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2015 IL App (3d) 150076-U

Order filed June 12, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> S.S. and S.S.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Minors)	Knox County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-15-0076
)	Circuit No. 10-JA-22
v.)	
)	
SHARI S.,)	
)	The Honorable
Respondent-Appellant).)	James R. Standard,
)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that the mother was unfit was not against the manifest weight of the evidence.

¶ 2 The respondent, Shari S., appeals the trial court's order terminating her parental rights as to her two sons, S.S. and S.S. On appeal, Shari argues that the trial court finding that she was unfit was against the manifest weight of the evidence.

FACTS

¶ 3

¶ 4 On July 26, 2003, Shari met the minors' father, whom she later married. On April 13, 2004, their first son, S.S., was born. On August 3, 2005, their second son, S.S., was born.

¶ 5 On September 21, 2010, the State filed a juvenile petition alleging the minors were neglected and abused. On November 1, 2010, the State filed an amended juvenile petition, alleging that: (1) the minors were neglected because on or before September 18, 2010, their environment was injurious to their welfare; and (2) the minors were abused because on or before September 18, 2010, their parents inflicted physical harm upon them. In support of the petition, the State further alleged *inter alia*: (1) on September 18, 2010, Shari told police she was going to kill herself or the minors; (2) Shari stated that she had hit her older son repeatedly while he was curled in a ball; (3) Shari indicated that she was stressed out and requested she be hospitalized; (4) Shari locked the minors in their rooms at night; (5) on October 7, 2009, the younger minor was found wandering down the street alone after he was left by himself for at least 45 minutes, after which Shari was charged with endangering the life or health of a minor; and (6) the minors' father was in prison and their grandparents were unable to care for them.

¶ 6 On November 23, 2010, an adjudication hearing took place. The evidence showed that on October 7, 2009, Shari's younger son was found by a stranger in a neighbor's front yard. The court took judicial notice that Shari pled guilty to endangering the life of a child as a result of that incident.

¶ 7 Sean Tyler Glas, who worked under Shari in a multi-level marketing company, testified that in May of 2010, he witnessed Shari pumping soap into her younger son's mouth for saying the word "butt." The minors had bruises, which they told Glas originated from Shari. Glas observed marijuana and a pipe in Shari's home, where it was accessible to the minors. Glas also

testified that Shari would lock the minors in their rooms for many hours at a time as a form of punishment.

¶ 8 Gail Galbreath, Shari's neighbor, testified that on May 23 and 24, 2010, Shari kept the minors locked in their rooms until Shari awoke at 11 a.m. or 12 p.m., with the kids missing school one of the days. The minors had small potty chairs in their rooms that were overflowing at times, which they would have to empty themselves. Shari spanked the minors' with a wooden spoon and locked them in their bedrooms while she smoked marijuana in the basement. Gail observed Shari push the younger minor in the chest and hit him across the head. Jared Galbreath, the 20-year-old son of Gail, testified that in April of 2010, Shari offered him marijuana on three or four occasions in lieu of payment for mowing her lawn. Jared and Shari used marijuana in front of the minors on a couple of occasions.

¶ 9 Officer Mary Semington testified that she was dispatched to Shari's home on September 18, 2010, in reference to juvenile trouble with a six year old. Shari informed Semington that her older son was driving her crazy and she had continually hit him while he was curled into a ball. Semington described Shari as being upset and wanting help. Shari told Semington that she did not have control anymore, was unable to function, and could not control her emotions. Shari felt the emotional instability would escalate to the point of her killing the kids or herself.

¶ 10 Clifford Adam, a child protection specialist for the Department of Children and Family Services, testified that on September 18, 2010, Shari indicated that she could not control her son and she had hit him. Shari indicated that something needed to be done before she hurt or killed her son. She requested that she be hospitalized for a psychological evaluation. Adam took the minors into protective custody.

¶ 11 The minors' father testified that he was in prison. He anticipated that he would return home to live with Shari in November of 2012.

