

NOTICE

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2014 IL App (4th) 130952-U

Nos. 4-13-0952, 4-13-0953, 4-13-0954, 4-13-0955 cons.

FILED

February 21, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Jo. P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-13-0952)	)	No. 12JA78
ANTHONIQUE MARDIS,)	
Respondent-Appellant.)	
_____)	
In re: Jo. P., a Minor,	)	No. 12JA78
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0953))	
JEREMIAH PERKINS-BARHAM,)	
Respondent-Appellant.)	
_____)	
In re: Ja. P., a Minor,	)	No. 12JA79
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0954))	
ANTHONIQUE MARDIS,)	
Respondent-Appellant.)	
_____)	
In re: Ja. P., a Minor,	)	No. 12JA79
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0955)	)	Honorable
JEREMIAH PERKINS-BARHAM,	)	Thomas E. Little,
Respondent-Appellant.	)	Judge Presiding .

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Appleton and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment finding the respondent parents unfit and terminating their parental rights.

¶ 2 In August 2012, the trial court adjudicated minors Jo. P. (born January 2011) and Ja. P. (born June 2012) neglected. In July 2013, the State filed motions to terminate the parental rights of respondent parents, Anthonique Mardis and Jeremiah Perkins-Barham. Following a September 2013 fitness hearing, the court found respondents unfit on multiple grounds, as alleged in the State's motion to terminate parental rights. Following an October 2013 best-interest hearing, the court terminated respondents' parental rights.

¶ 3 Respondents appeal, arguing that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Events Preceding the Motion To Terminate Parental Rights

¶ 6 The State's June 2012 petitions for adjudication of abuse and neglect as to Jo. P. and Ja. P. alleged that while in labor with Ja. P., Mardis left St. Mary's Hospital in her gown against medical advice. Mardis later arrived at Decatur Memorial Hospital, where she gave birth to Ja. P., whose blood tested positive for an unspecified controlled substance. Mardis' blood tested positive for cocaine and marijuana.

¶ 7 In September 2012, the trial court adjudicated Jo. P. and Ja. P. neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012) (environment injurious to the minors' welfare)).

¶ 8 Following a dispositional hearing, the trial court made the minors wards of the court, finding that Mardis was unfit and unable to care for, protect, train, educate, supervise, or discipline the minors because of her substance abuse and mental health issues. The court found that Perkins-Barham was unfit, unable, and unwilling to care for, protect, train, educate, supervise, or discipline the minors because of his substance issues, noting that Perkins-Barham said

attended the required groups and gained the "full benefit" of the program. At the completion of that program, Mardis declined further treatment and denied that she had a drug problem, although she admitted to McGarry that she would occasionally use drugs in social situations. Between July 17, 2012, and July 19, 2013, DCFS referred Mardis to Heritage for drug screens on 138 occasions. Of those 138 referrals, Mardis showed up for only 35. Of the 35 completed drug screens, Mardis tested positive for cocaine and marijuana 14 times.

¶ 14 McGarry testified that her review of Perkins-Barham's Heritage computer file revealed that he failed to attend a DCFS substance-abuse referral in December 2012. In July 2013, Perkins-Barham completed a substance-abuse assessment at Heritage. Heritage made no recommendation for treatment. DCFS referred Perkins-Barham to Heritage for drug screens on 13 occasions. He attended only four drug screens, testing positive for cocaine twice. According to his computer file, Perkins-Barham stated that although he does not use drugs, he tested positive for cocaine because he handles that drug.

¶ 15 Virginia Karl, a parenting instructor at Webster-Cantrell Hall, testified that in August 2012, DCFS referred Mardis and Perkins-Barham to attend her 16-week parenting course, which they both eventually completed in July or August 2013, after the State filed its motion to terminate parental rights. Prior to their completion of the course, both respondents missed five classes, as well as subsequent opportunities to make up those classes. Karl admitted that Perkins-Barham did not actually complete the final class, but she chose to give him a pass because she "knew court was coming."

¶ 16 Chalanda Woods, a case assistant at Webster-Cantrell Hall, testified that she supervised five or six visits between respondents and the minors between July 2012 and July 2013. Perkins-Barham attended only one of those visits, which took place in July 2013, after the State

filed its motion to terminate parental rights. Each of the visits went "okay."

