2015 IL App (2d) 150529-U
No. 2-15-0529
Order filed October 9, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re E.R., a Minor	)	Appeal from the Circuit Court
	)	of DeKalb County.
	)	
	)	No. 13-JA-029
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Kyle R., 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 trial court properly found that respondent was unfit and that it was in the minor's best interests to terminate his parental rights.

¶ 2 After finding respondent, Kyle R., unfit, the trial court terminated his parental rights to minor E.R. Respondent appeals the trial court's finding that he was unfit and the order terminating his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The minor boy, E.R., was born April 10, 2013. The case came into care based on a domestic violence incident that occurred on July 5, 2013, when E.R. was about three months old. While in their car at a gas station, respondent repeatedly punched E.R.'s mother when she was

holding E.R. E.R. was not injured but his mother suffered a black eye and bruises on her body. Both respondent and E.R.'s mother were intoxicated, and the police were called.

¶ 5 The State filed a neglect petition against respondent in July 2013. On October 11, 2013, respondent stipulated to count I, which alleged that E.R.'s environment was injurious to his welfare because respondent and E.R.'s mother were intoxicated while caring for him. A dispositional order in November 2013 indicated that respondent was unfit based on alcohol and substance abuse, domestic violence, and his failure to comply with services. The order stated that respondent needed to begin services.

¶ 6 A report to the court dated January 2014 indicated that respondent was currently employed at his father's painting business, working about 40 hours per week. Respondent had not engaged in the integrated assessment. Though he had completed an alcohol/drug assessment at About Change Counseling in Aurora on August 12, 2013, respondent admitted that he did not honestly report his prescription drug use and therefore needed to complete a new assessment. Respondent failed to appear at his rescheduled drug/alcohol assessment on November 25, 2013. Respondent had rescheduled an appointment for domestic violence counseling to November 26, 2013, but he failed to appear. Respondent did not complete a urine test on November 5, 2013, and a November 26, 2013, urine test came back negative. Regarding visitation, respondent had supervised visits with E.R. at least five times per week for one hour before and after work. His last visit was January 2, 2014; he was no longer consistent. Respondent had not had contact with the caseworker since the last court date on November 22, 2013.

¶ 7 A second report to the court, dated April 2014, indicated that respondent had not contacted his caseworker and that the caseworker received voicemail when contacting him. In addition, respondent had not engaged in services recommended in his service plan and was irregular with visitation. A permanency order that same month stated that respondent had not

made reasonable progress or efforts toward returning E.R. home. Respondent needed to be consistent with services and to cooperate with and stay in contact with the agency.

¶ 8 A third report to the court, dated October 2014, indicated that respondent had appeared at the foster parent's house twice (August and September 2014) and was "on something." Respondent was asked to leave, and the foster parent had to call the police on one occasion because respondent would not leave. Respondent had been "very irregular" with his supervised visitation. In addition, he had not completed another substance abuse assessment.

¶ 9 In a second permanency order, dated October 17, 2014, the court again found that respondent had not made reasonable progress or efforts towards E.R.'s return home. Respondent stated that he would test positive for THC and possibly opiates if given a drug test. Likewise, at a status hearing on November 21, 2014, respondent acknowledged that he would test positive on a drug test.

¶ 10 On December 16, 2014, the State filed a petition to terminate respondent's parental rights. The State alleged that respondent was unfit on three grounds: (1) he had an addiction to alcohol and drugs for at least one year (750 ILCS 50/1(D)(k) (West 2014)); (2) he failed to make reasonable efforts to correct the conditions that led to the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) he failed to make reasonable progress toward the minor's return within nine months after the neglect adjudication, which occurred on October 11, 2013 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 11 A. Fitness Hearing

¶ 12 A two-day fitness hearing took place in February and March of 2015. It was a joint hearing for respondent and for E.R.'s mother. Because E.R.'s mother is not a party on appeal, however, we summarize only the evidence pertaining to respondent.

¶ 13 The caseworker, Kristina Ochoa, testified as follows. After respondent's case opened in July 2013, Ochoa became the caseworker in October 2013, which was the month that E.R. was adjudicated neglected. Ochoa had been the caseworker for the past 18 months.

¶ 14 When Ochoa first took over the case, she called respondent and told him that he needed to complete an initial integrative assessment. Respondent was subsequently reminded on several occasions that "to move forward," he needed to complete an initial integrative assessment. Though respondent worked for his father's painting company and said that he would be able to take off certain days and times in order to complete the assessment, he was "never available" and did not complete an integrative assessment until April 22, 2014.

