

2015 IL App (2d) 140742-U  
No. 2-14-0742  
Order filed January 26, 2015

**NOTICE:** This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re HAYLA B., SHAYNE B., SHAYDEN B., and HEIDI L., Minors	)	Appeal from the Circuit Court of Winnebago County.
	)	
	)	Nos. 12-JA -120
	)	12-JA-121
	)	12-JA-140
	)	13-JA-185
	)	
(The People of the State of Illinois, Petitioner-Appellee v. Rebecca B., Respondent-Appellant).	)	Honorable Mary Linn Green, Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Justices Jorgensen and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Trial court's finding of parental unfitness was not against the manifest weight of the evidence; (2) trial court's finding that it was in the children's best interests that parental rights be terminated was not against the manifest weight of the evidence.

¶ 2

¶ 3 Respondent, Rebecca B., appeals from the trial court's orders finding her to be an unfit parent and terminating her parental rights to her children, Hayla B., Shayne B., Shayden B., and

Heidi L., who previously had been adjudicated neglected minors and made wards of the court.<sup>1</sup>  
We affirm.

¶ 4 Hayla and Shayne were born in January 2011, and were substance exposed at birth. In April 2012, they were taken into protective custody, and the State filed neglect petitions alleging that each child was neglected, in that the minor's environment was injurious to his or her health because: (1) Rebecca had a substance abuse problem that prevented her from properly parenting, thereby placing the minor at risk; and (2) Rebecca's parental rights to other minors had previously been terminated and she had failed to cure the conditions that had caused the termination of those rights. See 705 ILCS 405/2-3(1)(b) (West 2012). The trial court found probable cause to believe that the children were neglected and that there was urgent and immediate necessity to place the children in shelter care. The court granted temporary guardianship and custody of the children, with discretion to place the children, to the Department of Children and Family Services (DCFS) on April 27, 2012.

¶ 5 Shayden was born on May 7, 2012, also substance exposed. He was taken into protective custody on May 10, when he was discharged from the hospital. He was placed in the temporary care and custody of DCFS on May 14, 2012 and placed into foster care.<sup>2</sup>

¶ 6 The State subsequently amended all of the neglect petitions, adding to each a third count alleging an injurious environment in that the minor had a sibling that was born "substance abuse exposed," thereby placing the minors at risk of harm, also pursuant to 705 ILCS 405/2-3(1)(b)

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<sup>1</sup> The fathers of the minors are not involved in this appeal. However, see *In re Heidi L.*, 2014 IL App (2d) 140672-U, regarding the appeal of Heidi's father, Lawrence L.

<sup>2</sup> The record on appeal does not contain Shayden's neglect petition. Much of Shayden's file is made up of duplicate copies of Shane's paperwork.

(West 2012). On June 20, 2012, Rebecca stipulated to count 3 of the amended petitions, and the State dismissed counts I and II as to each child with the agreement that the parents would engage in services based on all three counts. The court adjudicated Hayla, Shayne, and Shayden neglected minors, granted guardianship and custody to DCFS, and ordered Rebecca to complete the services required by DCFS, including drug, alcohol, and psychological treatment services and abstinence from drugs and alcohol.

¶ 7 On April 24, 2013, while in jail as a result of a finding of contempt of court for continued drug usage, Rebecca gave birth to Heidi L. Heidi was taken into protective custody, and the State filed a two-count neglect petition alleging that Heidi's environment was injurious to her welfare in that: (1) her siblings had been removed from Rebecca's care and Rebecca had failed to cure the conditions that caused the siblings to be removed; and (2) Rebecca had a substance abuse problem that prevented her from properly parenting, thereby placing Heidi at risk. See 705 ILCS 405/2-3(1)(b) (West 2012). Heidi was placed in shelter care on April 30, with temporary guardianship and custody granted to DCFS. On July 19, 2013, Rebecca stipulated to count II of the neglect petition, and Heidi was adjudicated a neglected minor.

