

NOTICE

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NOS. 4-13-1033, 4-13-1036, 4-13-1037 cons.

FILED
April 17, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: C.C., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
v. (No. 4-13-1033))	No. 10JA112
JACOB WAKELAND,)	
Respondent-Appellant.)	
-----)	
In re: J.S., a Minor,)	No. 10JA113
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-1036))	
JACOB WAKELAND,)	
Respondent-Appellant.)	
-----)	
In re: S.H., a Minor,)	No. 10JA136
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-1037))	Honorable
JACOB WAKELAND,)	Claudia S. Anderson,
Respondent-Appellant.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly found respondent father unfit and terminated his parental rights.
- ¶ 2 Respondent father, Jacob Wakeland, appeals the orders finding him an unfit parent of C.C. (born May 1, 2007), J.S. (born August 24, 2006), and S.H. (born March 1, 2007),

and terminating his parental rights. Wakeland contends the trial court's orders are against the manifest weight of the evidence. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Beginning in September 2010, the State filed juvenile petitions alleging the children were neglected. The petitions allege three counts of neglect based on an injurious environment (705 ILCS 405/2-3(1)(b) (West 2010)), alleging Wakeland sexually molested each child.

¶ 5 On April 28, 2011, after a hearing, the trial court entered adjudicatory orders finding the children neglected. The court found the State proved by a preponderance of the evidence the children were in an injurious environment, as Wakeland had sexually molested S.H. We note the three respondent mothers of the children in this appeal surrendered their parental rights to the children. The mothers are not involved in this appeal.

¶ 6 The State filed petitions seeking findings of unfitness and the termination of Wakeland's parental rights to S.H., C.C., and J.S. The State made the following allegations of parental unfitness: (1) Wakeland failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) Wakeland failed to make reasonable efforts to correct the conditions that were the basis for his children's removal in the first nine-month period following the neglect adjudication (April 28, 2011, to January 28, 2012) (750 ILCS 50/1(D)(m)(i) (West 2010)); (3) Wakeland failed to make reasonable progress toward the children's return during the initial nine-month period following the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (4) Wakeland failed to make reasonable progress toward the return of his children during any nine-month period after

the initial nine-month period following the neglect adjudication (January 28, 2012, to October 28, 2012) (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 7 The fitness hearing was held in October 2013. The State called Susan Minyard, a licensed clinical psychologist, who testified she performed a psychological evaluation of Wakeland in August 2012. Wakeland had been referred to her office through the Center for Youth and Family Solutions. Dr. Minyard was asked to determine whether Wakeland suffered from a mental illness or other impairment and whether such mental illness or impairment would prevent Wakeland from minimally discharging his parental responsibilities. As part of her evaluation, Dr. Minyard performed a number of tests on Wakeland and interviewed him.

¶ 8 Dr. Minyard testified Wakeland considerably filtered his responses to her. Dr. Minyard believed Wakeland was "not necessarily telling [her] everything" and "probably covering up some things." Wakeland denied abusing his children.

¶ 9 Dr. Minyard diagnosed Wakeland with paranoid schizophrenia. Paranoid schizophrenia may be treated with medication, but Wakeland was not taking medication for schizophrenia. Dr. Minyard also diagnosed Wakeland with alcohol abuse, if not dependence. Wakeland was assessed on the Global Assessment of Functioning, which is a global rating, on a scale of 0 to 100, used to determine how well the person functions psychologically in the world. Wakeland scored only 35, which indicated "some pretty serious impairment."

¶ 10 According to Dr. Minyard, Wakeland's schizophrenia would impact Wakeland's ability to parent and the children would not be safe around him. Dr. Minyard expected Wakeland would suffer his entire life from this affliction. Dr. Minyard recommended Wakeland receive a psychiatric evaluation to look at medication before engaging in sexual-abuse treatment.

Dr. Minyard believed sex-offender treatment would be more productive if Wakeland was treated effectively.

¶ 11 On cross-examination, Dr. Minyard testified she was not aware Wakeland had been participating in sex-offender treatment since October 2012. Dr. Minyard acknowledged Wakeland indicated his greatest worry was "his kids going without" and he feared "something was going to happen to his children." Dr. Minyard believed "sometimes" a paranoid schizophrenic on a medication regime could effectively parent.

¶ 12 Jeff Reynolds, the program director at the Community Resource and Counseling Center in Paxton, testified he worked in treating sex offenders. Wakeland was a client of the agency in July 2012 and October 2012. In July 2012, Wakeland attended two sex-offender group sessions, but he chose to terminate treatment. Wakeland asked Reynolds to close his file. On October 30, 2012, Wakeland reengaged services. Wakeland had attended sessions once a week since that time. Reynolds led the sessions in which Wakeland participated. Reynolds did not believe the children would be safe around Wakeland.

