

**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 (4th) 150047-U

NO. 4-15-0047

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 17, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: Clav. D., Clan. D., Car. D., Cas. D., and Cal. D.,	)	Appeal from
Minors,	)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Champaign County
Petitioner-Appellee,	)	No. 13JA36
v.	)	
CLAVIN DAVIS,	)	Honorable
Respondent-Appellant.	)	John R. Kennedy,
	)	Judge Presiding.

---

PRESIDING JUSTICE POPE delivered the judgment of the court.  
Justices Harris and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 2 In August 2014, the guardian *ad litem* filed a motion to terminate respondent Clavin Davis' parental rights to his children, Clav. D. (born October 30, 1998), Clan. D. (born November 29, 1999), Car. D. (born November 2, 2002), Cas. D., (born June 30, 2004), and Cal. D. (born August 13, 2008). Following adjudicatory and best-interest hearings, the trial court terminated his parental rights to all five children. Tracy Beckett is the mother of the children. The court's rulings as to her parental rights are the subject of a separate appeal.

¶ 3 Respondent appeals, arguing the trial court erred in finding it was in the minors' best interest to terminate his parental rights. We affirm.

¶ 4

## I. BACKGROUND

¶ 5

On July 15, 2013, the State filed a five-count petition for adjudication of neglect and shelter care regarding the five minors at issue in the instant appeal. (A sixth count pertained to M.D. (born July 22, 2011), Beckett's other child. However, M.D. is not at issue in this appeal.) The petition alleged Clav. D., Clan. D., Car. D., Cas. D., and Cal. D. were neglected where their environment was injurious to their welfare when residing with (1) Beckett, because (a) they were exposed to substance abuse (count I); (b) they were exposed to inadequate supervision (count II); (c) they were exposed to the risk of physical harm (count III); (d) Beckett leaves them in the care of inappropriate persons (count IV); and (2) respondent, in that respondent failed to correct the conditions which resulted in a prior adjudication of parental unfitness regarding the minors (count V). 705 ILCS 405/2-3(1)(b) (West 2012).

¶ 6

According to the shelter-care report, Beckett went to Mario Dunklin's home at 2 a.m. on July 12, 2013. Dunklin is the putative father of M.D. Two of respondent and Beckett's children were with her, one of whom was driving the vehicle. According to the report, Beckett confronted Dunklin's girlfriend and slapped her. The police were called and the children drove away from the scene, leaving Beckett behind. Beckett was arrested. According to the record in this case, Beckett pleaded guilty to the assault charge and was placed on 12 months' court supervision.

¶ 7

On July 16, 2013, the trial court found probable cause and an immediate and urgent necessity existed to place the minors' temporary custody with the Department of Children and Family Services (DCFS).

¶ 8 Following an August 27, 2013, adjudicatory hearing, the trial court found the minors neglected. According to the court's findings, in the early morning hours of July 12, 2013, 14-year-old Clav. D. drove Beckett to Dunklin's home, where she confronted Dunklin's girlfriend. An altercation ensued and Clan. D., who accompanied them, became involved in the altercation. As the altercation continued, Clav. D. and Clan. D. fled in the vehicle. The court also found Beckett had left her children in the care of her sister, whose parental rights to her own children had already been terminated.

¶ 9 Prior to the dispositional hearing, the Center for Youth and Family Services (CYFS) filed a home and background report. According to the report, Beckett had been arrested for driving while under the influence in 2006 when Cas. D., then two years old, was in the car. DCFS opened and maintained an intact case from that arrest until April 2008, when the children were taken into protective custody as the result of Beckett's violation of a supervision order restricting contact between the minors and respondent. In December 2010, the children were returned to Beckett for extended unsupervised overnight visits. However, in April 2011, they were returned to protective custody due to inadequate supervision. The minors were eventually returned to Beckett and remained with her until the instant case was opened.

¶ 10 According to the report, respondent had been in and out of prison since 1991. In March 2005, respondent was convicted of possession of a controlled substance, obstruction of justice, and retail theft and sentenced to 5 1/2 years' imprisonment. Respondent was incarcerated at the time the intact case was opened in 2006. He was paroled in September 2008 but convicted of burglary and possession of a controlled substance in December 2008. He was sentenced to 12 years in prison, with a projected parole date of December 2014. The report indicated respondent

had been attending Alcoholics Anonymous and Narcotics Anonymous meetings while in the Lincoln Correctional Facility. Respondent was also on the waiting list for their substance-abuse treatment program. The report stated respondent had no other history of substance-abuse treatment.

