2015 IL App (2d) 150392-U
No. 2-15-0392
Order filed August 31, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re D.S., a Minor	)	Appeal from the Circuit Court
	)	of DeKalb County.
	)	
	)	No. 13-J-3
	)	
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Eulean S., Respondent-Appellant).	)	Honorable
	)	Ronald G. Matekaitis,
	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State was not required to seek the termination of respondent's parental rights under a specific section of the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)), and the trial court's findings that respondent was unfit were not against the manifest weight of the evidence. As such, the trial court also did not err in proceeding with a best interests hearing. Therefore, we affirmed.

¶ 2 Respondent, Eulean S., appeals the trial court's rulings terminating her parental rights to her son, D.S., who was born on July 16, 2010. Respondent argues that the trial court's findings, that she (1) failed to make reasonable efforts to correct the conditions that let to D.S.'s removal (750 ILCS 50/1(D)(m)(i) (West 2014)) and (2) that she failed to make reasonable progress towards D.S.'s return within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii)

(West 2014)), were against the manifest weight of the evidence. Respondent argues that, therefore, the trial court also erred in ruling that it was in D.S.'s best interests to terminate her parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Proceedings

¶ 5 On March 25, 2013, the State filed a petition seeking an adjudication that D.S. was dependent because respondent was mentally unstable and had been admitted to a psychiatric unit. The petition alleged that prior to respondent's admission, she had suffered a mental breakdown and was unable to care for D.S. The trial court entered an order giving temporary custody of D.S. to the Department of Children and Family Services (DCFS).

¶ 6 The State filed an amended petition for adjudication on September 13, 2013. The State again alleged that D.S. was dependent because respondent was mentally unstable and had been admitted to a psychiatric unit. It alleged that prior to respondent's admission, she had left D.S. with a neighbor, saying that she did not want him anymore because she could not care for him. The State additionally alleged that D.S. was neglected because his environment was injurious to his welfare in that: (1) respondent had mental health issues and was not involved in any mental health treatment, and, alternatively (2) respondent had abandoned D.S.'s siblings, and they were now in the care of a legal guardian. The same day that the State filed the amended petition, respondent stipulated to the neglect based on her mental health, and the trial court adjudicated D.S to be a neglected minor on that basis.

¶ 7 On October 4, 2013, the trial court entered a dispositional order finding that it was consistent with D.S.'s health, welfare, safety, and best interests to make him a ward of the court. The trial court found that respondent was unfit and unable to take care of D.S. at that time

because she had unresolved mental health issues. Visitation was to take place at DCFS's discretion.

¶ 8 In a January 3, 2014, status order, the trial court found that respondent was not cooperative, in that she was not engaged in services.

¶ 9 On March 21, 2014, the trial court entered a permanency order finding that the appropriate permanency goal was return home within 12 months. It found that DCFS had made reasonable efforts towards the goal but that respondent had not made reasonable and substantial progress or reasonable efforts towards returning D.S. home. It further found that respondent had not been cooperative and needed to engage in services and visit D.S.

¶ 10 In a June 20, 2014, permanency order, the trial court again found that DCFS had made reasonable efforts towards the goal but that respondent had not made reasonable and substantial progress or reasonable efforts towards returning D.S. home. It further found that respondent had not completed services. The trial court changed the permanency goal to substitute care pending determination of termination of parental rights.

¶ 11 On August 8, 2014, the State filed a petition to terminate respondent's rights on the bases that she failed to make reasonable efforts to correct the conditions that led to D.S.'s removal (750 ILCS 50/1(D)(m)(i) (West 2014)) and that she failed to make reasonable progress towards D.S.'s return within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 12 In a February 6, 2015, permanency order, the trial court found that DCFS had made reasonable efforts towards the permanency goal but that respondent had not made reasonable and substantial progress or reasonable efforts towards returning D.S. home. It found that respondent had just started some services.

¶ 13 B. Fitness Hearing

¶ 14 The fitness hearing also began on February 6, 2015; evidence was additionally presented on February 27, 2015, and March 9, 2015. Mario Kemp, a DeKalb County DCFS worker, testified as follows. He was the caseworker for D.S. for the first year and created a service plan for May 2013 to March 2014. In May 2013, Kemp went over the plan with respondent at the DCFS office and gave her a copy. Respondent was to get a mental health evaluation, drug and alcohol evaluation, and domestic violence screening and follow recommendations from the evaluations. Respondent was rated unsatisfactory for not completing these services. She obtained a drug and alcohol evaluation but did not follow up with treatment. Similarly, she obtained a mental health evaluation and went to initial appointments, but she did not show up for follow-up appointments and had to restart services because of the time lapse. Kemp met with respondent 6 to 12 times while he had the case, and they spoke about services almost every time they talked. He would go over everything several times. Whenever they had a conversation, it seemed like respondent had never heard the information before and had no idea what Kemp was talking about.