¶ 13 Emily Zimmerman, a caseworker with the Center for Youth and Family Solutions, testified she was the foster-care caseworker for the family from February 2011 until October 3, 2012. Zimmerman testified the children were in counseling. Both S.H. and C.C. alleged Wakeland sexually abused them. The Department of Children and Family Services (DCFS) became involved in the case after S.H. told her mother Wakeland "showed her the nasty and then did the nasty with C.C." At the beginning of the case, Wakeland had visits with J.S. and C.C., but not S.H. In September 2011, after C.C. disclosed she had been sexually abused, Wakeland's visits with C.C. were terminated pursuant to the recommendation of C.C.'s therapist.

¶ 14 According to Zimmerman, when she became involved with the case, she contacted Wakeland and they reviewed the service plan. Services had already been developed by the previous caseworker. Most of the time, Wakeland kept Zimmerman informed of his contact information. Wakeland was directed to participate in individual counseling, sex-offender treatment, and a psychological evaluation. Wakeland was also told to cooperate with her agency and obtain a legal source of income. Zimmerman testified Wakeland did not successfully complete any of the required services in the service plans. Wakeland's progress was rated unsatisfactory under the September 2011 plan.

¶ 15 Regarding the February 2012 plan, Zimmerman testified Wakeland was not successful in making progress. A recommendation for a substance-abuse assessment was added after Wakeland was physically attacked in a bar in May 2011. Wakeland had been drinking before the attack.

¶ 16 Zimmerman testified regarding the individual-counseling goal. In March 2011, Wakeland began seeing Jim Russell. Wakeland completed a mental-health assessment. Russell believed Wakeland's needs could be addressed in the sex-offender treatment. Russell ended the individual sessions with the understanding Wakeland could be rereferred if necessary. Wakeland completed the sex-offender evaluation in October 2011 but did not start the recommended treatment.

¶ 17 Zimmerman testified "maybe some of the goals were successful." Wakeland cooperated with the agency at that time. He kept appointments, signed necessary documents, and informed the agency of any changes in contact information. A psychological evaluation was scheduled. Wakeland had several different jobs during the time Zimmerman was his

caseworker. He had periods of unemployment as well.

¶ 18 Zimmerman further testified regarding the August 2012 report, which rated Wakeland's progress unsatisfactory. In July 2012, Wakeland completed the psychological evaluation with Dr. Minyard. She recommended Wakeland attend sex-offender classes and complete a mental-health evaluation. As of October 3, 2012, when Zimmerman left the agency, Wakeland had not completed those services. Wakeland completed the sex-offender evaluation and started treatment. He attended two group sessions, but stopped for fear of incriminating himself. When Wakeland dropped the sex-offender treatment, the agency rereferred him for individual counseling, but Wakeland chose not to attend. During this time, Wakeland also stopped signing releases and failed to consistently inform the agency of changes in contact information.

¶ 19 According to Zimmerman, Wakeland was rated satisfactory on employment because he held a job for part of the time period and had a legal source of income. Wakeland completed the substance-abuse assessment and no services were initially recommended. After the psychological evaluation, however, he was rereferred for a substance-abuse assessment. Wakeland did not disclose a conviction for driving under the influence.

¶ 20 Zimmerman testified regarding the visitation schedule. When Zimmerman began working on the case in February 2011, Wakeland had supervised visits once a week for two hours with C.C., J.S., and an older sibling not involved in this case. Visits with C.C. were halted in September 2011 due to allegations of sexual abuse. C.C.'s counselor recommended the visits stop until Wakeland completed sex-offender treatment. The visits with J.S. continued in Wakeland's home. Zimmerman supervised some of those visits. At times, Wakeland's

discussions with the children were inappropriate. These discussions included adult issues, "such as getting fired from work and how his boss was out to get him." After Zimmerman corrected Wakeland, he attempted not to discuss such matters with J.S.

¶ 21 On cross-examination, Zimmerman testified Wakeland completed the sex-offender assessment in September 2011. Zimmerman received the results in November 2011. The referral for sex-offender treatment was not made until March 5, 2012. In that time, no services for sex-offender treatment were offered to Wakeland.

¶ 22 According to Zimmerman, after the group sex-offender classes began in July 2012, Wakeland asked if there was an option for individual sex-offender treatment rather than group sessions. Wakeland told Zimmerman he was not comfortable in the group session. Zimmerman looked into individual services but found none available. She informed Wakeland individual sex-offender treatment was not an option.