¶ 11 Following the October 3, 2013, dispositional hearing, the trial court found respondent and Beckett unfit and unable to care for the minors. The court also adjudged the minors neglected, made them wards of the court, and placed their custody and guardianship with DCFS.

¶ 12 According to the January 15, 2014, permanency report, the children were doing well in their relative foster placements. The report indicated respondent remained incarcerated and uninvolved in the proceedings.

¶ 13 On January 22, 2014, the trial court reviewed the case and found respondent had made neither reasonable and substantial progress nor reasonable efforts toward the goal of return home.

¶ 14 The July 3, 2014, permanency report indicated the children, with the exception of Cas. D., who was hospitalized, had been doing well in their relative foster placements. According to the report, respondent remained incarcerated and did not have any visitation with the children even though it had been offered to his older children.

¶ 15 On July 9, 2014, the trial court again reviewed the case and found respondent had failed to make either reasonable efforts or reasonable and substantial progress toward achieving the permanency goal of return home.

¶ 16 On August 6, 2014, the guardian *ad litem* filed a motion to terminate both

respondent's and Beckett's parental rights to the minors. According to the motion, respondent was unfit for failing to make reasonable progress toward the return of the minors within nine months of the adjudication of neglect (count II).

¶ 17 Following an October 1, 2014, review of the case, the trial court changed the permanency goal to substitute care pending determination of termination of parental rights.

¶ 18 In November 2014, the trial court held an adjudicatory hearing on the petition to terminate. Because respondent's appeal does not challenge the trial court's fitness findings, we need not extensively recount the evidence presented at that hearing. During the hearing, Danielle Edenburn, a foster-care caseworker for CYFS, testified respondent had been incarcerated the entire time she had been the caseworker. According to Edenburn, respondent's service plan included refraining from criminal activity, abstaining from alcohol, cooperation with CYFS, participation in domestic-violence classes, parenting classes, and individual counseling.

¶ 19 Edenburn met with respondent on February 28, 2014, while he was still incarcerated. While respondent reported being involved in a drug class, he did not provide any paperwork showing his involvement. Edenburn discussed the possibility of arranging phone visitations with some of the children. However, no visits ever occurred. In May 2014, Edenburn updated the service plan and reported respondent had not yet provided her with documentation showing completion of any of the recommended services. In the July 2014 and September 2014 permanency-review reports, Edenburn noted respondent's status remained unchanged regarding the services. During the hearing, however, respondent introduced into evidence certificates of completion for a substance-abuse program, a parenting class, a "Lifestyle Redirection class," and an anger-management-education program.

¶ 20 The trial court took judicial notice of respondent's convictions and sentences for burglary and unlawful possession of a controlled substance. The court found the convictions related to the "subject of incarceration, which is relevant to the issue of whether [respondent] has made reasonable progress as alleged in [count II]." At the conclusion of the hearing, the court found respondent unfit pursuant to count II.

¶ 21 On January 2, 2015, CYFS filed a best-interest report. The report stated the caseworker had limited contact with respondent due to his incarceration. Respondent was paroled on December 24, 2014. Respondent was informed at the adjudicatory hearing he would need to contact the caseworker as soon as he was released from prison. However, respondent had not done so. The report recommended the termination of respondent's parental rights as to all five of the children.

¶ 22 According to the report, Clav. D. and Clan. D. were living with their paternal grandmother. The report indicated Clav. D., then a high school sophomore, appeared closely bonded with his sister. Clav. D. was doing well in school and athletics. He did not mind living with his grandmother but wanted to be returned home to his mother. The report indicated Clan. D., then a freshman in high school, also wanted to be returned to her mother. Clan. D. was doing well in school and maintaining average grades.

¶ 23 According to the report, Car. D., then 12 years old, was living with her maternal grandmother and doing well in school and at home. The report indicated Car. D.'s placement was "beyond adequate" and she had a healthy bond with her grandmother. However, the report also noted Car. D.'s desire to return home to her mother and father.

