

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (3d) 140806-U

Order filed March 3, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

In re J.H., a Minor,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
(THE PEOPLE OF THE STATE)	Rock Island County, Illinois.
OF ILLINOIS,)	
)	
Petitioner-Appellee,)	Appeal No. 3-14-0806
)	Circuit No. 13-JA-30
v.)	
)	
JESSICA H.,)	Honorable
)	Peter W. Church
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's findings that the respondent was unfit and terminating her parental rights were not against the manifest weight of the evidence.
- ¶ 2 The trial court found the respondent, Jessica H., unfit to parent her child, J.H. The court then found that it was in the best interest of J.H. to terminate the respondent's parental rights. The respondent appeals, arguing that the court's findings of unfitness and terminating her parental rights were against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

The minor, J.H., was born May 21, 2013, and was taken into protective custody the following day. On May 23, 2013, the State filed a petition for adjudication of wardship alleging that J.H. was neglected due to an injurious environment. The State further alleged that the respondent's two other children had been previously adjudicated neglected by a court in Iowa and that her parental rights to those two children had been terminated on April 30, 2013, due to her failure to completed services and an inability to maintain consistent and stable mental health medication and treatment. A report filed by the Iowa Department of Human Services (IDHS) reported that J.H. was diagnosed with depression, bipolar disorder, anxiety disorder, reactive attachment disorder, and post-traumatic stress disorder (PTSD). The report further stated that the respondent was combative, threatening, and argumentative when not taking her medications. On May 24, 2013, the trial court entered an order granting the Illinois Department of Children and Family Services (DCFS) temporary custody of J.H., based upon the finding that it was urgent and immediately necessary for the protection of J.H. that he be removed from the respondent's custody due to her mental health issues and her failure to complete services in Iowa relating to her two other children.

¶ 5

On June 11, 2013, the trail court entered an order finding that J.H. was neglected based upon the stipulations of the parties. DFCS assigned the case to Bethany Center for Children and Families (Bethany). On July 5, 2013, Bethany filed a report recommending that the respondent complete various services. A dispositional hearing was held on July 16, 2013, after which the court entered a dispositional order requiring the respondent to: (1) obtain a psychological evaluation and follow recommendations for treatment; (2) maintain compliance with mental health treatment and follow all treatment recommendations, including taking all prescribed

medications, and cooperate with all counseling directions; (3) obtain and maintain appropriate housing for herself and J.H.; and (4) successfully complete parenting classes.

¶ 6 On February 7, 2014, a permanency review hearing was held at which Bethany's permanency report was accepted. The report indicated that the respondent had moved out of the house she shared with J.H.'s father due to a domestic violence issue on or about October 21, 2013, and had not been able to maintain stable housing since. Bethany also reported significant issues with the respondent's mental health. At the time of the report, the respondent had not met with Bethany staff since December 19, 2013, nor had she attended any of the scheduled supervised visitations since that date. Respondent had not participated in psychiatric or psychological services since September 2013, and stopped taking her prescribed psychiatric medications around the same time. On October 22, 2013, the respondent refused to comply with urinalysis request. Bethany reported that the respondent was "unsatisfactory" on all her counseling and treatment goals, including cooperating in psychological examinations, participating in psychiatric treatment and individual counseling, completing parenting classes, and finding and maintaining appropriate housing. The court made a finding that the respondent had not made reasonable and substantial progress toward returning the minor to her care.

¶ 7 On May 9, 2014, a second permanency review hearing was held. Bethany reported that the respondent was homeless at the time the second report was written on March 6, 2014. Bethany also reported that the respondent had not participated in psychological services since September 2013 and had not followed through with a referral to a community mental health center. The respondent attended only 8 of 24 scheduled visitations, although it was reported that 3 visits had been cancelled due to inclement weather. Bethany staff noted that at times the respondent would interact appropriately with J.H. during visits, however on several occasions

she was more preoccupied with discussing her case with staff. Bethany reported that all the respondent's goal progress remained "unsatisfactory." The respondent continued to refuse to cooperate with urinalysis requests, and staff suspected she was using illegal substances. The court entered an order finding that the appropriate goal was substitute care pending termination of parental rights.

¶ 8 On June 12, 2014, the State filed a supplemental petition to terminate the respondent's parental rights for: (1) failure to maintain a reasonable degree of interest, concern or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failure to make reasonable *efforts* to correct the conditions that were the basis for the removal of the child during any nine month period following adjudication of neglect, *i.e.*, July 16, 2013, through April 16, 2014 (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) failure to make reasonable *progress* toward the return of the child during the same nine month period (750 ILCS 50/1(D)(m)(ii) (West 2012)). The following evidence, along with the above reports and orders, was adduced at the fitness hearing held on August 22, 2014.