¶ 23 Zimmerman testified Wakeland, as of the March 2012 report, attended 48 of 52 visits with his children. Wakeland always had a meal prepared for his boys, and he made them complete their homework before they would be allowed to play.

¶ 24 Regarding Wakeland's income, Zimmerman testified Wakeland maintained a legal source of income throughout her time on the case. When he was between jobs, he received unemployment benefits. Wakeland also maintained housing. Wakeland participated in drug screens, which all tested negative.

¶ 25 Zimmerman testified regarding the service plan ending in August 2012. The report indicated Wakeland discontinued group sessions on July 24, 2012, and he had been referred internally for counseling. A therapist had been assigned to Wakeland. Zimmerman

believed the therapist contacted Wakeland, but she was not certain. Zimmerman admitted Wakeland had received satisfactory ratings on all tasks except for the sex-offender treatment, which he left on July 24, 2012.

¶ 26 Michael Tolles, a foster-care caseworker with the Center for Youth and Family Solutions, testified he took over the case on October 3, 2012. Tolles testified Wakeland had not completed the follow-up recommendations made by Dr. Minyard. Wakeland did not have any legal troubles during Tolles's time on the case. During the visits, Tolles did not observe Wakeland making any inappropriate statements or comments to the children. Wakeland had not successfully completed the sex-offender group sessions.

¶ 27 On cross-examination, Tolles acknowledged Wakeland did complete the recommendations set forth by Dr. Minyard, which included a substance-abuse assessment and a mental-health assessment. Tolles testified Wakeland was actively engaged in sex-offender treatment at that time. He began that treatment in October 2012.

¶ 28 The trial court found Wakeland "failed to maintain a reasonable degree of interest or concern or responsibility" due to the lack of consistency in attending services and his failure to get moving on the sex-offender therapy until October 2012. The court found he failed to make reasonable progress toward the return of the children during the period of April 28, 2011, to January 28, 2012, and during the period of January 28, 2012, to October 28, 2012. The court did not find the State proved by clear and convincing evidence Wakeland failed to make reasonable efforts toward his children's return, finding Wakeland made the efforts he was able to make.

¶ 29 In November 2013, the best-interests hearing was held. The trial court indicated it reviewed the best-interests report submitted by the Center for Youth and Family Solutions,

which recommended termination of Wakeland's parental rights. According to the report, the mothers of J.S., S.H., and C.C. each surrendered their parental rights to the children at the October 2013 termination hearing. J.S. and C.C. resided with their paternal grandmother since August 2010. The 62-year-old grandmother offered permanency through adoption. She had no major health issues, but noted her 36-year-old son had bonded with the children and would provide permanency if she was physically unable to do so. J.S.'s prior issues with attention difficulties had subsided. J.S. was diagnosed with mood disorder and attention deficit/hyperactivity disorder, as well as oppositional defiance disorder. J.S. was effectively treated with medication. C.C. did well in school. She began counseling in May 2011, during which she revealed Wakeland sexually abused her. In December 2011, C.C. was successfully discharged from counseling. She, however, was rereferred after allegations of sexual abuse by her foster father in October 2012. C.C. was successfully discharged from counseling in September 2013.

¶ 30 According to the report, S.H. resided with her foster parents, a great aunt and great uncle, since July 2011. S.H.'s foster parents were in their forties and were willing to provide permanency through adoption. S.H. initially had behavioral problems at school, but those problems significantly lessened after visits with her birth mother ended. S.H. is intelligent and excelled academically. S.H. visited with J.S. and C.C. for four hours, once a month. The foster parents were committed to continuing the visits after the case closed.

¶ 31 At the hearing, Tolles testified on behalf of the State. Tolles explained C.C. was sexually abused by her paternal grandfather. Her grandmother obtained an order of protection and divorced him. She also sought criminal charges. Tolles opined the grandmother was able to keep the children safe.

¶ 32 The trial court granted the State's petitions to terminate Wakeland's parental rights. The consolidated appeals followed.

