2015 IL App (2d) 150427-U
No. 2-15-0427
Order filed October 15, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Ava E.W., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 12-JA-343
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Gregory W.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that respondent failed to make reasonable progress within nine months after the adjudication of neglect of his daughter was not against the manifest weight of the evidence where respondent failed to meet most if not all of the service plan requirements, the trial court is affirmed.

¶ 2 Respondent, Gregory W.[1], appeals from the trial court's order declaring him an unfit parent and terminating his parental rights to his daughter, Ava E.W. The trial court found respondent unfit: (1) for failing to maintain a reasonable degree of interest, concern, or responsibility as to the

[1]The court also terminated the parental rights of Whitney E., the minor's biological mother; however, she is not a party to this appeal.

child's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) for failing to make reasonable progress toward the return of the child to the parent within nine 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 2014)), and (3) because respondent was depraved (750 ILCS 50/1(D)(i) (West 2014)). Respondent argues that the trial court's unfitness findings are against the manifest weight of the evidence. We affirm.[2]

¶ 3 I. BACKGROUND

¶ 4 This appeal involves a minor, Ava, E.W., born September 27, 2012. Respondent was determined to be Ava's biological father. On October 19, 2012, the Department of Children and Family Services (DCFS) took protective custody of Ava, stating that she tested positive for opiates and morphine at birth. On October 23, 2012, the trial court granted temporary custody of Ava to the DCFS and placed her in foster care. The State filed a two-count neglect petition alleging in count one that Ava was a neglected minor in that she was born with "THC and opiates or a metabolite of said substance in [her] urine, blood, or meconium *** pursuant to 750 ILCS 405/2-3(1)(c)." Count two alleged that Ava was a neglected minor in that her environment is injurious to her welfare in that respondent "acted angry and aggressive in [the] presence of hospital staff when instructed [on] appropriate care of minor who was born

[2] We note that this appeal was accelerated pursuant to Supreme Court Rule 311 (a), providing that, except for good cause shown, this court must issue its decision in an accelerated case within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a) (eff. Feb. 26, 2010). Our approximate 20-day delay in issuing this decision is occasioned by appellant's delay in filing his brief. We find these circumstances constitute good cause for this decision to be issued after the time frame mandated in Supreme Court Rule 311(a).

premature, thereby placing the minor at risk of harm, pursuant to 705 ILCS 405/2-3(1)(b)." On December 12, 2012, respondent was arrested and jailed in Winnebago County. The State filed an amended petition on February 1, 2013, adding that Ava was presently in the custody of the DCFS. On March 14, 2013, the trial court found Ava neglected as to count one of the State's amended petition and granted custody and guardianship of Ava to the DCFS. The trial court ordered that respondent to cooperate with all drug, alcohol, and psychological treatment services as required by the DCFS and its agencies.

¶ 5 On May 9, 2013, the matter returned to court for disposition. Respondent appeared in custody. The parties stipulated and the trial court ordered that Ava would become a ward of the court and guardianship and custody would remain with the DCFS with discretion to place her with relatives or in traditional foster care. The trial court ordered that respondent to cooperate with all drug, alcohol, and psychological treatment services as required by the DCFS and its agencies. The first permanency hearing was scheduled for October 8, 2013.

¶ 6 On October 8, 2013, respondent's attorney informed the court that respondent was not present because he was transferred from the Winnebago County jail to another facility. The parties stipulated that they had received the reports prepared by CASA and Lutheran Social Services of Illinois (LSSI). The CASA report, prepared by the guardian *ad litem*, prepared September 30, 2013, stated that respondent had weekly visits with Ava at the jail, respondent had "not complied with any recommended services at this time," and CASA recommended that custody and guardianship of Ava remain with the DCFS. The LSSI report prepared by Stephanie Roach on September 25, 2013 stated that respondent reported that he had not engaged in any services while incarcerated, respondent had visited weekly with Ava but respondent ended the visits early, respondent stated that when he is released from jail he wants to complete service

recommendations so that Ava can be returned home to him. Roach opined that respondent had not made reasonable efforts or progress.