¶ 12 Dr. Lynn Greeley testified that she had been the minors' pediatrician since birth. On August 7, 2008, Greeley wrote a letter to Dawn Trulson at DCFS to get help for Shari because, for the second time, Shari had indicated that she locked the boys in their rooms for safety reasons. Greeley did not receive a reply from DCFS. Greeley opined that in some cases it is more dangerous to have children roaming around through the night rather than in their rooms.

¶ 13 Abby Putnam testified that she was a nurse. On September 21, 2010, Shari had been admitted to the hospital because she was diabetic and her hemoglobin and glucose levels were high. Shari also had an advanced bacterial infection in a deep wound that had developed on her gluteus area. Shari's high glucose level would have affected Shari's cognitive reasoning, with her possibly becoming agitated or confused over the course of the days or weeks when the levels were high. The infection would have aggravated Shari's high blood sugar and diabetic condition.

¶ 14 Mike Kovanda testified that he was a crisis counselor. On September 10, 2010, Kovanda had evaluated the older minor in the emergency room after Shari reported his behavior as increasingly problematic, defiant, and destructive. Shari requested that the older minor be hospitalized because she could not protect him from himself or from her other son. Kovanda felt that hospitalization was necessary, but the closest hospitals did not have available beds. Shari declined sending him to a hospital over two hours away because she wanted to participate in his treatment.

¶ 15 Linda Crandall testified that she was the coordinator for the single parent program at Lutheran Social Services. Since 2008 Shari attended parenting workshops and a parenting program. Shari also attended a moms' support group twice per month. On May 25, 2010,

Crandall was at Shari's home for a monthly visit when Adam from DCFS arrived to inquire about a report of Shari locking the minors in their rooms at night. Shari explained that she locked the minors' doors at night because they walked around during all hours of the night and she could not sleep. She also indicated that they could get into trouble in the middle of the night.

¶ 16 Two of Shari's friends testified that they never smelled marijuana or observed marijuana or drug paraphernalia in Shari's home. They described Shari as a loving mother who read to the minors, drove them to their activities, and was very affectionate. One friend testified that the older minor tended not to sleep during the night. The other friend testified that Shari would discipline the boys by telling them to stop their bad behavior twice and then send them to their room for 15 minutes if they did it a third time. She also testified that she did not see Shari lock the minors in their rooms. After Shari became ill, Shari's friend noticed that Shari was not herself and had problems thinking coherently.

¶ 17 Shari testified that on October 7, 2009, she left the younger minor watching cartoons while she drove her older son to the bus stop, which you could see from their front door. When her older son asked that Shari drive him all the way to school, Shari did so, forgetting that her younger son was not in the car. On July 23, 2010, after DCFS informed Shari that she had been indicated for locking the minors in their rooms, she did not lock them in their rooms again. Shari had tried to consult with counselors and doctors regarding the older minors' sleeping habits in an attempt to find a better way to keep the minors safe at night. On September 12, 2010, she brought her older son to the emergency room due to dangerous behavior issues. On September 18, 2010, Shari was having health problems, was depressed, and was in pain from a boil that had developed on her back side. She was not aware that she was having diabetic complications.

¶ 18 Shari testified that she never told police that she was going to kill herself or her children. She testified that, on September 18, 2010, her older son had taken something he was not supposed to have and had been out of control, so she started slapping away. She explained that she only gave the boys "five-count" spankings. She has never observed bruises on the boys. She had explained to the police officer that the children were driving her "nuts," but she did not request hospitalization. The officer suggested that she go to the emergency room for a psychological examination, and Shari agreed in an attempt to improve the situation. Shari also indicated that the soap incident described by Glas was fabricated and he was not present when she put soap on her finger and placed it on her son's tongue.

