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2014 IL App (4th) 140240-U

**FILED**  
July 29, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

14-0240, 4-14-0241, 4-14-0242, 4-14-0243 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Aa. J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.            (No. 4-14-0240)	)	No. 12JA137
TERRY JONES,	)	
Respondent-Appellant.	)	
_____	)	
In re: Al. J., a Minor,	)	No. 12JA138
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v.            (No. 4-14-0241)	)	
TERRY JONES,	)	
Respondent-Appellant.	)	
_____	)	
In re: C.J., a Minor,	)	No. 12JA139
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v.            (No. 4-14-0242)	)	
TERRY JONES,	)	
Respondent-Appellant.	)	
_____	)	
In re: T.J., a Minor,	)	No. 12JA140
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v.            (No. 4-14-0243)	)	Honorable
TERRY JONES,	)	Thomas E. Little,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Pope and Knecht concurred in the judgment.

**ORDER**

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

¶ 2 In January 2013, the trial court adjudicated minors T.J. (born November 2, 2002), Aa. J. (born January 5, 2005), Al. J. (born January 5, 2005), and C.J. (born March 6, 2010) neglected and abused. In December 2013, the State filed motions to terminate the parental rights of respondent, Terry Jones, as to each of the minors. In March 2014, following separate fitness and best-interest hearings, the court entered a written order, finding respondent unfit and terminating his parental rights as to each of the minors.

¶ 3 Respondent appeals, 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 Motions To Terminate Parental Rights

¶ 6 The State's December 2012 petitions for adjudication of abuse and neglect alleged that the four minors were (1) neglected within the meaning of section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2012)) in that the minors were not receiving the proper or necessary care recognized under State law as necessary for their well-being; (2) neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) in that their environment was injurious to their welfare; and (3) abused within the meaning of section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2012)) in that their parents created a substantial risk of physical injury to the minors by other than accidental means, which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function.

¶ 7 The State supported all three counts with the same factual allegations. Specifically, the State alleged that (1) both parents had significant, ongoing substance-abuse issues; (2) the parents had a history of domestic violence; (3) the trailer home, while habitable, was filthy, with

trash, debris, and dirty laundry everywhere; (4) the trailer home had no heat because the propane tank was empty; and (5) all four minors had previously been under the guardianship of the Department of Children and Family Services (DCFS) due to the same issues.

¶ 8 In January 2013, following a hearing, the trial court adjudicated all four minors neglected and abused for the reasons set forth in the State's petitions. Following a dispositional hearing held that same month, the court made the minors wards of the court, appointed DCFS as their guardian, and ordered respondent to comply with the DCFS service plan.

¶ 9 B. The State's Motions To Terminate Parental Rights

¶ 10 In December 2013, the State filed separate motions to terminate respondent's parental rights as to each of the four minors. The State alleged in each motion that respondent was unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) because he (1) abandoned the minors (750 ILCS 50/1(D)(a) (West 2012)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); (3) deserted the minors (750 ILCS 50/1(D)(c) (West 2012)); (4) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from the parents (750 ILCS 50/1(D)(m)(i) (West 2012)); and (5) failed to make reasonable progress toward the return of the minors to the parents within nine months after the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 11 1. *The February 2014 Fitness Hearing*

¶ 12 At a February 2014 fitness hearing, the parties agreed that the relevant nine-month period for purposes of section 1(D)(m)(ii) of the Adoption Act was January 23, 2013, to October 23, 2013. Respondent appeared at the hearing in custody. (We note that no evidence was presented at the hearing regarding (1) the date respondent went into custody or (2) the rea-

sons for his arrest.)

¶ 13 a. The State's Evidence

¶ 14 Janice Nicholls, a DCFS caseworker, testified that she was assigned to respondent's case on November 30, 2012, shortly after the minors came into DCFS' care. The minors had previously been in DCFS' care from 2009 until 2011 for the same issues that brought them into care in 2012. Respondent's DCFS service plan, implemented on January 23, 2013, required him to complete certain goals targeted at (1) substance-abuse treatment, (2) individual and family counseling, (3) housing, and (4) visitation with the minors.

¶ 15 Nicholls testified that although respondent completed his required substance-abuse assessment promptly, he delayed engaging in the recommended treatment. Respondent began inpatient substance-abuse treatment at Heritage Behavioral Health Center (Heritage) in March 2013, but he was asked to leave before his completion of the inpatient program due to conflicts with staff and other patients. Following this early dismissal from Heritage, respondent did not follow through with subsequent outpatient substance-abuse treatment. Of the 52 drug tests that respondent was required to take, he failed to attend 42. Of the 10 drug tests that respondent attended, he tested negative for drugs only once. (We note that Nicholls did not specify the time frame during which the 52 drug tests took place.) Nicholls considered respondent unsuccessful in his substance-abuse-treatment goal.