¶ 7 On October 25, 2013, at the hearing on the first permanency hearing, with the respondent present, Roach testified as follows. Respondent had recently transferred from the Winnebago County Jail to Stateville Correctional Center. Respondent had been asked to engage in services but had not completed them. Roach acknowledged that she received some certificates of completion of classes respondent took while at the Winnebago County Jail, including one from a parenting class, but that Roach had not reviewed the certificates. Respondent had failed to complete a drug and alcohol assessment but Roach had not arranged for such assessment while respondent was in jail. Following the evidence, the trial court deferred its finding as to respondent's efforts. The trial court determined that Ava "will be in short-term care with a continued goal to return home within a period not to exceed one year."

¶ 8 On April 22, 2014, the second permanency hearing was held. Following the evidence the trial court found that respondent had not made reasonable efforts or progress. The trial court determined that Ava "will be in substitute care pending court determination of termination of parental rights."

¶ 9 On May 28, 2014, Whitney E., Ava's mother, consented to Ava's adoption by Whitney's parents.

¶ 10 On October 28, 2014, the State filed four-count amended motion for termination of parental rights and power to consent to adoption. The State alleged that (1) respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare; (2) respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from him within nine months after an adjudication of neglect under section 2-3 of the Juvenile Court Act of 1987; (3) respondent failed to make reasonable progress toward

the return of the child to him within nine months after an adjudication of neglect under section 2-3 of the Juvenile Court Act of 1987; and (4) respondent is depraved.

¶ 11 The hearing regarding unfitness commenced on November 19, 2014. Roach, a caseworker at LSSI, testified a follows. Roach had provided case management for Ava from September 2012 through April 2013 and August 2013 through July 2014. Roach identified the service plans that she created every six months, which outlined the services required for the parents, foster parents, and Ava, to correct the reasons for the involvement of the DCFS. Roach testified that the service plans were true and accurate copies that she maintained in her files. The trial court admitted the service plans into evidence. Regarding visitation, Roach testified that respondent was allowed weekly supervised visits with Ava. When Ava came into DCFS custody in October 2012, Roach tried to contact respondent but she could not reach him because respondent did not have a "working telephone number." In December 2012 respondent was arrested and jailed in Winnebago County. Prior to his arrest, respondent had two supervised visits with Ava, according to Roach's report to the trial court. In March 2013 Roach met with respondent in jail and respondent told Roach that he would not have visits with Ava because Ava was an infant and visitation would be "via telephone." In October 2013 respondent was transferred to Stateville Correctional Center and in November 2013 he was transferred to Danville Correctional Facility. Roach wrote letters to respondent in December 2013 and February 2014, but she received no response from respondent and respondent did not inquire about Ava from December 2013 through February 2014. On February 28, 2014, Respondent was released from Danville and placed on parole. Respondent contacted Roach and had a supervised visit with Ava on March 17, 2014. At the time of the visit, Roach and her supervisor told respondent that he needed to maintain contact with the agency to continue visitation. In the beginning of April 2014 respondent left a voice mail message at the agency but respondent did not provide his contact

information. Also, in April 2014 Roach learned that respondent was arrested and incarcerated in Southern Illinois and then transferred to Wisconsin. Respondent did not communicate with the agency until late June when he wrote a letter to Roach's supervisor. On July 9, 2014, respondent had a supervised visit with Ava.

¶ 12 Roach opined that Ava should not be placed with respondent because he did not complete recommended services or make "a significant progress or effort towards those services." Respondent was required to complete an alcohol and drug assessment, a mental health assessment, and a parenting assessment, engage in visiting, engage in regular contact with the agency, maintain housing, and handle his legal issues. While Roach was the caseworker respondent did not complete any of these requirements. Respondent did not have a safe and stable place to live; he was incarcerated two or three times. This affected his ability to provide a safe and stable home.