¶ 8 On August 29, 2013, the State filed petitions to terminate parental rights as to Hayla, Shayne, and Shayden, alleging that Rebecca failed to: (1) maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (see 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 children within nine months after the neglect adjudication (see 750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) make reasonable progress toward the return of the children within nine months after the neglect adjudication (see 750 ILCS 50/1(D)(m)(ii) (West 2012)). On October 17, 2013, the State filed a one-count petition to terminate parental rights as to Heidi, alleging that

Rebecca failed to maintain a reasonable degree of interest, concern, or responsibility as to Heidi's welfare (see 750 ILCS 50/1(D)(b) (West 2012)). After hearings that were held over the next several months, the court, on June 25, 2014, concluded that Rebecca (who was again in custody) was an unfit parent of Hayla, Shayne, Shayden, and Heidi pursuant to all counts of the petitions. Following a hearing that same day, the court then concluded that termination of Rebecca's parental rights was in the children's best interests. Therefore, the court terminated Rebecca's parental rights and granted DCFS the power to consent to adoption. This appeal followed.

¶ 9 Rebecca first contends that the trial court erred in finding her to be an unfit parent as to each child. The State must prove a parent unfit by clear and convincing evidence. *In re Konstantinos H.*, 387 Ill. App.3d 192, 203 (2008). While section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) provides several grounds upon which a parent may be deemed unfit, any one ground, properly proven, is sufficient to sustain a finding of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. A finding of unfitness will not be disturbed unless it is against the manifest weight of the evidence. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). "A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented." *Id.* "Each case concerning parental unfitness is *sui generis* and requires a close analysis of its unique facts." *Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89.

¶ 10 The only ground of unfitness alleged regarding Heidi was that Rebecca failed to maintain a reasonable degree of interest, concern, or responsibility as to Heidi's welfare. See 750 ILCS 50/1(D)(b) (West 2012). Because the language of subsection 1(D)(b) is stated in the disjunctive, any of the three elements on its own can be the basis for a finding of unfitness: the failure to

maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare. *Shauntae P.*, 2012 IL App (1st) 112280, ¶ 90. In assessing a parent's unfitness under this subsection, a court considers the parent's efforts to visit and maintain contact with the child, as well as other indicia, such as inquiries by the parent into the child's welfare. *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 35. Evidence of noncompliance with service plans may be considered in determining a parent's interest, concern, or responsibility, as may be a continued addiction to drugs. *Shauntae P.*, 2012 IL App (1st) 112280, ¶ 90. A court should focus on the parent's efforts, not her success, and her conduct is examined in the context of the circumstances in which that conduct occurred. *B'Yata I.*, 2013 IL App (2d) 130558, ¶ 31. Circumstances such as poverty, actions and statements of others that hinder visitation, difficulty in obtaining transportation, and the need to resolve other life issues are relevant. *Id.* In addition, if personal visits with the child are somehow impractical, other methods of communication, such as letters, telephone calls, and gifts can demonstrate a reasonable degree of interest, concern, or responsibility, "depending upon the content, tone, and frequency of those contacts under the circumstances." (quoting *In re Adoption of Syck*, 138 Ill.2d 255, 279 (1990)) *Id.* However, courts have repeatedly held that a parent is not fit merely because she has demonstrated some interest or affection toward the child; the interest, concern, or responsibility must be objectively reasonable. *Shauntae P.*, 2012 IL App (1st) 112280, ¶ 90.

¶ 11 The trial court made the following findings regarding Heidi:

"While [Rebecca] was pregnant with the minor, she used drugs. After the minor was born, she engaged in criminal conduct. She did not engage in substance abuse treatment or any assessments until November of 2013. She had a contempt finding because of her

use of drugs before, during, and after her pregnancy with Heidi. I believe that certainly proves the paragraph and count against her as to Heidi.”

The evidence showed that Rebecca admitted to using drugs four times during her pregnancy with Heidi. She was to remain free of alcohol and illegal drugs under the terms of supplemental protective orders entered at the shelter care hearing and as part of the order of adjudication. According to Rachel Leon, case manager from Children’s Home & Aid Society, Rebecca lied about completing a substance abuse screening in June 2013 and had a positive (for cocaine) drug drop in July 2013. She also missed a scheduled drug drop in August, which was therefore considered positive. She was arrested on June 14, 2013, for retail theft (pleading guilty to the charge, she was incarcerated for two days) and again on August 24, 2013, for theft, and remained in custody until September 27. Her visitation with Heidi was described as “very inconsistent”; she attended in full her weekly visitation with Heidi only three times between June 27 and October 18. On August 15, she admitted using cocaine. She did not begin partaking of services until October 2013. Rebecca only argues that she “did not have the amount of time to show efforts that she had regarding the other children” and can point only to some visitation with Heidi and attendance at some doctor appointments. The trial court’s finding of unfitness as to Heidi was not against the manifest weight of the evidence.