¶ 17 Loretta Taylor, a case assistant for foster care at Webster-Cantrell Hall, testified that she was the main case aide from October 2012 to March 2013. During that period, Taylor attended weekly visits between respondents and the minors. Mardis had two "no shows," arrived late for some other visits, and left some visits early. Perkins-Barham did not attend any visits until January 2013, after which he arrived late for some visits and failed to appear for some others. Taylor testified that the visits respondents did attend went "well."

¶ 18 Vicki Brown, a case assistant at Webster-Cantrell Hall, testified that she was scheduled to supervise six visits between respondents and the minors beginning in June 2013. Of those six visits, respondents attended only three. Respondents were "no call no show[s]" for two visits (meaning they failed to appear without calling before or after to explain their absence), and they called ahead to cancel a third visit. The visits that respondents did attend went "fine."

¶ 19 Nicki Bond, a foster care case manager at Webster-Cantrell Hall, testified that she had been the respondents' case manager since June 2012. Bond developed a service plan for both respondents. Mardis' service plan goals included (1) completing a substance-abuse assessment and the recommended substance-abuse treatment, (2) engaging in individual therapy, and (3) attending parenting classes. Bond determined that Mardis failed to successfully complete her substance-abuse treatment goal in that she failed to maintain sobriety. Mardis gave a negative drug screen on August 5, 2013, followed by an August 7, 2013, drug screen that tested positive for cannabis. Mardis missed 103 drug screens between June 2012 and July 19, 2013. Between July 19, 2013, and the date of the hearing, Mardis was mostly "no shows" for her drug screens. Despite being referred back to Heritage for further substance-abuse treatment in December 2012 following several positive drug screens, Mardis failed to attend any further treatment. Mardis

told Bond that she did not have time to attend substance abuse treatment.

¶ 20 Bond testified that DCFS referred Mardis to Decatur Psychological Associates, P.C., in August 2012. Between August 2012 and January 2013, Mardis was scheduled to attend 21 weekly appointments with therapist Sue Brinklow. Mardis attended less than half of those appointments. At the end of January 2013, Mardis was reassigned to therapist Patricia Brown and required to continue attending weekly appointments. Mardis attended one appointment in February 2013 and thereafter quit attending appointments without calling or providing an explanation. Bond determined that Mardis failed to complete her service plan goal of engaging in individual therapy.

¶ 21 Bond testified that Mardis successfully completed her service plan goal of attending parenting classes. However, Mardis was "half and half" in terms of attending scheduled visits with her children. Bond testified that whenever parents had three consecutive "no call no shows" for visitation, she was required to have a family meeting with them. Bond was required to have two family meetings with Mardis and Perkins-Barham. Despite the service plan requirement of monthly inspections of Mardis' home, Bond had not been inside Mardis' home since April 2013. After that month, when Bond would arrive at Mardis' home for inspections, Mardis would not answer Bond's knocks on the door or telephone calls. In June 2013, Mardis told Bond that she was no longer allowed in her home.

¶ 22 Bond testified that Perkins-Barham's service plan required him to undergo a substance-abuse assessment and follow all recommendations, as well as complete parenting classes. Perkins-Barham refused to comply with his service plan until December 2012, when he called Bond to ask if he could begin attending visits with the minors. Bond then referred him to complete a substance-abuse assessment, which he did not do until late July 2013, after the State had

filed its motion to terminate parental rights. He attended some required drug screens and failed to attend others. In June 2013, he tested positive for cocaine. Between December 2012 and the date of the hearing, Perkins-Barham missed approximately three weeks to a month of visits. He admitted to Bond that he was living with Mardis, who prohibited Bond from entering her home. Although Perkins-Barham successfully completed parenting classes, Bond determined that he did not cooperate with his services.

¶ 23 Lindsey Sites, foster care supervisor at Webster-Cantrell Hall, testified that she had been the direct supervisor of respondents' case since it opened in June 2012. Sites testified that she attended a family meeting with respondents in March 2013 due to them missing four consecutive visits with the minors. Sites then attended another family meeting in June 2013 due to respondents missing three visits in a row. Each of the missed visits were "no call no shows." Sites determined that neither Mardis nor Perkins-Barham successfully completed their service plan goals sufficient to the point where it would be safe to return the minors to their home.

¶ 24 Without objection, the trial court admitted into evidence Bond's August 2013 report to the court. The findings and recommendations contained in the report were consistent with the testimony of the State's witnesses.