¶ 16 Nicholls testified that respondent and the minors' mother, Laura Jones, did not consistently attend or participate in counseling. Nicholls deemed respondent unsuccessful in his counseling goal. On the issue of housing, Nicholls stated that respondent did not have a home of his own, but instead, was living with friends and family prior to his incarceration. Nicholls considered respondent successful in his visitation goal because he and Laura attended the majority of

their scheduled visits with the minors, although they arrived late to approximately half of the visits. Nicholls determined that overall, respondent did not resolve the main issues his service plan was designed to address, in particular, his substance-abuse.

¶ 17 On cross-examination by respondent, Nicholls testified that respondent consistently (1) kept his psychiatric appointments and (2) obtained his prescribed medication. Nicholls also acknowledged that respondent had transportation difficulties during the nine-month period at issue. Respondent was consistent in his visitation with the minors, and he maintained a strong bond with them.

¶ 18 Tea Sarver, an addiction therapist at Heritage, testified that on November 30, 2012, respondent completed a substance-abuse assessment. Against DCFS' recommendation that he begin inpatient treatment as soon as possible, respondent did not enter inpatient treatment until March 1, 2013. On March 26, 2013, Heritage dismissed respondent from inpatient treatment due to conflicts with staff and patients. Heritage referred respondent to its outpatient treatment program, which respondent did not complete. Sarver testified that from March 26, 2013, until September 30, 2013, respondent was noncompliant with the substance-abuse-treatment requirements of his service plan. Between November 30, 2013, and the end of October 2013, respondent tested positive for drugs at 12 drug tests, failed to attend 45 drug tests, and tested negative twice. The drugs for which defendant tested positive included tetrahydrocannabinol, amphetamines, opiates, benzodiazepines, and cocaine. Heritage closed respondent's case on September 30, 2013, due to noncompliance. Thereafter, respondent did not seek additional substance-abuse-treatment. Sarver considered respondent unsuccessful in his substance-abuse-treatment goals.

¶ 19 On cross-examination by respondent, Sarver acknowledged that respondent's di-

agnosis of attention deficit/hyperactivity disorder (ADHD) might have contributed to his conflicts with staff and other patients during his inpatient substance-abuse treatment at Heritage.

¶ 20 Christina Walters, a DCFS Medicaid counselor with the Youth Advocate program, testified that DCFS referred respondent and Laura to her for individual and family counseling in April 2013. Respondent's individual counseling was to focus on his ADHD and adjustment disorder. From April 2013 until September 2013, respondent and Laura sporadically attended scheduled appointments with Walters. Because of this inconsistency, Walters had difficulty establishing a rapport with respondent or Laura, which prevented meaningful progress in their therapy.

¶ 21 Walters testified that a component of respondent and Laura's therapy was to develop skills for being self-sufficient. At some point during the case, respondent and Laura lost use of a van, which they had used as their primary mode of transportation. This required respondent and Laura to rely on public transportation. However, because respondent and Laura had difficulty making appointments on time while using the bus, Walters began personally transporting them to and from appointments. Even then, respondent and Laura were often not ready to leave when Walters arrived to pick them up.

¶ 22 Although Walters acknowledged that respondent was compliant during his therapy sessions, she denied that he made progress in his therapy. Specifically, Walters wanted respondent to take ownership for the choices he had made, but respondent tended to focus on how he had been "wronged" by the "system."

¶ 23 b. Respondent's Evidence

¶ 24 Respondent testified that he accepted responsibility for his unsuccessful outpatient substance-abuse treatment. He asserted that most of his progress toward ending his sub-

stance abuse came after he entered jail. Respondent admitted that he did not comply with his service plan during the relevant nine-month period because he was on drugs during that time. As to housing, respondent testified that his friend, who owned an apartment building, agreed to provide respondent with housing in exchange for respondent doing maintenance on the building.

¶ 25 c. The Trial Court's Ruling

¶ 26 Following the presentation of evidence and argument, the trial court found respondent unfit in that he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minors from the parents (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) make reasonable progress toward the return of the minors to the parents within nine months after an adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 27 2. *The March 2014 Best-Interest Hearing*

¶ 28 a. The State's Evidence

¶ 29 At a March 2014 best-interest hearing, Nicholls testified that although the minors were in separate foster placements, the three youngest minors were in potential adoptive homes. The oldest minor, T.J., was awaiting full-time placement in a potential adoptive home. In the meantime, T.J. spent some nights and weekends at his future potential adoptive home.

¶ 30 Nicholls testified that the three oldest minors were diagnosed with ADHD, for which they took medication. Despite this condition, the minors did well in school. Aa. J. and Al. J. were straight 'A' students, and T.J. was an above-average student.

