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2014 IL App (4th) 131077-U

NO. 4-13-1077

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

April 14, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

In re: K.D., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	No. 12JA16
KAREN HENDERSON,	)	
Respondent-Appellant.	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which terminated respondent's parental rights.

¶ 2 In November 2013, the State filed a second amended petition to terminate the parental rights of respondent, Karen Henderson, as to her daughter, K.D. (born January 7, 2010). Following a fitness hearing held that month, the trial court found respondent unfit. At a best-interest hearing held immediately thereafter, the court terminated respondent's parental rights.

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

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 On May 8, 2012, the State filed a petition for adjudication of wardship, alleging

that K.D. was a neglected minor under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). Specifically, the State alleged that K.D.'s environment was injurious to her welfare because six days earlier, respondent (1) tested positive for cannabis and methamphetamine use, (2) admitted to her probation officer she was using cannabis every day for two weeks, and (3) used methamphetamine approximately three days earlier. The State's petition also alleged that the Department of Children and Family Services (DCFS) had "a pending investigation" on respondent, who had previously threatened to harm herself while K.D. and S.F. were in her care. (The record reveals that S.F. is K.D.'s older brother by one year. In April 2012, DCFS placed S.F. with his maternal grandmother. S.F. is not the subject of this appeal.)

¶ 7 That same day, the trial court entered a temporary custody order, finding that an immediate and urgent necessity required K.D.'s placement in shelter care. (DCFS placed K.D. with her maternal grandmother.) Following an October 4, 2012, adjudicatory hearing, the court found K.D. was a neglected minor based on the following:

"[Respondent] was indicated for [two] reports regarding substantial risk of harm in [February and] May 2012. [Respondent] threatened to harm herself and banged her head into a wall and used illegal substances while the children were in her care."

At a November 2012 dispositional hearing, respondent's counsel acknowledged that respondent was not present because police had issued a warrant for her arrest. The court then declared K.D. a ward of the court and maintained DCFS as her guardian. In its written dispositional order, the court suspended respondent's visitation with K.D. until further notice.

¶ 8 B. The State's Motion To Terminate Parental Rights

¶ 9 In November 2013, the State filed a second amended petition to terminate respondent's parental rights as to K.D. pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2012)). Specifically, the State alleged that respondent was an unfit parent in that she failed to make reasonable (1) efforts to correct the conditions that were the basis for K.D.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) progress toward the return of K.D. to her care within nine months after an adjudication of neglect (October 4, 2012, to July 4, 2013) (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) progress toward the return of K.D. during any nine-month period after the end of the initial nine-month period after the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 10 1. *The November 2013 Fitness Hearing*

¶ 11 a. The State's Evidence

¶ 12 On the State's motion and without objection, the trial court admitted into evidence three separate February 2013 convictions that respondent pleaded guilty to in Adams County case Nos. 11-CF-738, 12-CF-535, and 12-CF-724. In April 2013, the court in those cases imposed the following respective sentences: (1) six months in the Adams County jail for theft (under \$500) (case No. 11-CF-738); (2) two years in prison for possession of methamphetamine (less than 5 grams) (case No. 12-CF-535); and (3) four years in prison for conspiracy to manufacture methamphetamine (less than 15 grams) (case No. 12-CF-724).

¶ 13 Jenna Jenkins, a child-welfare specialist for a DCFS affiliate, testified that she had been respondent's sole caseworker. Jenkins explained that following an integrated assessment, she authored an initial six-month client-service plan that covered the period from May to November 2012. The plan required respondent to accomplish the following tasks: (1) cooperate

with DCFS; (2) complete parenting classes and attend weekly scheduled visits with K.D.; (3) complete a residential-substance-abuse treatment program; (4) complete a mental-health assessment and comply with any recommendations; and (5) maintain stable housing and employment.