¶ 13 During examination by the guardian *ad litem*, Roach testified as follows. Between December 2012 and April 2013, there were no visits between respondent and Ava. When Roach returned from medical leave in August 2013, weekly visits between respondent and Ava resumed at the Winnebago County Jail until October 2013, when respondent was transferred to Statesville. At the Winnebago County Jail, visits are conducted via video camera, and Ava was an infant at the time of her visits with respondent. Respondent ended visits early because Ava became "fussy." In December 2014 and February 2014, Roach mailed respondent his service plans advising him of the services in which he needed to be engaged. Respondent did not contact the agency until March 2014. Respondent provided Roach with information that he had discussed his mental health with a counselor while at Stateville. However, this session did not meet the requirement for a mental health assessment. The report from the mental health worker who met with respondent discussed respondent's current mental health state, but did not discuss his past

behaviors and was not detailed. Respondent participated in a parenting class at the Winnebago County Jail but the agency required an additional class.

¶ 14 Roach testified that respondent had a supervised visit with Ava in March 2014. During the visit, Ava appeared disinterested in engaging with respondent. During the team meeting after the visit, the agency workers discussed the outstanding warrant for respondent issued by Wisconsin and they encouraged respondent to take care of it. Respondent indicated that he was taking care of the warrant and that he was on parole and living in Peoria, but that he had no phone. Respondent called Roach on April 4, 2014 and left a voicemail message but did not leave his phone number. Respondent was arrested on the outstanding warrant on April 4, 2014. Between April 4 and July 2, 2014, there was no contact between the agency and respondent.

¶ 15 During cross-examination by respondent's counsel Roach testified as follows. Although respondent completed some parenting classes, the classes were not provided by providers approved by the DCFS. Roach testified that respondent had taken an anger class while incarcerated at the Winnebago County Jail.

¶ 16 The trial court admitted the DCFS visiting records into evidence showing the following visits: (1) November 19, 2012 (length of visit not recorded), (2) December 4, 2012 (two hours) (3) June 15, 2013 at the Winnebago County Jail (WCJ) (15 minutes); (4) July 11, 2013, at the WCJ (15 minutes); (5) July 18, 2013, at the WCJ (15 minutes); (6) July 25, 2013, at the WCJ (15 minutes); (7) August 1, 2013, at WCJ (15 minutes);.(8) August 22, 2013, at WCJ; (9) August 29, 2013, at WCJ (15 minutes); (10) September 26, 2015, at WCJ (15 minutes); (11) March 17, 2014 (length and location of visit not recorded); (12) July 9, 2014 (length and location of visit not recorded).

¶ 17 On December 18, 2014, the trial court found respondent to be an unfit parent in that respondent failed to maintain a reasonable degree of responsibility toward Ava, that respondent

failed to make reasonable progress toward the return of Ava within nine months of the adjudication of neglect, and that respondent was depraved. The trial court stated as follows:

"As to the father [respondent] the Court finds that the State has proven the following by clear and convincing evidence: Count One, Count Three and Count Four.

The evidence shows that the father has had a total of four felony cases, some of which were committed after the minor was born. There's valid evidence of the father's history of a continuing course of criminal conduct. This obviously raises the presumption of depravity that the Court finds was unrebutted.

To the best of my knowledge, in going through the evidence and my notes, in October 2013 the father went to Statesville. In November 2013 he went to Danville. He did have a mental assessment done at Stateville, but didn't qualify for any services at Danville.

And he then was also incarcerated—arrested in April 2014 and transferred to Wisconsin, where he was incarcerated until July 14.

The Court raises these because I believe that it's evidence of the fact that, although the father came in and out of this child's life, there was not consistency, in that the charges are obviously serious ones.

As for Count One, responsibility, I think that same evidence goes to the responsibility part of that count. And as to the reasonable progress count, the Court finds that there were never any reasonable measurable steps made towards the return home to [the] father's care after the adjudication on this child in March 2013.

The Court did not make the same findings for Count Two [reasonable efforts].

Therefore, the Court adjudicates the father to be unfit."

After hearing evidence regarding the best interests of Ava, the trial court found that it was in the best interests of Ava that respondent's parental rights be terminated. On April 10, 2014, the court then terminated the parental rights of respondent and appointed the DCFS guardianship administrator as guardian with right to consent to adoption. Respondent filed a timely notice of appeal on April 23, 2014.

