2015 IL App (2d) 150089-U
No. 2-15-0089 & No. 2-15-0142 cons.
Order filed July 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re URIYAH R. and RYLAN R., Minors,	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 11-JA-205, 11-JA-134
(The People of the State of Illinois, Petitioner-Appellee v. Jennifer K., and Wiljohn R., Respondents-Appellants).	)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's finding that respondents were unfit for failing to make reasonable progress toward the return of the minors within the applicable nine-month period was not against the manifest weight of the evidence. The evidence presented at the best-interest hearing was more than sufficient to support the court's determination that it was in the minors' best interest to terminate respondents' parental rights. Affirmed.

¶ 2 These consolidated appeals involve the best interests of two minors, Uriyah R. and Rylan R., the children of respondents, Jennifer K. and Wiljohn R. The minors were adjudicated neglected and the trial court found both respondents unfit and that it would be in the best interests of the minors to terminate respondents' parental rights. Jennifer appeals the trial court's

order finding her unfit and terminating her parental rights. Wiljohn contests the unfitness determination but not the best interest ruling. We affirm.

¶ 3 BACKGROUND

¶ 4 Jennifer first became involved with the Department of Children and Family Services (DCFS) on March 24, 2008, when DCFS received a hotline report that Jennifer had been arrested for drug possession and for selling drugs out of her home with her children present. The children also reported that Jennifer would force them to smoke blunts of marijuana. Jennifer's mother was granted custody of the children in their juvenile court cases.

¶ 5 Uriyah was born on April 11, 2011, and he lived with his mother and father, Jennifer and Wiljohn, for a short time after his birth. Uriyah's case came into care after Jennifer's mother gave notice that she was going to move to Idaho and would not take Uriyah's siblings with her. One of the transition plans called for the siblings to move back home with Jennifer. DCFS, however, did not approve of the plan because Jennifer was allegedly residing with Wiljohn, who was a registered sex offender. Also, according to Jennifer's caseworker, Jennifer had not allowed DCFS to see Uriyah for approximately two weeks before the State filed its neglect petition.

¶ 6 On June 30, 2011, the State filed a two-count neglect petition alleging that Uriyah was a neglected minor in that his siblings had been removed from Jennifer's care and Jennifer had failed to correct the conditions that caused their removal, thereby placing Uriyah at risk of harm. Additionally, Wiljohn was an untreated sex offender, which also placed Uriyah at risk of harm. Temporary custody was granted to DCFS following a shelter care hearing on June 30, 2011. On November 17, 2011, Uriyah was adjudicated a neglected minor based on Jennifer's factual stipulation to count I of the neglect petition.

¶ 7 Rylan was born on May 3, 2012. On May 11, 2012, the State filed a one-count neglect petition alleging that Rylan was a neglected minor in that his siblings had been removed from Jennifer's care and she had not corrected the conditions which caused their removal, thus placing Rylan at risk of harm. Rylan was taken into protective custody shortly after his birth and DCFS was granted temporary custody at a shelter care hearing. Rylan was adjudicated a neglected minor on June 29, 2012, after Jennifer stipulated to count I of the petition. The trial court also entered an order of disposition on that date making Rylan a ward of the court and granting guardianship and custody to DCFS.

¶ 8 On February 21, 2014, the State filed two petitions for termination of parental rights and power to consent to adoption against respondents. One was in the interest of Uriyah, and the other was in the interest of Rylan; otherwise the counts brought against respondents were identical. Count I alleged that respondents were unfit in that they failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(b) (West 2012)). Count II alleged that respondents failed to make reasonable progress toward the return of the minors within nine months after adjudication (750 ILCS 50/1(m)(ii) (West 2012)). Count III alleged that respondents failed to make reasonable progress toward the return of the minors within any nine-month period following the initial nine months after adjudication (750 ILCS 50/1 (m)(iii) (West 2012)).[1]

[1] Counts II and III were pled in the framework of the relevant statute as it existed prior to its revision. The State correctly notes that "[n]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612 (West 2014). Respondents were informed of the nature of the claim or defense which they were called upon to meet, and they did not

¶ 9 On January 30, 2015, the trial court entered an order terminating respondents' parental rights as to both minors. Following a best interest hearing, the trial court found that it was in the minors' best interests to terminate respondents' parental rights. Jennifer and Wiljohn separately appealed. We consolidated the appeals for decision only.

¶ 10 ANALYSIS

¶ 11 In Illinois, the Juvenile Court Act of 1987 (705 ILCS 405/1 *et seq*. (West 2014)) provides a two-stage process for involuntary termination of parental rights. First, the State must establish that the parent is "unfit" under one or more of the grounds set forth in the Adoption Act (Act). 705 ILCS 405/2-29 (West 2014); 750 ILCS 501/1 (D) (West 2014). If the trial court finds the parent to be unfit, the court then determines whether it is in the best interests of the minors that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2014). *In re D.T.*, 212 Ill. 2d 347, 352 (2004).