¶ 25 b. Mardis' Evidence

¶ 26 Mardis testified that she was 24 years old. She admitted that she "missed a few" visits in recent months, stating, "I picked up night shifts and I use[d] to sometimes oversleep or I had appointments and stuff." Mardis acknowledged that she had a substance-abuse problem. She did not reengage in treatment because talking with her caseworker about it was "weird" and she was "nervous and scared."

¶ 27 When asked by the State on cross-examination why she missed 103 drug screens,

Mardis stated, "I just missed them. I didn't go."

¶ 28 c. Perkins-Barham's Evidence

¶ 29 Perkins-Barham admitted that he did not go to his initial substance-abuse assessment because he "didn't want to cooperate." He could not remember the month when he decided to start cooperating. He admitted that he missed several visits and arrived late to others. On cross-examination by the State, Perkins-Barham testified that he had been living with Mardis since several months prior to the birth of Jo. P.

¶ 30 d. The Guardian *Ad Litem*'s Evidence

¶ 31 Bond, testifying for the guardian *ad litem*, stated that Mardis did not follow through with her December 2012 referral for additional substance-abuse treatment. Mardis called Bond the week prior to the hearing to ask for another referral. Throughout the life of the case, Mardis repeatedly told Bond that she would contact Heritage to reengage in treatment, but she never did.

¶ 32 e. The Trial Court's Ruling

¶ 33 At the conclusion of evidence and argument, the trial court found that the State proved respondents unfit on the grounds that they failed to (1) make reasonable progress toward the return of the minors within nine months after the adjudication of neglect; (2) maintain a reasonable degree of interest, concern, or responsibility for the minors' welfare; (3) protect the minors from conditions within their environment injurious their welfare; and (4) make reasonable efforts to correct the conditions that were the basis for the removal of the minors. The court also found Mardis unfit on the ground that she had been habitually drunk or addicted to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the fitness proceeding.

¶ 34 *2. The October 2013 Best-Interest Hearing*

¶ 35 At the October 2013 best-interest hearing, respondents moved for a continuance to allow them more time to make progress in their treatment. The trial court denied that motion.

¶ 36 a. The State's Evidence

¶ 37 Bond testified that DCFS was recommending termination of respondents' parental rights because "there ha[d] been no progress in addressing the condition that brought the children into care." Bond testified that Mardis had been inconsistently attending therapy, and although she was attending substance-abuse groups at Heritage, she was not attending her required drug screens.

¶ 38 Three weeks prior to the best-interest hearing, Perkins-Barham called Bond to ask if he could come late to a visit with the minors at Webster-Cantrell Hall. Bond told him that he could, but he never showed up. On that same day, Bond asked Mardis to perform a drug screen, but she refused.

¶ 39 Bond testified that Jo. P. and Ja. P. had been in foster placement with their paternal grandmother since the opening of the case in June 2012. They were very attached to their paternal grandmother, who did an "excellent" job taking care of them. All of the minors' needs were met, and they were "very spoiled in a good way." The paternal grandmother lived with a friend, who acted as a "very good" support system for her and was able to provide financially for the minors as well. The paternal grandmother had agreed to serve as an adoptive placement for both minors.

¶ 40 Sites testified that she agreed with the conclusion of DCFS that it was in the best interest of the minors to remain in their placement with their paternal grandmother and achieve

permanency through adoption. Sites based this conclusion on respondents' continued refusal to provide drug screens, as well as their untimely completion of their service plan goals. Sites did not think that respondents would be able to parent within a reasonable amount of time.

¶ 41 Without objection, the trial court admitted into evidence the October 2013 best-interest report prepared by Bond, which recommended termination of respondents' parental rights.

¶ 42 b. Mardis' Evidence

¶ 43 Mardis testified that she stopped using drugs and was attending classes to address her substance abuse. She was also attending therapy sessions. Mardis denied being in a romantic relationship or living with Perkins-Barham. Without objection, the trial court admitted into evidence a letter from Mardis' counselor at Decatur Psychological Associates, P.C., which generally asserted that Mardis had made progress in her therapy.

¶ 44 c. Perkins-Barham's Evidence

¶ 45 Perkins-Barham testified that he was no longer using drugs. As opposed to participating in substance-abuse counseling, he was "just doing it on [his] own." When asked if he had a good relationship with Bond, who had been his caseworker since June 2012, Perkins-Barham stated, "I don't really know her. I mean, I just know she is a caseworker and her name is Nicki Bond is all." Perkins-Barham admitted that the minors were in a "good place" with their paternal grandmother, and that he needed "time to get a house, stuff like that." He was living with his friend in a one-bedroom apartment at the time of the hearing.