¶ 33 II. ANALYSIS

¶ 34 A. Parental Fitness

¶ 35 A parent will be found unfit if the State proves a ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) by clear and convincing evidence. *In re A.L.*, 409 Ill. App. 3d 492, 499-500, 949 N.E.2d 1123, 1128-29 (2011). At a hearing on parental fitness, because the trial court views witnesses and their demeanor during their testimony, its decisions on fitness are entitled to great deference. *Id.* at 500, 949 N.E.2d at 1129. This court will not overturn a finding on parental fitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 36 In this case, Wakeland was found unfit on multiple grounds listed in section 1(D): he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to his children's welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) make reasonable progress toward the return of his children within nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (3) make reasonable progress toward the return of his children within any nine-month period after the initial nine-month period following the neglect adjudication (January 28, 2012, through October 28, 2012) (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 37 We begin with Wakeland's argument the trial court erred in finding him unfit for failing to make reasonable progress toward the return of his children within the nine-month period of January 28, 2012, through October 28, 2012. Wakeland argues he performed the

services required of him. Regarding the one task on which he did not receive a satisfactory rating, sex-offender treatment, Wakeland contends he made reasonable progress "as best he could." Wakeland contends he was not comfortable in group sessions and sought individual treatment sessions instead.

¶ 38 The question of whether progress is reasonable is judged under an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress reasonable, there must be, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the custody of the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). Only when a court can conclude the child will be able to be returned to the parent's custody in the near future because the parent will have fully complied with the court's directives should progress be deemed reasonable. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 39 The trial court's decision finding Wakeland unfit on this ground is not against the manifest weight of the evidence. While Wakeland satisfactorily complied with most of the tasks, he failed to progress at the task central to the case: sex-offender treatment. Wakeland's children were removed due to allegations of sexual abuse. The children could not be returned until Wakeland complied with the treatment and proved his children would be safe in his care. Wakeland, however, made no progress in the relevant nine-month period on this goal. Wakeland was referred for group therapy in March 2012. He began treatment in July 2012, but left group treatment because he "was uncomfortable." From July 2012 until October 28, 2012, Wakeland chose not to receive any sex-offender treatment. In addition, because individual-counseling

matters were to be addressed during these treatment sessions, Wakeland did not receive those services either.

¶ 40 Wakeland's argument he made reasonable progress "as best he could" on the sex-offender task is misplaced. Reasonable progress is not judged under a subjective standard, which requires consideration of whether the progress made "is reasonable for a particular person," but under an objective standard that turns on "the amount of progress measured from the conditions existing at the time custody was taken." *In re A.P.*, 277 Ill. App. 3d 592, 598, 660 N.E.2d 1006, 1011 (1996). Wakeland's progress was not reasonable "measured from the conditions existing at the time custody was taken." *Id.* The court properly found the children could not be safely returned to Wakeland in the near future.

¶ 41 B. Best-Interests Findings

¶ 42 After a finding of parental unfitness, the focus of the trial court shifts to the children's interests "in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). A parent's desire to maintain the parent-child relationship yields to those interests of the children. *Id.* A court may terminate parental rights if it finds the State proved by a preponderance of the evidence it is in the best interests of the children those rights be terminated. *Id.* at 366, 818 N.E.2d at 1228. We will not overturn a decision terminating parental rights unless we find the decision is against the manifest weight of the evidence. *T.A.*, 359 Ill. App. 3d at 961, 835 N.E.2d at 914.

¶ 43 Wakeland contends the trial court erred in terminating his parental rights. Wakeland emphasizes he consistently attended visits with J.S. During those visits, he provided meals, ensured homework was done, and provided playtime. Wakeland further emphasizes he

was not allowed to visit with C.C. or S.H. until he completed sex-offender treatment.

¶ 44 The trial court's best-interests determination is not against the manifest weight of the evidence. The children entered care over 3 1/2 years ago. During this time, S.H., now seven years old, had no contact with Wakeland. C.C., nearly seven years old, had no contact with Wakeland since September 2011. The visits with these children could not be resumed until Wakeland completed sex-offender treatment. While Wakeland resumed these services, he has not completed them. His group leader, despite the group treatment since October 30, 2012, did not believe the children would be safe with Wakeland. While J.S. had appropriate and consistent visits with Wakeland, nothing in the record indicates Wakeland could at any time provide a safe and stable home for him either.

¶ 45 In contrast, the children were bonded to their respective foster parents, who offered permanency. While the incident of sexual abuse on C.C. by her foster father, her paternal grandfather, is troubling, the agency opined the foster mother handled the situation appropriately, C.C. received the necessary counseling, and the foster placement remained a stable and proper home. The trial court agreed, and the record does not indicate such finding is against the manifest weight of the evidence.

¶ 46 We find no error in the trial court's finding the children's best interests lie in terminating Wakeland's parental rights.

¶ 47 III. CONCLUSION

¶ 48 We affirm the trial court's judgment.

¶ 49 Affirmed.