¶ 31 Nicholls stated that the minors were more strongly bonded with their foster parents than with respondent and Laura. The foster parents had consistently provided for the mi-

nors' needs. Each of the foster families was willing to arrange sibling visits between the four minors. Nicholls opined that it was in the minors' best interests that respondent's parental rights be terminated.

¶ 32 Following Nicholls' testimony, the trial court admitted into evidence a January 2, 2014, court appointed special advocate (CASA) report prepared by Christa Trump and Jan Kahila. The report indicated, among other things, that respondent was arrested on October 15, 2013, for burglarizing a pharmacy, and he was incarcerated and awaiting trial as of the date of the report.

¶ 33 b. Respondent's Evidence

¶ 34 Respondent testified that he was recently released from custody, and his friend was going to provide him with housing at an apartment building in exchange for respondent performing maintenance. Respondent had been off drugs since his release from custody, and he planned to attend substance-abuse treatment. Respondent also testified that he was "looking into a job right now" doing maintenance and repair of trailer homes. According to respondent, the minors told him they were happy in their foster homes, but they would be happier living with respondent and Laura. Respondent estimated that he would be able to take the minors into his care in six months to a year.

¶ 35 c. The Trial Court's Ruling

¶ 36 Following the presentation of evidence and argument, the trial court found that it was in the minors' best interests to terminate respondent's parental rights.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 On appeal, respondent argues that the trial court's fitness and best-interest deter-

minations were against the manifest weight of the evidence. We disagree

¶ 40 A. The Trial Court's Fitness Findings

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

¶ 42 At the time the State filed its motion to terminate parental rights 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).

¶ 43 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 re-

turn 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."

¶ 44 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.)

¶ 45 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).

¶ 46 "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.*

¶ 47                    2. *The Trial Court's Finding That Respondent Was Unfit*

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

¶ 49                    The trial court found that respondent was unfit as a parent because, among other reasons, he failed to make reasonable progress toward the return of the minors within nine months after the adjudication of neglect and abuse. 750 ILCS 50/1(D)(m)(ii) (West 2012). That relevant nine-month period was January 23, 2013, to October 23, 2013. Respondent's DCFS client-service plan was designed to achieve return of the minors to respondent's care by requiring respondent to complete certain goals targeted at (1) substance-abuse treatment, (2) individual and family counseling, (3) housing, and (4) visitation with the minors.

¶ 50                    Nicholls testified at the fitness hearing that substance-abuse treatment was the primary focus of respondent's service plan. The evidence presented at the fitness hearing showed that respondent neither complied with treatment nor achieved sobriety during the relevant nine-month period. Respondent chose not to take advantage of the range of treatment services available to him, and he failed to comply with required drug testing. The few drug tests that respondent did take confirmed that he was still using. Given the importance of substance-abuse treatment to the return of the minors to respondent's care, respondent's utter failure to meet the substance-abuse goals of his service plan justified the trial court's finding that respondent failed to

make reasonable progress toward the return of the minors within nine months of the adjudication of neglect or abuse.

¶ 51 Further, respondent never attained stable housing prior to his arrest and incarceration, nor did he fully engage in the counseling requirement of his service plan. These failures also showed a lack of reasonable progress toward the return of the minors. Accordingly, based on the evidence presented at the fitness hearing, the trial court did not err in finding that respondent failed to make reasonable progress under section 1(D)(m)(ii) of the Adoption Act.

¶ 52 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).

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

¶ 54 1. *Standard of Review*

¶ 55 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).

¶ 56 "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.*

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

¶ 58 Respondent argues that the trial court's finding that it was in the minors' best interests to terminate respondent's parental rights was against the manifest weight of the evidence. We disagree.

¶ 59 The evidence at the best-interest hearing showed that respondent had recently been released from jail on bond for a pending burglary charge. A possibility exists that respondent will be convicted and sentenced to a lengthy term of incarceration. At the time of his release on bond, respondent was without a job, and his housing situation was tentative, at best. Although respondent asserted that he was sober and planning to attend substance-abuse treatment, his history of failed attempts at treatment suggests that his assertion should not be given great weight. We also note that Laura failed to appear at the best-interest hearing, and her counsel represented to the court that he believed she was living in Arizona. Nothing in the evidence suggested that respondent could successfully parent four young children on his own in the foreseeable future.

¶ 60 The minors' foster parents, on the other hand, proved capable of caring for the minors and meeting their needs. Each of the minors had potential adoptive placements in line. Further, as the court noted in announcing its decision, the need for permanency was particularly pronounced in this case because the same minors had previously been placed in foster care due to the same issues.

¶ 61 Based upon the evidence presented, we conclude that the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 62 **III. CONCLUSION**

¶ 63 For the reasons stated, we affirm the trial court's fitness and best-interest determi-

nations.

¶ 64 Affirmed.