¶ 46 d. The Trial Court's Ruling

¶ 47 At the conclusion of evidence and argument, the trial court found that it was in the minors' best interests that respondents' parental rights be terminated.

¶ 48 This appeal followed.

¶ 49 II. ANALYSIS

¶ 50 On appeal, respondents argue that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence.

¶ 51 A. The Trial Court's Fitness Findings

¶ 52 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 53 At the time of the fitness hearing in this case, section 1(D) of the Adoption Act provided, in pertinent part, as follows:

"D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

* * *

(m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987[.]" 750 ILCS 50/1(D)(m)(ii) (West 2012).

¶ 54 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme

court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent."

¶ 55 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

" 'Reasonable progress' *** exists when the [trial] court *** can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent ***." (Emphases in original.)

¶ 56 The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605

(2004); *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 57 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id.*

¶ 58 2. *The Trial Court's Finding that Respondents Were Unfit as Parents*

¶ 59 Respondents argue that each of the trial court's fitness findings were against the manifest weight of the evidence. We disagree.

¶ 60 The trial court found that respondents were unfit as parents because, among other reasons, they failed to make reasonable progress toward the return of the minors within nine months after the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2012).

¶ 61 As the trial court noted without objection at the September 2013 fitness hearing, the relevant nine-month period for purposes of section 1(D)(m)(ii) of the Adoption Act was September 5, 2012, through June 5, 2013. In its September 2012 dispositional order, the trial court cited substance abuse and mental health issues as the reasons for its finding that Mardis was unfit and unable to care for, protect, train, educate, supervise, or discipline the minors. As to Perkins-Barham, the trial court cited substance abuse and Perkins-Barham's representation that he wanted nothing to do with his children, DCFS, the court case, or Mardis. The trial court ordered both respondents to comply with the conditions of their DCFS service plans.

¶ 62 The uncontroverted evidence at the fitness hearing showed that both respondents

consistently avoided taking their required drug screens throughout the nine-month period at issue. The trial court could reasonably conclude that respondents refused to perform drug screens because they had in fact been using drugs. Of the drug screens that they did complete, both respondents tested positive for drugs on more than one occasion. Further, both respondents avoided participating in substance-abuse treatment as directed by DCFS. In short, neither respondent achieved—much less maintained—sobriety during the nine months following the adjudication of neglect. Given the fact that substance abuse was the primary reason for the trial court's decision to remove the minors from respondents' custody, the trial court's finding that respondents failed to make reasonable progress toward the return of the minors within nine months after the adjudication of neglect was clearly not against the manifest weight of the evidence.

¶ 63 Having so concluded, we need not consider the trial court's other findings of parental fitness against respondents. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental fitness).

¶ 64 B. The Trial Court's Best-Interest Determination

¶ 65 1. *Standard of Review*

¶ 66 At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 67 "We will not reverse the trial court's best-interest determination unless it was

against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 68 *2. The Trial Court's Best-Interest Determination*

¶ 69 Respondents argue that the trial court's finding that it was in the minors' best interests to terminate respondents' parental rights was against the manifest weight of the evidence.

¶ 70 The evidence at the best-interest hearing showed that neither respondent had achieved sobriety, as evidenced by their positive drug screens and subsequent refusals to perform further drug screens. Further, Mardis continued to deny DCFS permission to enter and inspect her home. Perkins-Barham testified that he was living with a friend in a one-bedroom apartment. Even at the time of the best-interest hearing, the evidence showed that neither respondent had fully committed to completion of their service plans, which were designed to achieve the return of the minors to respondents' custody.

¶ 71 The minors' paternal grandmother, on the other hand, provided for all of the minors' needs, and she was willing to adopt the minors. Both Bond and Sites opined that termination of respondents' parental rights, followed by adoption by the paternal grandmother, was in the best interests of the minors. Respondents' testimonies did little or nothing to rebut the conclusions of Bond and Sites. Accordingly, we conclude that the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 72 **III. CONCLUSION**

¶ 73 For the reasons stated, we affirm the trial court's fitness and best-interest determinations.

¶ 74 Affirmed.