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2015 IL App (3d) 140760-U

Order filed January 14, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

<i>In re</i> K.G.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor.	)	Rock Island County, Illinois,
	)	
(THE PEOPLE OF THE STATE OF	)	Appeal No. 3-14-0760
ILLINOIS,	)	Circuit No. 12-JA-78
	)	
Petitioner-Appellee,	)	The Honorable
	)	Peter W. Church,
v.	)	Judge, Presiding.
	)	
COREY M.,	)	
	)	
Respondent-Appellant).	)	
	)	

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PRESIDING JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's unfitness and best interest findings were not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Corey M. unfit to parent his child K.G. The court also found it was in K.G.'s best interest to terminate respondent's parental rights. Respondent

appeals, arguing the court's findings were against the manifest weight of the evidence. We affirm.

¶ 3

### FACTS

¶ 4

Respondent is the father of K.G. On September 14, 2012, the State filed a juvenile petition alleging that K.G. was neglected due to an injurious environment. The petition alleged that K.G.'s four siblings had previously been adjudicated neglected, K.G. was born with opiates in his blood, and respondent admitted using marijuana. K.G. was adjudicated neglected and a dispositional order was entered requiring respondent to complete certain services.

¶ 5

The dispositional order required respondent to (1) obtain and maintain a source of income, (2) obtain and maintain appropriate housing, (3) cooperate with counseling, (4) obtain a substance abuse evaluation, (5) follow any recommendations for substance abuse treatment, and (6) perform random drug testing through urine drops.

¶ 6

The March 19, 2013, permanency report provided that respondent had not made significant progress toward reunification. Respondent had not obtained financial means to support his family or obtained suitable housing. Respondent had not followed through with services or service providers on a consistent basis. He had not taken part in a Level II Substance Abuse Program that was made available to him through services. Respondent attended visitations with K.G. where he demonstrated a strong level of attachment to K.G.

¶ 7

The June 3, 2013, permanency report provided that respondent had made satisfactory progress on his mental health evaluation, but he still remained unsatisfactory on his substance abuse evaluation and his financial and housing requirements. Respondent obtained a janitorial and personal trainer position; however, concerns remained about the short term nature of the

employment and income insufficient to support his family. He continued to visit K.G. and exhibit a strong attachment.

¶ 8 The June 14, 2013, permanency order reflects the trial court's finding that respondent had failed to make reasonable progress toward reunification and also failed to make reasonable efforts toward correcting the conditions that were the basis for K.G.'s removal. The court, however, did find that respondent had made nominal efforts and progress.

¶ 9 On January 29, 2014, the State filed a supplemental petition to terminate respondent's parental rights for: (1) failure to make reasonable efforts during a nine-month time period (December 7, 2012 through September 7, 2013) to correct the conditions that were the basis of K.G.'s removal, and (2) failure to make reasonable progress toward reunification during the same time period. The following evidence, along with the above reports and order, was adduced at the fitness hearing. We only discuss evidence relevant to the applicable nine-month period.

¶ 10 Respondent's caseworker, Drake Griffith, opined that K.G. was no closer to returning home to respondent than when the child was removed from respondent's care on September 13, 2012. Griffith testified that respondent was mandated to undergo Level II Intensive Outpatient Substance Abuse Treatment, which consisted of treatment four days per week for several hours a day. Respondent never began the Level II treatment during the relevant nine month period. Respondent also failed to provide Griffith with verification of appropriate employment and income. While respondent's urine drops all came back negative, he only completed 50% of his required drops. Respondent's living situation fluctuated between living in hotels and living in a townhome with K.G.'s mother. Respondent, however, was not listed on the townhome's lease. Thus, respondent was in violation of Section 8 Housing requirements.

¶ 11 The trial court specifically found that during the relevant nine-month period respondent failed to: (1) complete 50% of his required urine drops, (2) enroll in substance abuse treatment, and (3) obtain suitable housing. The trial court held respondent unfit on the basis that he failed to make reasonable efforts and reasonable progress during the relevant nine-month period.