¶ 19 The trial court found that the State did not prove the minors were abused but did prove that they were neglected in that their environment on September 18, 2010, was injurious and dangerous to their welfare. The trial court stated that Shari's emotional and physical situation did not lessen the fact that the minors were in a dangerous situation, especially in light of evidence that Shari was losing control and may have harmed the minors, the soap incident, the minors were being spanked with a wooden spoon, and marijuana was left out in the open.

¶ 20 On April 19, 2011, at the dispositional hearing, Shari testified that she had not touched drugs or alcohol since July of 2010, and she felt that random drug testing was demeaning and a waste of her time. Shari requested a drug assessment before being required to perform the drug drops. She was also reluctant to see a new counselor because she had been assigned three counselors and she wanted more stability with her counseling. She had never been informed that she was diagnosed with adjustment disorder, borderline personality disorder, and cannabis abuse. Shari requested a one-week break from DCFS services because she felt that she needed an emotional break.

¶ 21 The trial court found that Shari was dispositionally unfit and custody of the minors was given to DCFS. The trial court found that placement of the minors with Shari was contrary to their health, safety and best interests because she was "unwilling to do services to demonstrate her willingness" to care for, protect, train, educate, supervise or discipline them.

¶ 22 As the case progressed, Shari made reasonable progress. On January 3, 2012, DCFS was given discretion to return the minors home to Shari. By July 26, 2012, both minors were returned home.

¶ 23 On May 30, 2013, the State filed an emergency motion for the court to return custody of the minors to DCFS. The State alleged that: (1) the boys were consistently tardy or absent from school; (2) Shari failed to groom or bathe the boys; (3) Shari missed counseling appointments; (4) Shari failed to properly feed the minors and withheld meals as punishment; and (5) Shari failed to maintain their residence. On June 4, 2013, at the hearing on the emergency motion, Walter Tray Gordon testified that he was a child welfare specialist. On May 31, 2013, Gordon attempted to do a home drop-in visit but the older minor indicated that Shari instructed him not to let anyone in the home. After an hour, police broke a window to the home to gain entry and ensure the children's safety.

¶ 24 Shari testified that on May 31, 2013, when Gordon and police were at her door, she had been using the basement restroom and could not hear anyone. Shari claimed that she never withheld a meal from the minors. Shari tried to bathe boys every day in the summer and every other day during school. If the minors were unclean at school it was because they ate food at the bus stop and again when they got to school. The boys had recently been tardy because Shari lost her alarm clock when the minors' father "tore up" the house. The minors missed school because either she or they had been ill. The house was messy because: (1) basement items were brought

upstairs after some flooding occurred in the basement; (2) Shari's husband turned the house upside down when she kicked him out on March 24, 2013; and (3) Shari had been grieving because her stepmother and father both had recently passed away.

¶ 25 The minors' father had been out of prison for five months, during which time he lived at home with Shari. He testified that meals were never withheld from the boys as a form of punishment and the boys were bathed and dressed in clean clothes.

¶ 26 The trial court noted that it had "serious issues with the cleanliness of the children." The court had admonished Shari two weeks earlier to keep the minors clean and she had failed to do so. The court had also admonished Shari that her parenting was on the margin of acceptable standards but her home continued to be a mess and Gordon could not gain access to her home to ensure the safety of the minors. The trial court found that Shari could not "get it together enough to parent above th[e] minimum state standards" and found that it was in the minors' best interest to grant custody of the minors to DCFS.

¶ 27 On August 19, 2014, the State filed a petition to terminate Shari's parental rights. In a subsequently amended petition, the State alleged that Shari failed to: (1) make reasonable efforts to correct the conditions which were the basis for removal of the minors within nine months of an adjudication of neglect being June 30, 2013, to March 30, 2014 (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of the minors within nine months of an adjudication of neglect being from June 30, 2013, to March 30, 2014 (750 ILCS 50/1(D)(m)(ii) (West 2012)); (3) protect the children from the conditions within their environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2012)); and (4) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)).