¶ 24 With respect to Cas. D., then in fifth grade, the report noted he was struggling the most with his placement compared to his siblings. Cas. D. was living with M.D.'s grandmother, with whom he has a "unique bond" as his "grandmother." However, according to the report, Cas. D. "has difficulty responding to many adults and needs a lot of stability." In school he demonstrates "consistently disruptive behavior," including "cussing, outbursts or running out of class, talking back to teachers with specific sexual references, and making sexual comments and threats toward female classmates." The report noted the threats were particularly concerning. However, the report recommended the trial court change Cas. D.'s permanency goal to adoption as his caregiver was willing to provide permanency through adoption.

¶ 25 The report indicated Cal. D., then six years old, was on time-release medication to deal with her attention deficit/hyperactivity disorder. She also meets with a psychiatrist every month due to her previous struggles in school. According to the report, Cal. D. was thriving in her foster placement and her foster parent expressed a desire to adopt her.

¶ 26 A second best-interest report, dated January 2, 2015, and submitted by the guardian *ad litem*, recommended termination of respondent's parental rights as to all the children. According to the report, respondent "had not had regular contact with his children for many years, and he had not had an opportunity to do the necessary services to show he can be a reliable father. If he were to be allowed to do services after his upcoming release from prison, I think that it would take him too long to complete [during which time] his children would remain in limbo."

¶ 27 The report emphasized an immediate need for care with regard to Cas. D. The report cited a number troubling behavioral issues and stated he was "not in good shape." The

report expressed concern if he did not receive the care he needed, he had the potential to develop into "a very troubled adult with possible dire consequences." As to Cal. D., the report indicated she had been with her current foster mother almost since her birth. Cal. D.'s foster mother "is a licensed child care giver, and family friend, and a person who gives [Cal. D.] the safety and structure she needs." The report also stated Cal. D., Car. D., and Cla. D. were all "in stable placements that would be willing to provide permanency for them."

¶ 28 No testimony was presented during the January 7, 2015, best-interest hearing. During the hearing, the State took the position the detailed recommendations of the court appointed special advocate and the guardian *ad litem* were appropriate and asked the trial court to adopt those recommendations. Respondent's attorney argued against the court terminating respondent's parental rights to any of the children. Counsel argued letters from the children showed they were clearly bonded to respondent. Respondent's attorney asked the court to consider giving respondent a chance to show he could "seriously make efforts" and "do what is necessary."

¶ 29 Following the hearing, the court terminated respondent's parental rights to all five children. In doing so, the court stated the following:

"This is not a situation that shows an opportunity for prompt change that somehow the court can somehow expect that somehow [respondent] would in the future be a parent that provides responsibility for the children, gives them guidance, direction, those things that they need regardless of what their age and position in life is now and, as pointed out to, you know, keep open the possibility of



him because, if parental rights are not terminated, then, again, the question is where do we go, is [respondent] going to be provided visitation with the opportunity towards restoration of custody, restoration of a role of parenting if not a custodial parent? That's going to place the children, all of them, in a difficult position of having expectations that are not going to come true, and that is not in any of their best interests. That is very clear in regard to each of the children, his parental rights must be terminated in their best interest. That is the order with respect to [respondent]."

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 On appeal, respondent argues the trial court's order terminating his parental rights was not in the best interest of the children. We disagree.

¶ 33 Because respondent does not challenge the trial court's unfitness finding, we confine our analysis on appeal to the court's best-interest determination. At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. The trial court's finding termination of parental rights is in a child's best interest will not be reversed unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A

decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 34 When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2012). These factors include the following:

"(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 and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child."

*Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141; 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 35 In this case, the record showed Clav. D., Clan. D., and Car. D. were having their individual needs met and were doing well in their foster placements. As stated, Cas. D. and Cal. D have special behavioral issues. Both best-interest reports indicated Cas. D. required

special developmental care and stability now, which the record does not indicate respondent is able to provide. By comparison, the CYFS report indicated Cas. D.'s caregiver was willing adopt him. Cal. D.'s behavior has improved in her foster placement and she is very bonded to her foster mother, with whom she has lived for almost her entire life. Cal. D.'s foster mother is also willing to provide permanency through adoption.

¶ 36 While respondent is no longer incarcerated, he is still not in a position to immediately regain custody of the children. It is also not likely respondent would be able to provide for the children's needs in the near future. The children require stability, and respondent's current position is one of uncertainty. The trial court's finding it is in the children's best interest to terminate respondent's parental rights is not against the manifest weight of the evidence where the facts do not clearly demonstrate the court should have reached the opposite result.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the judgment terminating respondent's parental rights.

¶ 39 Affirmed.