¶ 15 Respondent was hospitalized at least once for mental health issues, and she did not follow up with after-care treatment. She reported symptoms such as feeling overwhelmed and insomnia. She also reported erratic behavior including trying to flood her apartment and burn down her building, exposing herself, and audio and visual hallucinations. She was incapable of demonstrating even minimal parenting skills. Respondent continued to be involved in violent relationships, failed to obtain independent income and housing, and failed to obtain a GED. Kemp had “sporadic” contact with respondent because she was going back and forth between Chicago and DeKalb and did not have a stable residence or phone number. She would call him on average about once every three to four weeks, and there were gaps of six to eight weeks.

Some weeks she showed up for visitation, and other weeks she did not.

¶ 16 Jessica Wear, a DCFS caseworker, testified as follows. She was assigned to the case from December 2013 to November 2014. Wear discussed the services plan when she first met with respondent in December 2013. She also discussed the importance of mental health services whenever she talked to respondent on the phone in the following months. During the conversations, respondent repeatedly said that she did not know that she was supposed to be doing that service, and they would have to review everything.

¶ 17 Wear created service plans in February and September 2014. Respondent was to obtain a substance abuse assessment, have random drug screens, obtain mental health services, and obtain domestic violence services. Respondent was rated unsatisfactory on the first service plan because she had started mental health services but attended only two or three appointments, resulting in her being "closed" from attending.[1] Also, she did not start any other services. Respondent was rated unsatisfactory on the second service plan because she did not start any services. During that time, respondent was arrested for human trafficking and separately for felony theft.

¶ 18 Wear's contact with respondent was minimal because respondent kept providing different addresses and phone numbers, and often when Wear tried to call, the number would be disconnected. Wear was supposed to see respondent monthly but saw her only three times. Respondent did restart mental health services once but did not follow through.

¶ 19 Respondent was diagnosed with psychosis. She missed at least three appointments for her injections of medication, which were to treat her schizophrenia and schizoaffective disorder.

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[1] Wear testified that when the Ben Gordon Center closes a case for failure to attend, the individual may not restart for 90 days.

She rarely visited D.S. during the time Wear had the case. The case was transferred to DCFS in Chicago in October 2014.

¶ 20 At the State's request, the trial court took judicial notice of the March 21, 2014, and June 20, 2014, permanency reviews in which respondent was found to have made no reasonable efforts or progress.

¶ 21 Respondent testified as follows, in relevant part. At one time she resided in DeKalb, but she decided to return to Chicago at the end of February 2014, after getting out of jail, because she had family there. She was currently living with her grandmother. Respondent knew that she had to get back into services, but she did not receive any DCFS referrals. Instead, respondent started making phone calls on her own, and she began attending Loretto Hospital's outpatient psychological program in March 2014. She had an assessment, was taking prescribed medication, and was going to individual self esteem classes. Respondent had been regularly attending the classes, other than the time she was in the DeKalb County jail. Respondent had been working as a cab dispatcher since November 2014.

¶ 22 When living in DeKalb, respondent had been getting medical injections every month at the Ben Gordon Center. Respondent had not been getting mental health treatment there because the Center kept rescheduling appointments, so finally she left. She agreed that she had tested positive for marijuana during some of her drug tests. In 2014, she did not seek out any domestic violence classes or DCFS-approved parenting classes. She was also not doing individual counseling or random drug screens because she "didn't know [she] had to do it." Kemp "never once" told her what services she was supposed to do, and he never went over a service plan with her even though he knew where she resided and did not have trouble contacting her. He did tell her to do a drug drop once, and she tested positive. Similarly, Wear never went over her service

plan with her or gave her a list of services to complete. Respondent later testified that Wear did tell her that she needed mental health treatment. When respondent was in jail, she talked to a lot of people and learned that she should have a service plan, so she finally went to the DCFS office in September 2014 and got one at that time. Respondent agreed that she had not completed any services in that plan.

¶ 23 Respondent was arrested in September 2014 for criminal trespass, she was incarcerated for 15 days in February 2014, and she was also recently incarcerated for 15 days. During those times, she missed some of her medications. Respondent was diagnosed with schizophrenia, "bipolar," and depression. When she moved, she kept in contact with her DCFS workers.

¶ 24 David Salas, a clinical social worker at Loretto Hospital, testified that respondent first came to the hospital on October 28, 2014. DCFS objected on the basis that the termination petition related events before that date. The trial court allowed Salas to testify as an offer of proof.

¶ 25 Salas continued as follows, in relevant part. Respondent had been "pretty consistent" in attendance. She was doing individual therapy, and one issue that they were working on was her self-esteem. The hospital had also placed her on medication based on her diagnosis of mood disorder, not otherwise specified. Salas opined that her treatment would be long-term given her issues.