¶ 12 A. Unfitness Determination

¶ 13 On appeal, respondents present several arguments challenging the trial court's finding of unfitness. Because we choose to dispose of this case on the basis of respondents' arguments relating to the finding of unfitness for failure to make reasonable progress, pursuant to section 1(D)(m)(ii) of the Act, we need not address respondents' other arguments. See *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005) ("[a] parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence"); *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 29 (where State met its burden of proving unfitness on one ground, court declined to consider whether the parent was also unfit on other grounds).

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object to the pleadings at the proceedings. See 735 ILCS 5/2-612 (West 2014) ("[a]ll defects in pleadings, either in form or substance, not objected to in the trial court are waived."

¶ 14 Section 1(D)(m)(ii) provides that a parent may be declared unfit if he or she fails to make reasonable progress toward the return of the child to the parent during any nine-month period after an adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(ii) (West 2014). Reasonable progress "is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent. [Citations]. At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphine E.*, 368 Ill. App. 3d 1052, 1067 (2006). The "benchmark" for measuring such reasonable progress "encompasses the parent's compliance with the service plans and the court's directives in light of the condition that gave rise to the removal of the child and other conditions which later become known and would prevent the court from returning custody of the child to the parent." *Id.*; *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 15 Respondents argue that the trial court's finding that they failed to make reasonable progress toward the return of the minors during the first nine months following the adjudications of neglect was against the manifest weight of the evidence. A trial court's determination of parental unfitness "involves factual findings and creditability assessments that the trial court is in the best position to make." *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90 (2004). Therefore, the trial court's finding must be given great deference, and a reviewing court will not reverse a trial court's finding of parental unfitness unless it was contrary to the manifest weight of the evidence, which means that 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 (2005).

¶ 16 The trial court adjudicated Uriyah a neglected minor on November 17, 2011, following Jennifer's stipulation to count I of the neglect petition. Therefore, the relevant nine-month period with respect to Uriyah fell between November 17, 2011, and August 17, 2012. Rylan was adjudicated a neglected minor on June 29, 2012. Thus, the nine-month period following Rylan's adjudication spanned from June 29, 2012, to March 29, 2013.

¶ 17 Count I of both neglect petitions stated that Uriyah and Rylan were neglected minors in that their environment was injurious to their welfare in that the minors' siblings had been removed from Jennifer's care and Jennifer had failed to cure the conditions which caused the removal of the siblings, thereby placing the minors at risk of harm. The siblings were removed from Jennifer's care due to her substance misuse and the substantial risk of the minors incurring physical injury and remaining in an environment injurious to their health and welfare by neglect.

¶ 18 Count II of the neglect petition, which was based on Wiljohn's status as an untreated sex offender, was dismissed on the condition that all parties, including Wiljohn, agreed to comply with all the recommended services.

¶ 19 DCFS prepared service plans for respondents and they were ordered, *inter alia*, to cooperate with DCFS regarding services and visitation, to refrain from using illegal substances and alcohol, and submit themselves to random drug screens as requested by DCFS or their contacting agency. Both respondents were required to establish three months of sobriety. Wiljohn, as a convicted sex offender, was required to undergo an assessment and to engage in recommended services. He also was required to attend all court hearings, to maintain regular contact with the caseworker, to attend all child visits, and to refrain from further criminal conduct. Jennifer was required to remain sober, cooperate with substance abuse assessments and

recommendations, participate in counseling, follow visitation plans and rules, appropriately interact with her children, and apply appropriate discipline methods.

¶ 20 Here, with respect to Uriyah, per the January 19, 2012, service plan, the evidence shows that Jennifer had not completed any drug test requested of her and had not signed a release of information in order to be referred for a substance abuse assessment. Her service plan stated that she had made "unsatisfactory progress" regarding her misuse of alcohol and/or other substances. Jennifer had expressed that she would not engage in any services requested of her because she believed that she already had completed all the necessary required services. Jennifer demonstrated poor parenting skills during visits with the minors, expressed that she was unwilling to attend parenting classes, and failed to undergo a required mental health assessment.

¶ 21 The June 28, 2012, service plan noted that Jennifer still had not established three months of sobriety, which was a prerequisite for services to help correct the conditions that resulted in the placement of her children with DCFS. Between May 10 and June 8, 2012, Jennifer completed four drug drops: two were negative, one was presumed positive, and the other was positive for opiates.

¶ 22 Wiljohn did not establish the three months of sobriety required of him to be referred for necessary services during the relevant nine-month period. At the end of November 2012, Wiljohn tested positive for marijuana. As of December 3, 2012, Wiljohn had attended all juvenile court proceedings as required by his service plan, but he was not using appropriate parenting skills. He used foul language toward the staff during visitation with the minors.

¶ 23 With respect to Rylan, as of December 7, 2012, Jennifer had not yet established the three months of sobriety necessary for her to engage in the services to help return the minors to her care. She had two positive drops, one in August 2012, and the other in November 2012.

Jennifer also missed requested drops, which were presumed positive. Wiljohn also failed to establish three months of sobriety as of December 7, 2012, and, as stated, he was hostile with the caseworkers and used profanity during visitation with the minors.