¶ 15 Respondent was rated unsatisfactory in his first service plan, dated December 30, 2013. Respondent missed two drug tests, one of which was in March 2014, and the missed tests were considered positive. Respondent also failed to keep in contact with Ochoa. In his second service plan,[1] dated June 23, 2014, respondent was also rated unsatisfactory. Respondent failed to complete a substance abuse assessment and also substance abuse treatment. In addition, respondent failed to complete drug drops, engage in counseling, and keep in contact with Ochoa. According to Ochoa, respondent did not answer his phone or return calls.

¶ 16 Respondent completed a domestic violence assessment in March 2014. The domestic violence assessment did not require respondent to engage in domestic violence counseling at the time because the bigger issue was substance abuse. In order to benefit from domestic violence counseling, respondent needed to be sober. As a result, the recommendation of the domestic violence assessment was a substance abuse assessment. Ochoa explained that respondent had completed a substance abuse assessment in August 2013, which was before she took over the case. However, because respondent admitted to his previous caseworker that he was not truthful

[1] This service plan is not part of the record.

about his consumption of opiates, he was required to be reassessed. Respondent obtained a second substance abuse assessment in May 2014. After the re-assessment, it was recommended that respondent participate in outpatient treatment, and respondent successfully completed treatment in October 2014. During his treatment, respondent had four drug tests that came back "clean." A few days after he completed treatment, however, respondent admitted relapsing. Based on the relapse, Ochoa recommended that respondent be re-assessed and receive additional substance abuse treatment. Respondent's completed treatment did not "count based on the relapse."

¶ 17 Between April and September 2014, respondent missed three drug tests. Whenever a drug test was required, Ochoa would find out where respondent was working. Ochoa was aware that respondent worked as a painter for his father's business and that he would travel to different work sites, so she would choose a location for the drug test that was convenient. Overall, Ochoa asked respondent to complete approximately 10 drug tests, and he missed about half. The missed tests were considered positive, which respondent knew.

¶ 18 In September 2014, the foster parent informed Ochoa that respondent had showed up "on something" despite no scheduled visit. Respondent behaved inappropriately and would not leave, and the police had to be called. In addition, when respondent appeared in court in October and November 2014, he admitted that he would test positive for THC and opiates.

¶ 19 In October 2014, respondent was arrested for a domestic violence dispute with E.R.'s mother. He was charged with domestic violence and unlawful restraint, and the charges were pending. Because domestic violence was one of the reasons the case came into care, Ochoa was concerned that domestic violence was still part of respondent's relationship with E.R.'s mother.

¶ 20 On October 14, 2014, the goal was changed to substitute care pending termination of parental rights on October 14, 2014. Ochoa told respondent that DCFS was no longer

recommending services but to stay in communication, which respondent failed to do. Throughout the case, respondent never attended child and family team meetings, quarterly meetings, or administrative case reviews, all of which he had been notified.

¶ 21 The trial court found respondent unfit on all three grounds alleged by the State: (1) an addiction to alcohol and drugs for at least one year (750 ILCS 50/1(D)(k) (West 2014)); (2) failure to make reasonable efforts to correct the conditions that led to the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) failure to make reasonable progress toward the minor's return within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 22 In finding respondent unfit, the court made the following findings. Regarding substance abuse issues, respondent failed to complete a drug test on March 12, 2014, and he failed to complete three drug tests between April and September 2014. Respondent downplayed the importance of missed drug drops throughout the case. DCFS policy was that missed tests were considered positive tests.

¶ 23 In addition, although respondent completed drug treatment, he relapsed within days of completion and admitted he would test positive if given a drug test at the October 2014 court date. Respondent also admitted that he would test positive if given a drug test at the November 2014 court date. Finally, respondent appeared at the foster parent's home on an unannounced day in September 2014 and acted inappropriately, resulting in the police being called.

¶ 24 The trial court also noted the delay in services. First, respondent's delay in substance abuse services was "largely attributable to his admitted deception regarding substance abuse use which required him to be re-assessed. According to the court, respondent's admitted lack of honesty in his substance abuse assessment also called into question his truthfulness when he was initially assessed for domestic violence purposes. Second, due to respondent's "lack of timely

communication with the caseworker," respondent failed to complete an integrative assessment until six months after E.R. came into care.

¶ 25 Following the court's unfitness findings, the case proceeded immediately to a best interests hearing.

¶ 26 B. Best Interests Hearing

¶ 27 Ochoa testified that E.R. was placed in care in July 2013. Initially, E.R. was placed with his maternal aunt, Regina Zwart. He was then placed with respondent's parents on September 5, 2013. Based on respondent's father's health issues, E.R. was returned to Zwart in January 2014.

¶ 28 E.R., who had just turned two, had been with Zwart for more than one year. E.R. was "extremely happy" there. He was a "very happy baby, always playful," and "never moody." Since Ochoa became the caseworker in October 2013, she had heard E.R. cry only once, and it was when he had just awakened from a nap. At times, E.R. called Zwart "mama."