¶ 14 On November 26, 2012, Jenkins deemed respondent's overall progress on completing her initial client-service-plan goals unsatisfactory. Specifically, Jenkins noted that (1) respondent's residential-substance-abuse treatment provider had discharged respondent twice before she completed the program; (2) respondent's mental-health counselor closed her case due to noncompliance; (3) respondent did not keep Jenkins apprised of her location, which prevented Jenkins from scheduling respondent for the appropriate services; (4) respondent's absence caused Jenkins to rate her as unsatisfactory on the parenting, visitation, and housing goals; and (5) respondent did not appear for her six-month administrative-case review.

¶ 15 Jenkins confirmed that her unsatisfactory rating as to respondent's residential-substance-abuse treatment goal was based on the following two unsuccessful attempts: (1) on July 17, 2012, respondent appeared for a substance-abuse intake assessment but only stayed for one hour and (2) on September 17, 2012, after approximately two weeks of treatment, respondent was discharged unsuccessfully. Jenkins also confirmed that her unsatisfactory rating as to respondent's mental-health counseling was based on a May 2012 discontinuation of those services due to noncompliance.

¶ 16 Respondent's second service plan covered the period of November 2012 to May 2013 and required respondent to complete the same five goals as outlined in her initial plan. On December 31, 2012, Jenkins met respondent at the Adams County jail, where she had been incarcerated since November 2012. Respondent informed Jenkins that she was awaiting her scheduled February 2013 trial. On April 25, 2013, Jenkins rated respondent's overall progress on

her second service plan as unsatisfactory, noting that respondent's continuous incarceration prevented her from completing her assigned goals.

¶ 17 Jenkins designated respondent's third service plan, which covered the period of May to November 2013, as an "incarcerated-parent plan." Jenkins explained that because respondent had been incarcerated in the Department of Corrections (DOC) since April 2013, respondent's new plan required her to keep Jenkins updated as to her DOC status, which included, in part, (1) the identity of her DOC counselor, (2) any changes in her release date, and (3) any services she completed while incarcerated that would satisfy the goals of her previous plans.

¶ 18 On November 4, 2013, Jenkins rated respondent's overall progress on completing her incarcerated-parent plan as unsatisfactory because (1) although Jenkins confirmed through respondent's DOC counselor that she had been receiving substance-abuse services, respondent did not provide documentation of her participation; and (2) respondent did not provide documentation that she had successfully completed DOC's anger-management classes.

¶ 19 Jenkins acknowledged that with regard to respondent's third service plan, respondent received a satisfactory rating for (1) providing the name of her prison counselor, (2) reporting her tentative prison-release date, and (3) completing DOC's substance-abuse and anger-management classes.

¶ 20 b. Respondent's Evidence

¶ 21 Respondent testified that she expected to be released from prison on October 1, 2014. In September 2013, respondent began a 12-week "substance abuse contract" that she attended weekly. Respondent explained that her successful completion of that contract before a certain date would award her an additional 42 days of sentencing credit. Respondent confirmed that she (1) completed an eight-week anger-management program and (2) was currently enrolled

in general-educational-development classes, which she attended every weekday. Because of scheduling conflicts, respondent was awaiting availability for DOC's parenting program.

¶ 22 Respondent acknowledged that (1) before her November 2012 incarceration in the Adams County jail, she did not apprise Jenkins of her whereabouts as required by her client-service plan and (2) after her April 2013 incarceration in DOC, she had not provided Jenkins documentation regarding the programs she had completed.

¶ 23 c. The Trial Court's Ruling

¶ 24 Following argument, the trial court found that the State proved respondent unfit on the grounds that she failed to make reasonable (1) efforts to correct the conditions that were the basis for K.D.'s removal; (2) progress toward the return of K.D. to her care within nine months after an adjudication of neglect (October 4, 2012, to July 4, 2013); and (3) progress toward the return of K.D. during any nine-month period after the end of the initial nine-month period following the adjudication of neglect. In so finding, the court noted the following:

"The court is looking at what the evidence has shown with regard to the fitness of [respondent]. The evidence is clear that [respondent] has been either in the Adams County Jail or in [DOC] for most, if not all of the time that this cause has been pending.