¶ 12 The court made the following findings regarding Hayla, Shayne, and Shayden:

“As to Hayla, Shayne, and Shayden, and the mother, she did not complete services. She continued to use drugs. She did not complete a substance abuse assessment or treatment. Again, this is during that initial nine months.

As to Count I for the three older minors, again, her substance abuse continued. She continued a course of criminal conduct and had criminal convictions. In addition to

this, we have three minors with special needs, the two oldest, Hayla and Shayne, and Heidi as well.”

¶ 13 For the same reasons (and more) that we noted above regarding Heidi, we also find no error in the trial court’s finding of unfitness on the same ground regarding Hayla, Shayne, and Shayden. Rebecca’s behavior before Heidi was born included much of the same as her behavior after: drug use, incarceration, and failure to complete required services. Hayla, Shayne, and Shayden were all born substance exposed, Shayden being born after Hayla and Shayne were already in care. Rebecca argues that she did complete a substance abuse assessment and went through treatment at Rosecrance in 2013. However, she fails to address the fact that she relapsed during the outpatient treatment and entered the inpatient program, which she left before completion; although she eventually completed the inpatient program, she was later discharged from the outpatient program. She began using cocaine again in December 2013, while she was pregnant with Heidi. She also had a positive drop in March 2013. She had not been referred for parenting classes or domestic violence counseling because she had not remained drug-free long enough. In April 2013, her progress toward return of the children was rated as unsatisfactory in all areas except attending parent-child visits. She was found in indirect contempt of court for her failure to abstain from drugs and was in jail at the time of Heidi’s birth.

¶ 14 Rebecca clearly demonstrated interest and affection toward Hayla, Shayne, and Shayden; however, this interest and affection was not objectively reasonable in light of her continued drug use, failure to complete service plans, and criminal activity. Therefore, we find no error in the trial court’s findings of unfitness as to Hayla, Shayne, and Shayden.

¶ 15 Rebecca next contends that the trial court’s finding that termination of parental rights was in the best interests of Hayla, Shayne, Shayden, and Heidi was against the manifest weight of the

evidence. The issue at a best interests hearing is whether, in light of the child's needs, parental rights should be terminated, and a parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The proper standard at a best-interest hearing is proof by a preponderance of the evidence. *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 43. This court's standard of review of the trial court's decision is whether the findings were contrary to the manifest weight of the evidence. *Id.*

¶ 16 Our review of the evidence discloses no error here. Hayla and Shayne had been in foster care for over two years, since they were just over a year old. Both were severely developmentally delayed when they were taken into custody. Shayden and Heidi had never lived with Rebecca. Heidi was missing a chromosome and had "all the symptoms of deletion syndrome, which includes mild mental retardation."

¶ 17 However, all of the children were thriving in their foster homes and had bonded with their foster families. Hayla and Shayne had made significant progress with behavioral issues after Rebecca's visitation with them had been discontinued on the advice of the children's therapist. All of Heidi's needs were being met and her physical and developmental therapies had recently been ended, as she was "currently on track developmentally." Her current placement was the "least disruptive placement" for her.

¶ 18 Rebecca argues that "she clearly loves her children and they clearly love their mother" and that, if her parental rights are terminated, "not only is [Rebecca] being deprived of a chance to better herself, but her children are being deprived of their mother." However, as we have already noted, a parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *D.T.*, 212 Ill. 2d at 364. With her repeated drug use



and criminal activity (she was incarcerated again at the time of the best interests hearing), Rebecca was unable to provide the stable loving home lives that her children were receiving in their foster care. The trial court's finding that termination of parental rights was in the children's best interests was not against the manifest weight of the evidence.

### III. CONCLUSION

¶ 19 The judgment of the circuit court of Winnebago County is affirmed.<sup>3</sup>

¶ 20 Affirmed.

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<sup>3</sup> Supreme Court Rule 660A(f) (eff. May 1, 2013) mandates that this court file its decision within 150 days after the filing of the notice of appeal “[e]xcept for good cause shown.” In this case, 150 days expired on December 22, 2014. However, this court granted motions by both Rebecca and the State for extension of time to file briefs, which extended the briefing schedule beyond December 22.