¶ 29 E.R.'s maternal grandmother and Zwart's seven-year-old daughter also lived in the home, and E.R. was bonded to them as well. The maternal grandmother watched E.R. during the day. E.R. was treated as part of the family and was involved in all of their activities, such as eating at Chuck E. Cheese and going on walks. When E.R. turned two, they had a little party for him. Overall, the environment was safe and appropriate, and Ochoa had no concerns with this placement.

¶ 30 Respondent was inconsistent regarding visitation with E.R. Ochoa did not observe the visits because they occurred at 7 p.m. or 8 p.m., but Zwart would provide Ochoa feedback as to the visits. Zwart never reported respondent acting inappropriately during visits, and E.R. recognized respondent. However, respondent had appeared at Zwart's residence unannounced and "under the influence." The police were called, and respondent ran away.

¶ 31 Ochoa opined that it was in E.R.'s best interest to stay in Zwart's home given that he had moved there before he turned one; he was very connected to Zwart's daughter; and it had been a "good, appropriate living situation" with no issues. E.R. was young and needed permanency, and respondent had not shown progress during the entire case. In addition, Zwart had agreed to permanency.

¶ 32 Following the testimony, the court rendered its decision, finding as follows. The court had no doubt that respondent loved E.R. However, having found respondent unfit, the court had to determine what was in E.R.'s best interests. The court noted that E.R. had been in care the majority of his life, and his young age (two) required permanency. In addition, domestic violence issues had brought the case into care and still existed, and respondent had never progressed to unsupervised visitation. When the court looked at E.R.'s age and time in care, and the issues respondent still faced, he was not ready now or in the near term to care for E.R.. E.R., however, needed permanency. Thus, the court found that it was in E.R.'s best interests to terminate respondent's parental rights. The permanency goal was changed to adoption.

¶ 33 Respondent timely appealed.

¶ 34 II. ANALYSIS

¶ 35 A. Unfitness

¶ 36 Respondent's first argument on appeal is that the trial court erred by finding him unfit. The termination of parental rights is a two-step process: first, the trial court must find that the parent is unfit, and second, the court must find that termination is in the minor's best interests. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63. Because the termination of parental rights constitutes a complete severance of the relationship between the parent and child, proof of parental unfitness must be clear and convincing. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 88.

¶ 37 A finding of unfitness involves factual findings and credibility assessments that the trial court is in the best position to determine. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90 (2004). A reviewing court defers to the trial court's factual findings and will not reverse its decision unless the findings are against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if it is unreasonable, arbitrary, and not based on the evidence. *Id.*

¶ 38 As stated, the trial court found respondent unfit on three grounds: (1) an addiction to alcohol and drugs for at least one year (750 ILCS 50/1(D)(k) (West 2014)); (2) the failure to make reasonable efforts to correct the conditions that led to the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) the failure to make reasonable progress toward the minor's return within nine months after the neglect adjudication, which occurred on October 11, 2013 (750 ILCS 50/1(D)(m)(ii) (West 2014)). We begin by reviewing the trial court's finding that respondent failed to make reasonable progress during the relevant nine-month period.

¶ 39 Reasonable progress toward the return of the child "may be measured by looking at the parent's compliance with the service plans and the court's directives in light of the conditions that gave rise to the removal of the child and in light of other conditions that later became known and would prevent the court from returning custody of the child to the parent." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051 (2003). Whether a parent has made reasonable progress is judged by an objective standard. *Id*. Reasonable progress may be found when the trial court can conclude that the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future; it requires measurable or demonstrable movement toward the goal of reunification. *Id*. For the reasons that follow, we determine that the trial court's finding that respondent failed to make reasonable progress was not against the manifest weight of the evidence.

¶ 40 The relevant nine-month period in this case is from the date of the neglect adjudication, October 11, 2013, to July 11, 2014. As stated, compliance with the service plans is a way to measure respondent's progress, and respondent was rated unsatisfactory in both the December 2013 and June 2014 service plans. In particular, respondent received unsatisfactory ratings for missing drug tests, for failing to sign consent release forms, for failing to keep in contact with Ochoa, and for failing to appear at appointments for substance abuse and domestic services.

¶ 41 As the trial court noted, respondent delayed his participation in services. First, with respect to the integrative assessment, respondent took over six months to complete that task. Although respondent argues that DCFS had not originally required an integrative assessment, and that any delay was thus the fault of DCFS, the record belies this claim. The nine-month period commenced in October 2013, which is when Ochoa took over the case and called respondent to advise him that he needed to complete an integrative assessment. As a result, there was no delay attributable to DCFS during the relevant time period. Despite Ochoa's repeated reminders that respondent could not move forward with services until the integrative assessment was completed, respondent waited until April 2014 to do so. Ochoa testified that although respondent worked for his father's business and said that he would be able to take off certain days and times in order to complete the assessment, he was "never available."