¶ 26 The trial court issued its ruling on March 30, 2015, and we summarize its findings. The matter came into care in March 2013 in large part due to respondent's mental health issues. Those mental health issues also caused significant memory problems. Both case workers testified that every time they met with respondent, she did not know what she was supposed to be doing, and it was as if they were going through everything for the first time. There was

testimony that respondent began services at the Ben Gordon Center but was not able to progress due to transportation problems, living arrangements, and moving back and forth between Chicago and DeKalb. The inability to consistently contact respondent due to unreliable phone service and incorrect addresses also provided barriers for respondent to engage in mental health services. Respondent had failed to engage in such services in a meaningful way until October 2014. That was 17 months after D.S. had gone into care, which was "just too long[.]"

¶ 27 The State had met its burden regarding respondent's failure to correct the conditions that caused D.S. to be brought into care. Respondent had not made reasonable efforts or progress towards correcting those conditions largely due to her mental health issues, though other issues like arrests and positive drug tests interfered as well. The trial court found that the State had proven, by clear and convincing evidence, that respondent was unfit as to both counts.

¶ 28 C. Best Interests Hearing

¶ 29 A best interests hearing was conducted the same day. Sheila Thomas provided the following testimony. She had been the caseworker since the middle of 2014. D.S. had been in the care of a cousin, Bernice Harrison, since April 2013, and had bonded with her. He spoke about her positively. She was loving and affectionate with him and had decorated his room with Spiderman, which he loved. It was not in D.S.'s best interests to try to return him to respondent because it would be quite some time before respondent could care for him, and D.S. needed stability. The foster parents were taking care of all of D.S.'s needs, were engaging him in social activities, and were willing to adopt him.

¶ 30 Respondent did not present evidence.

¶ 31 The trial court stated that D.S. was in a loving, nurturing environment, and that he needed permanency. The trial court found that it was in D.S.'s best interests that the parental rights of

respondent and any father be terminated. The permanency goal for D.S. was changed to adoption.

¶ 32 Respondent timely appealed.

¶ 33 II. ANALYSIS

¶ 34 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *Id.* If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 35 A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009). We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the ruling is unreasonable, arbitrary, or not based on the evidence. *In re B.B.*, 386 Ill. App. 3d at 697-98.

¶ 36 Our supreme court has defined reasonable progress as " 'demonstrable movement toward the goal of reunification.' " *In re C.N.*, 196 Ill. 2d 181, 211 (2001) (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)). Progress towards return of the child is measured by the parent's compliance with the service plans and the court's directives, in light of both the condition which caused the child's removal and conditions that became known later and which would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. We review reasonable

progress using an objective standard relating to making progress toward the goal of returning the child home. *In re R.L.*, 352 Ill. App. 3d 985, 998 (2004). Reasonable progress requires measurable or demonstrable movement toward the goal of reunification, and reasonable progress can be found if the trial court can conclude that it can return the child to the parent in the near future. *In re J.H.*, 2014 IL App (3d) 140185, ¶ 22. A parent's mental deficiencies do not eliminate the requirement of making measurable progress towards the return home of the child. See *In re J.P.*, 261 Ill. App. 3d 165, 175-176 (1994); *In re Edmonds*, 85 Ill. App. 3d 229, 233-34 (1980); see also *In re Devine*, 81 Ill. App. 3d 314, 320 (1980) (a "child is no less exposed to danger, no less dirty or hungry because his parent in unable rather than unwilling to give him care"). In contrast to reasonable progress, reasonable efforts is related to the goal of correcting the conditions which caused the child's removal and is judged by a subjective standard of what the reasonable amount of effort is for the particular parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006).

¶ 37 Respondent maintains that her mental health issues are at the root of the conditions that led to D.S.'s removal; she notes that the trial court adjudicated D.S. neglected based on her mental health problems and lack of treatment. Respondent also points out that the State's evidence emphasized her mental health issues, as did the trial court's findings.

¶ 38 Respondent argues that the General Assembly has considered that there are circumstances where a parent's mental health interferes with his or her ability to discharge parental duties. Respondent contends that it therefore created section 1(D)(p) of the Adoption Act, which allows a trial court to find a parent unfit on the basis of:

> "Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental

> impairment, mental illness or an intellectual disability *** or developmental disability ***, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period." 750 ILCS 50/1(D)(p) (West 2014).

¶ 39 Respondent further cites *In re N.F.*, 178 Ill. App. 3d 662, 666 (1987), where this court stated that under section 1(D)(p), it must first be shown by competent evidence that the parent suffers from a mental impairment sufficient to prevent him or her from discharging a parent's normal responsibilities, and there must be sufficient justification to find that the inability will extend beyond a reasonable period of time. In that case, we affirmed the trial court's finding of unfitness. *Id.* at 668. We stated that a psychiatrist testified that the mother could not independently discharge her parental responsibilities and that her inability would continue for at least the next several years. *Id.* at 667-68. One of the mother's witnesses, a clinical psychologist, testified that even if the mother was provided with professional support and monitoring, she would not be able to provide the child with a sufficiently permanent home. *Id.* at 668.

