*;

2. Failed to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected \*\*\*."

¶ 35 We find that the trial court's determination that respondent is unfit is not against the manifest weight of the evidence.

¶ 36 I. Failure to Make Reasonable Efforts to Correct the Conditions That Were the Basis for the Removal of the Minor

¶ 37 Reasonable efforts and reasonable progress are two different grounds for finding a parent unfit in section 50/1(D)(m) of the Adoption Act. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066 (2006). "Reasonable efforts relate to the goal of correcting the conditions that caused the removal of the child from the parent." *Id.* at 1067. Reasonable efforts are measured subjectively

based upon the amount of effort that is reasonable for a particular person. *In re D.F.*, 332 Ill. App. 3d 112, 125 (2002). The reasonableness of a parent's progress toward the return of the child is measured objectively by the amount of movement toward the goal of reunification. *In the Interest of D.J.S.*, 308 Ill. App. 3d 291, 295 (1999).

¶ 38 The record demonstrates the State removed the minor from an unsafe and unhealthy living environment at respondent's mother's house. During the nine-month period after A.H. was adjudicated neglected, respondent was to attend and complete parenting classes, obtain a psychological and psychiatric evaluation and follow all recommendations for treatment, cooperate with counseling, complete anger management classes, and obtain and maintain appropriate housing and income.

¶ 39 Testimony established that respondent did not attend anger management classes, cooperate with counseling, obtain appropriate housing, or schedule or complete a psychiatric evaluation. Respondent was diagnosed with "adjustment disorder with depressive symptoms and mild mental retardation," but never received treatment. She did complete parenting classes between December 21, 2012, and June 28, 2013. She obtained employment at Burlington Coat Factory. Her employment started as part-time and eventually turned into full-time. Felske testified that respondent was agitated with the minor during visits, but was open to suggestions from the staff.

¶ 40 At every permanency hearing (December 21, 2012; June 28, 2013; September 24, 2013; December 27, 2013), the court found that respondent had not made reasonable efforts or progress toward returning the child home. During these periods, respondent switched between living with her mother and her friends. The child was originally moved from respondent's mother's home for being unsafe and unhealthy. There was no indication that respondent secured safe and

appropriate housing. Respondent sat on a waiting list for low-income housing and did not get an interview until late 2013. At the December 2013 hearing, Felske testified that respondent told the staff she did not know what to do when A.H. acted out. Further, respondent became withdrawn during visits and did not play or talk as much with the minor as she had done in the past. Respondent did not accept responsibility for her child being removed from her custody. She did not try to problem solve, but rather presented herself as a victim.

¶ 41 Based on our review of the record, we cannot say that the trial court's finding of unfitness was against the manifest weight of the evidence. A.H. was removed due to an unsafe living environment, and respondent did not secure appropriate housing nor did she engage in the required services. The trial court's finding that respondent is unfit is not against the manifest weight of the evidenc

¶ 42 II. Failure to Make Reasonable Progress Toward the Return of the Minor

¶ 43 Even if respondent made reasonable efforts for someone in her situation, reasonable progress was not made. Reasonable progress "is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d at 1067 (citing *In re Allen*, 172 Ill. App. 3d 950, 956 (1988)). At a minimum, reasonable progress requires "measurable or demonstrable movement toward the goal of reunification." *Id.*

¶ 44 A court will consider the parent's compliance with the service plans and the court's directive in light of the condition that results in the removal of the minor in order to measure a parent's progress. *Id.* When a trial court can conclude that it will be able to order the minor returned to parental custody in the near future, reasonable progress exists. *Id.*

¶ 45 Respondent argues that the trial court's finding that she failed to make reasonable progress toward the return of the minor during any nine-month period after the adjudication of neglect was against the manifest weight of the evidence. This argument is belied by the evidence.

¶ 46 There is no evidence that the minor is closer to being returned to respondent's custody than at the time of removal, thus supporting the finding that respondent did not make reasonable progress. *In re D.J.S.*, 308 Ill. App. 3d at 295. The trial court did not state that it will be able to order the child returned to respondent's custody in the near future. *In re Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 47 Respondent did not complete a majority of the required actions from the service plan and most notably, she did not obtain appropriate housing. The State removed the child based on an unsafe living environment and that condition did not change. The record indicated the following: (1) respondent did not enroll or complete anger management classes; (2) although respondent attended some counseling session, she failed to complete counseling; (3) respondent failed to undergo a psychiatric evaluation or engage in required mental health services; (4) respondent did complete a formal parenting class, but staff members observed respondent become agitated with the minor; and (5) respondent became withdrawn during visits with the minor during the period leading up to December 2013.

¶ 48 Respondent failed to demonstrate to the court how her actions constitute reasonable progress toward the return home of the minor. We acknowledge that respondent started some services as required, but her actions did not constitute substantial compliance with the service plan. Felske testified at the last permanency hearing that A.H. was no closer to returning home on December 19, 2013, than on the date of adjudication. The trial court found Felske's testimony