¶ 42 Second, respondent delayed substance abuse services by not being honest during his initial assessment and then by waiting months to complete a reassessment. The need for reassessment was due to respondent's admitted lack of candor at the initial August 2013 substance abuse assessment; respondent was not honest about his use of opiates. Still, respondent waited seven months (May 2014) to receive a second assessment. The second assessment resulted in a recommendation of outpatient treatment, which respondent argues he was completing at the end of the relevant nine-month period. However, respondent did not

complete the outpatient treatment until one year after the neglect adjudication (October 2014), and, as stated, he waited seven months before even commencing treatment. Moreover, after admitting that he was not truthful about his use of opiates, respondent missed drug tests during the relevant nine-month period. Respondent knew that the tests were considered positive, and substance abuse was one of the two reasons the case came into care.

¶ 43 As stated, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. Respondent, however, waited six and seven months during the first nine-month period to even begin services. Consequently, we cannot say that the trial court's finding that respondent failed to make reasonable progress during the initial nine-month period following the neglect adjudication was against the manifest weight of the evidence.

¶ 44 Having reached this conclusion, we need not consider respondent's arguments regarding the other two grounds of unfitness. See *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89 (although section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) sets forth several grounds under which a parent may be deemed unfit, any one ground, properly proven, is sufficient to enter a finding of unfitness).

¶ 45 B. Best Interests

¶ 46 Respondent's second argument is that it was not in E.R.'s best interests to terminate his parental rights. Following a finding of unfitness, the focus shifts to the child. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-2 *et seq.* (West 2014)), the best interests of the child is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). A child's best interests is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the minor involved. *Id.* at 50.

¶ 47 At this stage, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009). Once the trial court renders its decision as to the best interests of the child, it will not be reversed by a reviewing court unless it is against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. The reason for this deferential standard is that the trial court is in a superior position to assess the witnesses' credibility and weigh the evidence. *Id.* ¶ 66. A trial court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re William H.*, 407 Ill. App. 3d 858, 866 (2011).

¶ 48 The Act sets forth the factors to be considered whenever a best interests determination is required, and they are to be considered in the context of the minor's age and developmental needs:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
>
> (ii) the child's sense of security;
>
> (iii) the child's sense of familiarity;
>
> (iv) continuity of affection for the child;
>
> (v) the least disruptive placement alternative for the child;
>
> (e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care;

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2014).

¶ 49 In addition to the above factors, also relevant in a best-interests determination is the nature and length of the minor's relationship with his present caretaker, and the effect that a change in placement would have upon his emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d at 871.

¶ 50 In arguing that the court erred by terminating his rights, respondent challenges the court's specific finding that he was not ready to be a parent to E.R. Respondent argues that he had a full-time job and a home and also complied with services, all of which were indications of his readiness to parent. We disagree.

¶ 51 The flaw in respondent's argument is that he focuses on himself rather than the best interests of E.R. See *In re D.T.*, 212 Ill. 2d at 364 (once a parent is found unfit, the focus shifts to the child). The fact that respondent had a home and a job removes the focus from what is in E.R.'s best interests. Conversely, the trial court's finding that respondent was not ready now or in the near future to parent E.R. directly related to the issue of what was in E.R.'s best interests. To the extent that respondent challenges this finding, it was not against the manifest weight of the evidence.

¶ 52 All the reports to the court indicated that respondent was either inconsistent or "very irregular" with supervised visitation. Twice in 2014 (August and September), respondent

showed up for unscheduled visits while under the influence of "something." As a result, respondent never progressed to unsupervised visitation. In addition, domestic violence continued to be an issue, and charges were pending against him for an incident as recent as October 2014. For these reasons, the trial court's finding regarding respondent's ability to parent now or in the near future was not against the manifest weight of the evidence.

¶ 53 Likewise, the court's overall decision that it was in E.R.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence. At the time of the best-interests hearing, E.R. was two years old and had been living with Zwart for the past 16 months. Ochoa testified that E.R. was extremely happy living with Zwart. According to Ochoa, E.R. was never moody but a very happy, playful baby whom she had seen cry only once. E.R. was also very bonded to Zwart's mother and her seven-year-old daughter. They treated E.R. like part of the family, involving him in all of their activities.

¶ 54 In sum, E.R. had been in respondent's care a total of three months, meaning he had been in foster care nearly all of his life. Though the court acknowledged respondent's bond with E.R., the child, at age two, deserved permanency, which Zwart was willing to provide. Given the evidence that E.R. was happy and thriving in Zwart's care, combined with his age and her willingness to provide permanency, we cannot say that the trial court's decision terminating respondent's parental rights was against the manifest weight of the evidence.

¶ 55 III. CONCLUSION

¶ 56 For the aforementioned reasons, we affirm the judgment of the DeKalb County circuit court.

¶ 57 Affirmed.