¶ 24 The evidence indicated respondents failed to make progress that was reasonable and of such quality that the minors could be returned to them in the near future. Most significantly, respondents failed to substantially comply with the requirement that they remain sober. Thus, we find the trial court's finding of unfitness was not against the manifest weight of the evidence and the opposite conclusion is not clearly evident; nor is the determination unreasonable, arbitrary, or not based on the evidence. As previously noted, we need not address any of the other grounds under which the trial court found respondents unfit, as any one of them, if not contrary to the manifest weight of the evidence, is sufficient to affirm the trial court's finding. *Gwynne P.*, 215 Ill. 2d at 349.

¶ 25 Respondents cite *In re F.S.*, 322 Ill. App. 3d 486 (2008), for the proposition that the failure to comply with the specifics of a service plan, although relevant, is insufficient to overcome evidence of reasonable progress. In *F.S.*, the First District Appellate Court found that the respondent had made reasonable efforts and achieved reasonable progress toward correcting the deficient parenting skills and the drug and alcohol dependencies that led to the removal of F.S. from her home. The court held that the fact that the respondent made progress and met the obligations of her service plan outside of DCFS recommended programs did not show that she failed to make progress or that she failed to substantially fulfill her obligations under the service plan. *In re F.S.*, 322 Ill. App. 3d at 493. Unlike in *F.S.*, respondents failed to achieve reasonable progress toward correcting many of the concerns that led to the removal of the children from

their home either through their service plans of DCFS recommended programs or through programs outside of those programs recommended by DCFS.

¶ 26 B. Best Interest Determination

¶ 27 Jennifer argues the trial court's determination that it was in the best interests of the minors to terminate her parental rights was against the manifest weight of the evidence. We disagree.

¶ 28 After a finding of parental unfitness, the trial court must give full and serious consideration to the children's best interests. *In re G.L.*, 329 Ill. App. 3d 18, 24 (2002). At the best-interest stage of termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination is in the children's best interests. *D.T.*, 212 Ill. 2d at 366. We will not reverse the trial court's best-interests determination unless it is against the manifest weight of the evidence. *Tiffany M.*, 353 Ill. App. 3d at 890. A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002). Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008).

¶ 29 When determining whether termination is in the children's best interest, the court must consider, in the context of the child's age and developmental needs, the following factors: (1) the child's physical safety and welfare, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7)

the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 30 We first observe that, at the best-interest hearing, the "full range of the parent's conduct" must be considered, including the grounds for finding the parent unfit. *In re C.W.*, 199 Ill. 2d 198, 217 (2002). Such evidence is a "crucial consideration" at the best-interest hearing. *In re D.L.*, 326 Ill. App. 3d 262, 271 (2001). The primary issue before the trial court is what action is in the children's best interest. See *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008) (the purpose of the best-interest hearing is to minimize further damage to the children by shifting the court's scrutiny to the children's best interest).

¶ 31 On appeal, Jennifer makes several arguments as to how the trial court's ruling under each of the factors was against the manifest weight of the evidence. We conclude these arguments amount to nothing more than an attempt to have this court reweigh the evidence presented below, which we cannot do. *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992) ("It is not the function of this court to reweigh the evidence or assess the credibility of testimony and set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence.").

¶ 32 The trial court's determination is supported by the record. Uriyah's foster parents had cared for him since he was four months old. They continuously took care of all of Uriyah's needs, including providing a nurturing home environment, stability, and adequate food, medical care, physical care, and emotional support. Uriyah refers to his foster parents as "mommy" and "daddy," and he views his foster siblings as his brothers and sisters. Rylan had lived with his

foster parents since birth. They too provide for all of his needs and, like Uriyah's foster parents, Rylan's foster parents advocate for increased medical and developmental intervention. Rylan refers to his foster parents as "mommy" and "daddy," and he views his foster siblings as his brothers and sisters. Both sets of foster parents have continued to foster the relationship among Uriyah, Rylan, and their siblings.

¶ 33 Moreover, even if there existed a bond between Jennifer and her children, this would not automatically insure that a parent will be fit or that the children's best interest will be served by that parent. See *In re K.H.*, 346 Ill. App. 3d 443, 463 (2004). Of importance here is that the foster parents have provided the children with stable, safe, nurturing, and loving environments.

¶ 34 The foster parents have expressed a strong commitment to providing the children with permanent homes, thus ensuring the need for permanency in their lives. Further delay and lack of permanency and stability would not be in the children's best interest. See *K.H.*, 346 Ill. App. 3d at 463 (permanency and stability is important for a child's welfare).

¶ 35 Accordingly, we conclude that the evidence presented at the best-interest hearing was more than sufficient to support the court's determination that termination was in the minors' best interest.

¶ 36 III. CONCLUSION

¶ 37 Based on the preceding, we affirm the judgment of the Circuit Court of Winnebago County terminating respondents' parental rights.

¶ 38 Affirmed.