¶ 28 On December 9, 2014, a hearing was held on the termination petition. Officer Bryan Anderson testified that on March 24, 2014, Shari entered the police station to report that her roommates, Tiarra Likes and Johnny Spencer, were forcing her to grow marijuana in her home and sell marijuana. Shari indicated they would abuse her or threaten to call DCFS if she did not aid them. Later in the interview, Shari admitted to selling cannabis and supplying the money to purchase the cannabis upfront. On March 24, 2014, police executed a search warrant of Shari's home, during which they found cannabis plants, a heat lamp, drug paraphernalia, and small baggies commonly used for drug distribution. The plants tested positive for being cannabis.

¶ 29 Tiarra testified that she began living with Shari in October of 2013. Tiarra observed Shari smoking marijuana on a daily basis. Shari's older son would help Shari hide baggies or drug paraphernalia when social workers came to the door. Shari accompanied Tiarra on a trip to Colorado where Shari purchased marijuana. Shari had plans to buy houses and have people stay in these houses to grow marijuana for her. In January of 2014, Tiarra's boyfriend, Johnny, moved into Shari's home. The marijuana plants arrived in Shari's home later in January of 2014. Shari told her kids that the plants were peppers. Johnny did not force Shari to do anything. Other than when she was sleeping on one occasion, Tiarra was not in the home when the minors' arrived for the visits with Shari because of Tiarra's criminal background. Shari had asked Tiarra to contact the caseworker to complete a background check, but Tiarra did not do so.

¶ 30 Gordon testified that he had been the caseworker since March of 2013. At that time, Shari was doing well with her service plan. The service plan required Shari to cooperate with DCFS and caseworkers, maintain stable and appropriate housing, and maintain the cleanliness of the home. On March 26, 2013, Shari indicated the boys had been molested by their father, which was a few days after she kicked him out of the home because he had stolen money from her.

Shari went back and forth on whether she believed the boys' allegations. At a permanency review hearing Shari was ordered to ensure the kids attended school, the minors were kept clean, and her home was clean. After that hearing, Gordon requested that the boys' teachers keep a log about the boys' appearances. The boys appeared at school dirty and were tardy and absent from school multiple times in the following two weeks. On June 4, 2013, the court again ordered removal of the minors.

¶ 31 In the summer and fall of 2013, Shari did not participate in individual counseling or the minors' counseling, even though the minors' counselor requested her participation in their counseling sessions. In January of 2014, Shari began counseling. In the beginning of 2014, Shari got newer furniture and improved the cleanliness of her home. On March 24, 2014, Shari told Gordon that she had gotten into an altercation. Johnny was threatening to tell DCFS lies about her and he and his friends had been breaking into her home and hiding marijuana in her basement. Shari had never informed DCFS that Tiarra or Johnny had lived with her.

¶ 32 The State introduced into evidence photographs of Shari weighing cannabis in her home. The State also introduced a psychological evaluation into evidence, which indicated that Shari was immature, exhibited poor judgment, and was vulnerable to being used by others. Shari had become more vulnerable after the loss of family members. She had few reliable friends and allowed criminal types to live with her, take advantage of her, and use her repeatedly. Shari allowed these criminal types to photograph her weighing cannabis and then used the photographs against her when their relationship deteriorated. Shari was diagnosed with anxiety, depression, dyslexia, and a personality disorder regarding her paranoia and schizotypal features.

¶ 33 Shari testified that before the second removal of the children in 2013, her stepmother and father passed away, she kicked the minors' father out of the house, and the minors told her that