¶ 9 Christy Hutchinson testified that she was employed as caseworker at Bethany and had been the respondent's caseworker since July 17, 2013, the day following the issuance of the dispositional order requiring the respondent to cooperate and comply with the service plan. Hutchison testified about the respondent's services for the nine months following adjudication, July 16, 2013, through April 16, 2014. Hutchinson testified that, during this time, the respondent did not participate in psychiatric services, stopped taking prescribed psychotropic medication, failed to follow up with a referral by Hutchinson to the Robert Young Mental Health Center for mental health counseling, failed to complete a scheduled psychological evaluation, and did not complete any psychological counseling services. Hutchinson further testified that on or about

November 1, 2013, domestic violence services were added to the respondent's plan after the respondent reported a domestic violence issue between her and her father. Hutchinson made two referrals to free domestic violence counseling services, but the respondent did not attend either. Hutchinson further testified that, during the relevant time period, the respondent had not consistently attended visitation with J.H., missing over half of the scheduled sessions. Those visitations that the respondent attended often ended prematurely due to the respondent's frequent attempts to engage Bethany staff in discussions about the court proceedings and then becoming emotionally distraught. Hutchinson also testified that during September 2013 the respondent became homeless and reported living with friends, on the street, or in hotels. The respondent also would not provide an address where she was living.

¶ 10 The respondent testified that she completed a psychological evaluation "at several different organizations" but could not remember any of the details. She described her housing prospects as "obviously visionary." She acknowledged that she had not taken her prescribed medication because she did not think she benefited from medication and wanted to "use her own brain" to function. She also acknowledged that her failure to attend over half of her scheduled visitation sessions and her conduct at the sessions she had attended "didn't go as perfect as [she] wanted it to." She believed that Bethany staff were consistently provoking her during visitations and using her reaction as an excuse to terminate the sessions early. She also testified that she contacted a domestic violence counselor approximately three months prior to the fitness hearing.

¶ 11 The trial court found the State had proved the unfitness grounds as alleged in the petition to terminate the respondent's parental rights by clear and convincing evidence. Specifically, the court found that the respondent had failed to maintain a reasonable degree of interest, concern or responsibility as to J.H.'s welfare; failed to make reasonable efforts during the designated nine-

month period (July 16, 2013, to April 16, 2014) to correct the conditions that were the basis for the child's removal; and failed to make reasonable progress toward the return of the child during the same designated time period.

¶ 12 On September 12, 2014, Bethany filed a best interest report with the court. The report noted that J.H. was approximately 16 months old and had been residing in licensed relative foster case since birth. J.H. was reported to have bonded with his foster parent as she was the only caregiver the child had ever had. The foster parent, the child's godparent, had expressed a willingness to adopt. The foster parent was retired and had sufficient retirement income. J.H. was an accepted member of the foster family and had a positive relationship with the family and their friends. The report found that J.H.'s needs for health, education, safety, and wellbeing were being consistently met by the foster parent and her extended family. The report noted that the foster parent ensured that J.H. attended doctor appointments. Bethany's recommendation was that it was in the best interest of J.H. to remain with that foster family.

¶ 13 On October 8, 2014, the court held a best interest hearing, where Hutchinson testified regarding the best interest report. Hutchinson acknowledged that the foster parent was over 70 years old, but testified that she was in very good health and had another family member that would be willing to care for the child though his age of majority, if necessary. Hutchinson testified that she had several cases where a foster parent of the same age as J.H.'s was raising children and she had no concerns that an older foster parent could not meet the needs of a child of the same age as J.H. Hutchinson opined that this foster parent would be able to adequately meet the physical safety and welfare need in the future despite her age.

¶ 14 The respondent testified that she had secured appropriate housing by the date of the best interest hearing and had applied for Social Security disability benefits which would supply her

with a source of income and allow her to find and maintain steady housing. She also testified that at a visit in July 2014, J.H. had called her “mom.” She claimed that Bethany had been very unfair to her and that the staff did not want her to succeed.

¶ 15 Following the close of evidence, the trial court found that it was in the best interest of J.H. that the respondent’s parental rights be terminated. The court expressed some concern regarding the age of the potential adoptive parent being over 70 years of age. The court stated that the age difference was a factor for consideration, but the evidence suggested that the age difference was not necessarily a negative factor and ultimately did not outweigh other factors favoring termination. The court found that the totality of the best interest factors established the need for termination of the respondent’s parental rights. The respondent filed this timely appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, the respondent challenges the trial court’s unfitness and best interest findings. She maintains that both findings were in error and asks this court to reverse and remand the trial court’s order. The involuntary termination of parental rights involves a two-step process. *In re C.N.*, 196 Ill. 2d 181, 209 (2001). First, the State must show that the parent is unfit and if the court finds the parent unfit, it must then consider whether it is in the child’s best interest to terminate the parent’s rights. 750 ILCS 50/1D (West 2012); 705 ILCS 405/2-29(2) (West 2012); *C.N.*, 196 Ill. 2d at 209.