¶ 12 The trial court subsequently held a best interest hearing where the following evidence was adduced. The best interest report provided that K.G. was born on September 10, 2012. DCFS took custody of K.G. three days later on September 13, 2012. K.G. has resided in the same foster home since September 13, 2012, for a total of two years. K.G. has bonded with the foster parents and refers to them as "mom" and "dad." The foster parents have met all of K.G.'s basic needs -- food, shelter, health and clothing. K.G. is thriving in the foster home and is developmentally on track with other children in his age group.

¶ 13 The foster parents love K.G. and they view him as their own child. The foster parents' extended family accepts K.G. as one of their own relatives and treats him as family. The foster parents have exposed K.G. to church and the community. The foster parents intend to adopt K.G. and are already in the process of adopting his biological sister. The foster parents provide monthly overnight visits with K.G.'s other biological siblings. The foster parents are committed to providing K.G.'s mother and respondent contact with K.G. following adoption. The best interest report recommends that respondent's parental rights be terminated so that K.G. may be adopted into his current foster home.

¶ 14 Upon the conclusion of the best interest hearing, the trial court found it was in the best interest of K.G. to terminate respondent's parental rights. Respondent appeals the court's unfitness finding and its best interest finding.

¶ 15 ANALYSIS

¶ 16 Respondent appeals the trial court's order terminating his parental rights. Specifically, he contends the court's order finding him unfit was against the manifest weight of the evidence. He further contends that the court's order finding it was in K.G.'s best interest to terminate his parental rights was against the manifest weight of the evidence. We reject both of respondent's claims.

¶ 17 Unfitness Finding

¶ 18 Respondent challenges both the reasonable efforts and reasonable progress findings made by the trial court. Reasonable efforts and reasonable progress are separate and distinct grounds for finding a parent unfit under section 1(D)(m) of the Adoption Act. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066 (2006). We begin with the court's reasonable efforts finding.

¶ 19 Section 1(D)(m)(i) of the Adoption Act provides that a parent shall be considered unfit to have a child under the following circumstance.

"(m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(m) (West 2012).

¶ 20 The relevant nine-month period in the instant case was December 7, 2012, through September 7, 2013. "Reasonable efforts are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person." *In re Jacorey*, 2012 IL App (1st) 113427 ¶ 21.

¶ 21 Here, respondent's caseworker (Drake Griffith) during the relevant nine-month period opined that K.G. was no closer to returning home to respondent than when the child was

removed from respondent's care on September 13, 2012. This fact alone, if not refuted by the record, is sufficient to sustain the circuit court's finding of unfitness.

¶ 22 The record supports the caseworker's opinion. Removal was based on K.G.'s four siblings being previously adjudicated neglected, K.G. being born with opiates in his blood, and respondent's admission to using marijuana. Respondent was given certain tasks aimed at correcting the conditions that were the basis of K.G.'s removal. The permanency reports and permanency order during the relevant nine-month period were littered with unsatisfactory findings regarding respondent's efforts/progress.

¶ 23 Respondent mistakenly relies upon on the fact that the June 14, 2013, permanency order noted that respondent made nominal efforts and progress.<sup>1</sup> Nominal efforts are insufficient to show reasonable efforts and reasonable progress. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88-89. The June 14, 2013, permanency order reflects this principle in that it holds that even in the face of said nominal efforts; respondent had failed to make reasonable progress toward reunification and also failed to make reasonable efforts toward correcting the conditions that were the basis for K.G.'s removal.

¶ 24 The trial court specifically found that during the relevant nine-month period respondent failed to: (1) complete 50% of his required urine drops,<sup>2</sup> (2) enroll in substance abuse treatment, and (3) obtain suitable housing. The record supports these findings. Respondent also failed to provide Griffith with verification of appropriate employment and income. In light of these facts,

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<sup>1</sup> Respondent's reliance can be found in that portion of his brief challenging the trial court's "reasonable progress" finding.