The petition was first filed May 8, 2012. The adjudication was in October \*\*\* 2012. The evidence had been that the mother was either incarcerated or whereabouts were unknown during most of the time the case has been pending.

\*\*\* Because [respondent has been] incarcerated for such a lengthy period of time, she had not been in a position to be able to



S.F. K.D. attended school and had no known medical or mental-health issues. Marva had expressed her desire to adopt K.D. and signed a permanency commitment to that effect.

¶ 29 Respondent did not present any evidence.

¶ 30 b. The Trial Court's Ruling

¶ 31 Following argument, the trial court found that it was in K.D.'s best interest that respondents' parental rights be terminated. In so finding, the court noted that no evidence existed showing a parent-and-child relationship between K.D. and respondent.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Respondent argues that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 35 A. The Trial Court's Fitness Findings

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

¶ 37 Section 1(D)(m)(ii) of the Adoption Act provides, 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 [nine] months after the adjudication of neglected or abused minor under [s]ection 2-3 of the Juvenile Court Act \*\*\*." 750 ILCS 50/1(m)(ii) (West 2012).

¶ 38 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."

¶ 39 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 be-

cause, at that point, the parent *will have fully complied* with the directives previously given to the parent \*\*\*." (Emphases in original.)

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).

¶ 40 "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.*

¶ 41 *2. The Trial Court's Fitness Findings*

¶ 42 Respondent argues that each of the trial court's fitness findings were against the manifest weight of the evidence. We disagree.

¶ 43 In support of her argument, respondent contends that she "demonstrated, objectively, the goal of reunification" by taking appropriate steps during her DOC incarceration. In so contending, however, respondent essentially attempts to justify her failure during an earlier nine-month period by directing our attention to her efforts during another separate and distinct nine-month period. However, our review of the court's fitness findings is statutorily confined to the

pertinent evidence during specific periods of time as alleged by the State in its November 2013 second amended petition to terminate respondent's parental rights.

¶ 44 In this case, the State alleged that respondent was an unfit parent pursuant to section 1(D)(m) of the Adoption Act, specifically, subsections (i), (ii), and (iii), as earlier noted. "Subsections (i) and (ii) are to be examined for only the first nine months after the adjudication [of neglect], whereas subsection (iii) may be examined for any nine-month period following the expiration of the initial nine months after the adjudication." *Daphnie E.*, 368 Ill. App. 3d at 1066, 859 N.E.2d at 137 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)).

¶ 45 Here, the initial nine-month period following the trial court's adjudication of neglect covered October 4, 2012, to July 4, 2013. During that period of time, the evidence showed that respondent was either absent or incarcerated in the Adams County jail. Respondent remained in jail until her April 2013 transfer to DOC, following her February 2012 guilty-plea hearing. More important, during that initial nine-month time period, respondent did not make any reasonable progress to regain custody of K.D. in the near future.

¶ 46 Accordingly, we reject respondent's argument that the trial court's fitness finding under section 1(D)(m)(ii) of the Adoption Act was against the manifest weight of the evidence. Having so concluded, we need not consider the trial court's other findings of parental fitness against respondent. 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).

¶ 47 B. The Trial Court's Best-Interest Finding

¶ 48 1. *Standard of Review*

¶ 49 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).

¶ 50 "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.*

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

¶ 52 Respondent argues that the trial court's best-interest findings were against the manifest weight of the evidence. We disagree.

¶ 53 In this case, the only evidence presented at the November 2013 best-interest hearing showed that K.D. had lived all but the first four months of her life with her maternal grandmother and her older brother, S.F. Jenkins noted that K.D.'s maternal grandmother was (1) actively engaged in providing permanency for K.D. by adopting her and (2) willing and able to provide K.D. a loving and stable home life. We agree with the trial court's assessment that no evidence existed showing a parent-and-child relationship existed between K.D. and respondent.

¶ 54 Accordingly, we conclude that the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 55 **III. CONCLUSION**

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

¶ 57

Affirmed.