¶ 18 Addressing the respondent’s unfitness, the State alleged three grounds: (1) failure to maintain a reasonable degree of interest, concern or responsibility as to the minor’s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failure to make reasonable *efforts* to correct the conditions that were the basis for the removal of the child during any nine month period following adjudication of neglect, *i.e.*, July 16, 2013, through April 16, 2014 (750 ILCS 50/1(D)(m)(i)

(West 2012)); and (3) failure to make reasonable *progress* toward the return of the child during the same nine month period (750 ILCS 50/1(D)(m)(ii) (West 2012)). Here, the trial court found that the State had proven each of the allegations. When multiple allegations of unfitness are made, a finding that any one allegation has been proven is sufficient to support a finding that the respondent is unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). We will not reverse a trial court’s unfitness finding unless it is against the manifest weight of the evidence. *In re S.R.*, 326 Ill. App. 3d 356, 360 (2001). A trial court’s findings are not against the manifest weight of the evidence unless the opposite conclusion is clearly apparent from the record. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009). We find that the record supports the trial court’s finding that the respondent was unfit.

¶ 19 The State alleged that the respondent failed to make “reasonable efforts” to correct the conditions which gave rise to the removal of J.H. from the respondent’s care, and failed to make “reasonable progress” toward the return of the child. Both findings look at a nine-month period of time following the adjudication of neglect. “Reasonable progress” is a distinct grounds from “reasonable efforts.” *In re Edmonds*, 85 Ill. App. 3d 229, 235 (1980). Whether a parent’s efforts to correct conditions are reasonable involves a subjective judgment of the particular parent’s efforts, while the reasonableness of a parent’s progress toward the return of the child is measured objectively by the amount of progress toward the goal of unification. *In re D.J.S.*, 308 Ill. App. 3d 291, 294-95 (1999).

¶ 20 Here, it cannot be said that the trial court’s findings that the respondent failed to make reasonable efforts to correct the conditions which gave rise to the removal of J.H. from her custody was against the manifest weight of the evidence. The conditions which gave rise to the removal of J.H. included the respondent’s inability to cooperate with consistent and stable

mental health counseling, medication and treatment. The record is replete with evidence showing that the respondent failed to cooperate with psychological counseling, refused to take prescribed medication, and missed or refused to follow up on multiple referrals for mental health treatment and counseling. The record likewise established that, rather than cooperate with the staff at Bethany, the respondent was actively hostile and blamed the staff for her own failure to cooperate with her treatment. These actions illustrate that the respondent was not able or willing to make reasonable efforts to correct the conditions that gave rise to the removal of J.H. from her custody.

¶ 21 Likewise, the record supports the trial court's finding that the respondent failed to make reasonable progress toward the child's return to her custody. Reasonable progress requires, at a minimum, measurable and demonstrable movement toward the goal of unification in the near future. *In re K.P.*, 305 Ill. App. 3d 175, 180 (1999). Where the trial court finds that the minor is no closer to being returned to a parent's custody than at the time of removal from custody, reasonable progress has not been made. *In re D.J.S.*, 308 Ill. App. 3d at 295. Here, the record established that the respondent had been completely uncooperative with all efforts to help her to achieve the levels of mental and psychological health to allow the child to be returned to her custody and that she was no closer to having J.H. returned to her custody than at the time he was removed from her custody.

¶ 22 We find that the record clearly supports the trial court's finding that the State proved by clear and convincing evidence that the respondent had failed to make reasonable efforts to correct the conditions that lead to the removal of J.H. from her custody and failed to make reasonable progress toward the child's return to her care. We find, therefore, that the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 23 After the trial court determines a parent to be unfit, a court must then determine whether it is in the best interests of the child to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). At the best interests hearing, the parents' interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To determine the best interests of a child, the trial court is required to consider several factors "in the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2012). These statutory factors include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural and religious background; (4) the child's sense of attachment, including love, security, familiarity, continuity of relationships with parent figures; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preference of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). *In re A.F.*, 2012 IL App (2d) 111079 ¶45. A trial court's best interest determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d at 697.

¶ 24 Here the record supports the trial court's finding. The trial court expressly stated that it considered the statutory factors. The record established that the foster family and home was the only one J.H. had ever had. The child appeared to be bonded to the family and his physical and emotional needs were being met. The foster parent also indicated a willingness to adopt. On appeal, the respondent focuses on the foster parent's age as a potentially adoptive parent as a reason against terminating parental rights. The trial court noted its concern with the foster parent's age, but ultimately found that this was not a significant factor in determining the child's best interest. Weighing all the facts surrounding the foster family, we cannot say that the trial

court's decision regarding the weight to be placed upon the age difference was against the manifest weight of the evidence.

¶ 25 The respondent also maintains that the trial court's best interest decision was against the manifest weight of the evidence due to what she perceives as a "quick" decision. She maintains that it would be in the best interest of J.H. if more time were to be given to her to complete her necessary tasks. Based upon the evidence in the record, this argument must fail. The record established that the respondent had, from an objective perspective, failed to make any progress toward reunification prior to the best interest hearing, thus showing little likelihood that she would be able to make any progress were the decision on the child's best interest to be delayed. We find, therefore, that the trial court did not err when it found that it was in the best interest of J.H. that the respondent's parental rights be terminated.

¶ 26 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 27 Affirmed.