¶ 40 Respondent argues that the language in section 1(D)(p) and the court's analysis in *In re N.F.* and cases cited therein seem to indicate that a significant mental impairment with long-term effects must be shown when considering the termination of the rights of a parent who suffers from mental illness. Respondent argues that by seeking to instead terminate under sections 1(D)(m)(i) and 1(D)(m)(ii), the State was able to avoid the evidentiary requirements of section 1(D)(p). Respondent argues that in doing so, the State went against the General Assembly's intent, for had the legislature intended for parents with mental health issues to be found unfit on other grounds, it would not have drafted section 1(D)(p).

¶ 41 Respondent's argument raises a question of statutory construction. In construing a statute, our primary objective is to ascertain and give effect to the legislature's intent, which is best indicated by the statute's plain language. *McVey v. M.L.K. Enterprises, L.L.C.*, 2015 IL 118143, ¶ 11. We give undefined terms their ordinary and popularly understood meaning. *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 15. If the statutory language is clear, we must apply it as written, without resorting to extrinsic aids of statutory construction. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶ 56.

¶ 42 Section 1(D) states that the "grounds of unfitness are any one or more of the following ***." 750 ILCS 50/1 (West 2014). Therefore, the plain language of the statute shows that the grounds for a finding of unfitness are listed as alternatives. See also *In re D.W.*, 214 Ill. 2d 289, 292 (2005) (section 1(D) provides alternative grounds for finding a parent unfit); *In re D.F.*, 201 Ill. 2d 476, 505 (2002) ("The grounds for a finding of unfitness contained in section 1(D) of the Act are listed in the alternative."). Moreover, section 1(D)(p) in particular does not contain any language stating that if a parent has a mental health issue, a finding of unfitness must be pursued only under that section. See 750 ILCS 50/1(D)(p) (West 2014). Indeed, to have such a rule could create various problems, as a parent with a mental illness could seek to avoid a finding of unfitness simply by refusing to speak to mental health professionals, which would make a diagnosis of mental illness much more difficult. More significantly, as stated, the statute's plain language does not support plaintiff's argument that the State was required to pursue a finding of unfitness only under section 1(D)(p).

¶ 43 Respondent does not otherwise contest the trial court's findings that she was unfit under sections 1(D)(m)(i) and 1(D)(m)(ii). These findings were not against the manifest weight of the evidence. First, regarding reasonable efforts to correct the conditions that led to D.S.'s removal

(750 ILCS 50/1(D)(m)(i) (West 2014)), the petition to terminate did not allege a specific time frame.[2] However, as the State points out, respondent did not object in the trial court to this lack of specificity, thereby forfeiting such a challenge on appeal. See *In re S.H.*, 2014 IL App (3d) 140500, ¶ 21 (a pleading defect not raised at trial is forfeited on appeal). Here, D.S. was adjudicated neglected on the basis that his environment was injurious to his welfare, in that respondent had mental health issues but was not involved in any mental health treatment. Prior to the petition for termination being filed, respondent went for initial mental health evaluations but repeatedly failed to follow-up with mental health appointments. Thus, she did not even begin to address her mental health problems in any consistent manner. Accordingly, a finding that she failed to make reasonable efforts was not against the manifest weight of the evidence.

¶ 44 Second, with regard to the allegation that respondent failed to make reasonable progress towards D.S.'s return within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)), the relevant time period was September 13, 2013, to June 13, 2013. Caseworkers testified that during this time, respondent was difficult to contact and failed to follow through with mental health and drug and alcohol treatment. Respondent further continued to be involved in violent relationships, failed to obtain independent income and housing, and failed to obtain a GED. She was also sporadic in her visitation of D.S. As such, the trial court's finding that she did not make reasonable progress during this time was not against the manifest weight of the evidence.

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[2] Beginning in 2014, a reasonable efforts determination could be made for any nine-month period. See P.A. 98-532 (eff. Jan. 1, 2014). Prior to that time, the relevant period was the first nine months after the adjudication of abuse or neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2012); *In re D.F.*, 208 Ill. 223, 238 (2003).

¶ 45 Respondent's final argument is that without a valid finding of unfitness, the trial court improperly proceeded with the best interests portion of the termination process. Respondent did not present any evidence at the best interests hearing and does not contest the trial court's finding based on the evidence before it. As we have affirmed the trial court's finding of unfitness, we likewise affirm its finding that it was in D.S.'s best interests to terminate respondent's parental rights.

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we affirm the judgment of the DeKalb County circuit court.

¶ 48 Affirmed.