¶ 18 II. ANALYSIS

¶ 19 On appeal respondent argues that the trial court erred by terminating his parental rights because its finding that he was unfit is against the manifest weight of the evidence. In particular, respondent argues that the trial court's finding was against the manifest weight of the evidence that he was unfit in that he failed to make reasonable progress toward the return of the child to the parent within nine 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 2014)). Respondent argues that he made reasonable progress by attending parenting and anger management classes, visiting with Ava, setting goals, studying the bible to discover insight, requesting a mental health assessment, and taking responsibility for his criminal cases so that he could be released from jail sooner rather than later.

¶ 20 Because respondent does not challenge the trial court's best interest finding, we confine our analysis to the trial court's finding of unfitness. Section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2–29(2) (West 2012)) outlines a bifurcated procedure to determine whether a parent's rights should be terminated. First, the court must determine whether the parent is unfit. See *In re D .T.*, 212 Ill. 2d 347, 352 (2004). The trial court must determine that the parent is unfit by clear and convincing evidence. *Id*. at 364. A trial court's ruling on unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A. W.*, 232 Ill.

2d 92, 104 (2008). A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Id*.

¶ 21 Section 1(D)(m) of the Adoption Act (Act) provides that a parent is unfit for failing "(i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or (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." 750 ILCS 50/1(D)(m)(ii) (West 2014). The time period to be assessed under subsections (i) and (ii) is solely the first nine months after the adjudication of neglect or abuse. *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 20. Further, time spent incarcerated is included in the nine-month period in which the respondent must make reasonable progress under section 1(D)(m). See *In re J.L.*, 236 Ill. 2d 329, 343 (2010).

¶ 22 Reasonable efforts and reasonable progress are separate and distinct grounds for finding a parent unfit under section 1(D)(m) of the Adoption Act. *Jacorey*, 2012 IL App (1st) 113427, ¶ 21. Reasonable efforts are judged by a subjective standard based upon the amount of effort that is reasonable for the respondent. *Id*. Conversely, reasonable progress is judged by an objective standard that requires, at minimum, measurable or demonstrable movement toward the goal of reunification. *Id*. The standard for measuring a parent's progress is to consider the parent's compliance with the service plans and the trial court's directives. *Id*. "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." *Id*.

¶ 23 In this case, the record supports the trial court's finding that respondent failed to make reasonable progress toward the return of Ava within the nine-month period after her adjudication. Ava was adjudicated neglected on March 14, 2013. Therefore, the period at issue is from March 14, 2013 to December 14, 2013. See *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 20.

¶ 24 Respondent was required to complete an alcohol and drug assessment, a mental health assessment, parenting assessment, engage in weekly visitation, engage in regular contact with the agency, maintain housing, and handle his legal issues. During the relevant nine-month period, respondent failed to make reasonable progress on most if not all of these requirements. Respondent did not complete an alcohol and drug assessment, did not complete a mental health assessment, did not complete a parenting assessment, and did not maintain regular contact with LSSI. Obviously, respondent did not obtain adequate housing considering that he was imprisoned during the relevant time period. Respondent may have made reasonable *efforts* during the relevant nine-month period, by visiting with Ava eight times, attending one or two parenting and anger management classes, setting goals, studying the bible, and requesting a mental health assessment. However, the trial court did not find respondent unfit due to failure to make reasonable efforts. Rather, the trial court found respondent unfit due to his failure to make reasonable progress within nine months after the adjudication of neglect. In light of the record, we cannot say that the trial court's finding is against the manifest weight of the evidence.

¶ 25 When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, the reviewing court need not consider additional grounds for unfitness cited by the trial court. See *In re D.D.*, 196 Ill. 2d 405, 422 (2001). Therefore, we need not consider whether respondent was unfit based upon the trial court's findings that he failed to maintain a reasonable degree of interest, concern, or responsibility toward Ava (see 750 ILCS 50/1(D)(b) (West 2014)), or that he was depraved (see 750 ILCS 50/1(D)(i) (West 2014)).

¶ 26 III. CONCLUSION

¶ 27 Accordingly, we affirm trial court's judgment.

¶ 28 Affirmed.