<sup>2</sup> The fact that all of respondent's urine drops came back negative does not excuse respondent's failure to complete 50% of his required drops.

we cannot say that the trial court's unfitness finding was against the manifest weight of the evidence.

¶ 25 In coming to this conclusion, we note that the specific substance abuse treatment that respondent was required to complete during the relevant nine-month period was Level II. There is no disputing that respondent failed to enroll in such a program. Instead, respondent confusingly argues that his completion of Level I treatment should be deemed sufficient.<sup>3</sup> At one point respondent states he "completed Level I Treatment in the relevant time period." However, at another point in his brief respondent states he "complete[d] Level I on April 18, 2014" (which is outside the relevant nine-month period). Regardless of when respondent completed Level I treatment, the fact remains that during the relevant nine-month period respondent was required to obtain Level II treatment. He failed to do so.

¶ 26 We acknowledge that the mandate to obtain Level II treatment was changed to Level I subsequent to the expiration of the relevant nine-month period. However, because this change occurred outside the nine-month period it is not relevant to this appeal. A court is not permitted to consider any evidence outside the designated nine-month period. *In re D.F.*, 208 Ill. 2d 223, 242-43 (2003). Even if considered, however, it does not excuse respondent for failing to comply with the Level II mandate that existed during the relevant nine-month period.

¶ 27 Finally, we note the limited nature of respondent's argument concerning the trial court's reasonable efforts finding. Specifically, respondent's entire argument in regards to this particular factor is as follows:

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<sup>3</sup> This argument is found in that portion of respondent's brief challenging the trial court's "reasonable progress" finding.

"Since parental rights and responsibilities are of such deep human importance and should not be lightly terminated, the efforts of [respondent] and his continual professment of the desire to be involved in a major role in K.G.'s life should not be thrown aside when he really has made reasonable efforts to correct the conditions that were the basis for the removal of the child."

¶ 28 We remind respondent's counsel that mere contentions, without argument or citations of authority do not merit consideration on appeal. Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2003), *Barth v. State Farm Fire and Casualty Co.*, 371 Ill. App. 3d 498, 507 (2007). Points not argued are deemed waived. *Collins v. Westlake Community Hospital*, 57 Ill. 2d 388, 391-92 (1974).

¶ 29 Because we have found that respondent failed to make reasonable efforts, we need not examine the merits of the trial court's reasonable progress finding. When multiple allegations of unfitness are made, a finding that any one allegation has been proved is sufficient to declare a parent unfit. *In re D.J.S.*, 308 Ill. App. 3d 291, 295 (1999).

¶ 30 Best Interest Finding

¶ 31 We now turn to the question of the termination of respondent's parental rights. The State must prove by a preponderance of the evidence that termination is in the best interest of the child. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The trial court's best interest finding will not be disturbed unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005).

¶ 32

In this termination phase, all considerations of the parent yield to the best interest of the child. *In re Tashika F.*, 333 Ill. App.3d 165, 170 (2002). Whenever a "best interest" determination is required, the following factors shall be considered:

- "(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 \* \* \*;
- (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; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 33

Here, K.G. has been in the same foster home since birth. According to the best interest report, K.G. has clearly bonded with the entire nuclear and extended foster family. Further, the foster parents are able to effectively provide for K.G.'s safety and welfare. Significantly, the

foster parents wish to provide K.G. permanency through adoption. Conversely, the record demonstrates that respondent is unable at this time to provide K.G. with permanency. While we acknowledge that respondent has bonded with K.G. during visitation we emphasize that the stable loving environment that has been provided to K.G. since birth has come from the foster parents, not respondent. Lastly, we note that the best interest report recommends that respondent's parental rights be terminated so that K.G. may be adopted by the foster parents. Virtually all relevant statutory factors weigh in favor of termination. Thus, we conclude the circuit court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 34 For the reasons stated, we affirm the circuit court's judgment.

¶ 35 Affirmed.