they had been sexually abused by their father. Shari also testified that the minors went to the school bus stop by themselves. Shari did not observe the minors get on or off the bus because at the age of seven they can legally go places on their own. Shari claimed that the minors left home in the morning clean and would have only been dirty from eating something at the bus stop or at school. Shari testified that the minors were removed from her care on June 4, 2013, and three days later her home was immaculately clean. Shari indicated that Tiarra moved into her home in October of 2013, and Johnny moved in the home in January of 2014. Within a week of moving in, Johnny was threatening to take Shari's life, "kick [her] ass," and tell DCFS anything so that Shari's kids would not be returned home. Johnny forced Shari to sell marijuana, drive to East St. Louis to buy marijuana, order marijuana seeds from the internet, and purchase the growing equipment. Shari lent Tiarra \$2400 to purchase two pounds of marijuana. Johnny started planting marijuana plants in her home on January 21, 2013. On March 21, 2014, Shari and Johnny got into an altercation in the Walgreens parking lot, after which Shari went to the police to report that Johnny was forcing her to sell marijuana. In April of 2013, Shari obtained an order of protection against Johnny.

¶ 34 The trial court found that the evidence presented at the fitness hearing and a prior hearing established by clear and convincing evidence that Shari failed to: (1) make reasonable efforts to correct the conditions which were the basis for the minors' removal during the nine-month period of June 30, 2013, to March 30, 2014; (2) make reasonable progress toward the return of the minors during the nine-month period of June 30, 2013, to March 30, 2014; (3) protect the minors from conditions within their environment injurious to their welfare; and (4) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare.

¶ 35 On January 27, 2015, a best interest hearing took place. At that time, Shari was residing in jail for a felony charge of unlawful use of another person's credit card. She was also scheduled to attend a plea hearing on charges of unlawful manufacturing of cannabis. The trial court found that it was in the minors' best interest to terminate Shari's parental rights.

¶ 36 Shari appealed.

¶ 37 ANALYSIS

¶ 38 On appeal, Shari argues that the trial court's finding that she was unfit was against the manifest weight of the evidence. The termination of parental rights constitutes a permanent and complete severance of the parent child relationship and, as such, the State must prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(4) (West 2012); *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The trial court's decision should not be reversed on appeal unless its finding was against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208. A person's parental rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005).

¶ 39 Here, Shari was found unfit, *inter alia*, for failure to make reasonable efforts to correct the conditions which were the basis of removal within the nine-month period of June 30, 2013, to March 30, 2014, pursuant to section 1(D)(m)(i) of the Adoption Act. See 750 ILCS 50/1(D)(m)(i) (West 2012). Reasonable efforts relate to the goal of correcting the conditions that caused the removal of the minor from the parent, and are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). In determining whether reasonable efforts have been put forth, a court must determine whether the parent has made earnest and conscientious strides toward

rectifying the conditions that led to the minor's removal. *In re D.F.*, 332 Ill. App. 3d 112, 125 (2002).

¶ 40 In this case, in 2010, the children were adjudicated neglected and then removed from Shari's care due to an injurious environment. At that time, the evidence showed that Shari was losing control of her emotions causing her to repeatedly strike one of the minors and call for emergency assistance with indications that she felt as if she would kill herself or the minors if she was not hospitalized. The evidence also showed that Shari left the younger minor unattended in the home on occasions and locked the minors in their rooms for extended periods of time. In the summer of 2012, the minors were returned to Shari's care. In June of 2013, based on allegations that the minors were repeatedly tardy or absent from school, Shari failed to keep their residence clean and free of hazards, and Shari failed to groom, bathe, and feed the minors, they were once again removed from her care.

¶ 41 In the termination petition, the State alleged the relevant nine-month period that Shari failed to make reasonable efforts was June 30, 2013, to March 30, 2014. During that period, Shari failed to advise caseworkers that she had people living in her home, one of which was a convicted felon, and the other Shari claimed was dangerous. Shari declined to participate in the counseling. She kept drug paraphernalia lying around the home, smoked marijuana daily, and was growing marijuana plants. There were also indications that Shari was selling marijuana. Consequently, the evidence showed that Shari did not make reasonable efforts toward correcting the conditions which were the basis of removal, from June 30, 2013, until March 30, 2014. The minors' environment remained injurious to their welfare and Shari's judgment and efforts toward improving their environment appears to have worsened over the 4-year period that the minors had been in and out of foster care.

