

NOTICE

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2015 IL App (4th) 150135-U

NO. 4-15-0135

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 17, 2015

Carla Bender

4th District Appellate
Court, IL

In re: N.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 12JA52
JIMALE WILLIAMS,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's best-interest finding was not against the manifest weight of the evidence.

¶ 2 In September 2014, the State filed a petition seeking to terminate the parental rights of respondent, Jimale Williams, as to his child, N.M. (born November 8, 2012). In January 2015, the trial court found respondent unfit. The following month, the court determined it was in the best interest of N.M. to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court's best-interest finding was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2012, the State filed a petition for adjudication of neglect and shelter care, alleging N.M., a newborn, was subjected to an injurious environment pursuant to

section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)), in that (1) respondent mother failed to correct the conditions which resulted in prior adjudications of parental unfitness (count I); (2) respondent, as a convicted sex offender, exposed N.M. to the risk of sexual abuse (count II); (3) respondent was a registered sex offender (count III); (4) N.M. received inadequate supervision (count IV); and (5) N.M.'s environment would expose her to inappropriate persons (count V). In January 2013, following respondent's admission to count III of the petition, the trial court entered an adjudicatory order finding N.M. was in an environment injurious to her welfare. After a February 2013 dispositional hearing, the court found respondent unfit and unable to care for N.M. and granted guardianship to DCFS.

¶ 6 In September 2014, the State filed a petition seeking a finding of unfitness and the termination of respondent's parental rights. The petition alleged respondent was unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for N.M.'s removal from the home (750 ILCS 50/1(D)(m)(i) (West 2012)) (count I); (2) make reasonable progress toward the return home of N.M. during the initial nine-month period following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count II); (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of N.M. (750 ILCS 50/1(D)(b) (West 2012)) (count III); and (4) make reasonable progress toward the return home of N.M. during any nine-month period after the end of the initial nine-month period following the adjudication of neglect. (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count IV).

¶ 7 In December 2014, the trial court commenced a fitness hearing. Respondent mother had previously surrendered her parental rights, so the case proceeded solely against respondent. Notably, during the proceedings, respondent's caseworkers through Lutheran Social Services (Lutheran) testified respondent, who had been incarcerated throughout the majority of

the case, had not communicated with them or participated in any services. The court took judicial notice of respondent's two convictions for failure to register as a sex offender (Champaign County case Nos. 12-CF-192 and 14-CF-283). Respondent then testified his conviction for the underlying sex offense from Wisconsin had been reversed, and he was awaiting documentation to confirm his conviction had been vacated. Thereafter, the court found respondent unfit as to all counts alleged in the petition.

¶ 8 In February 2015, the trial court held a best-interest hearing. The parties presented no evidence, relying instead on the best-interest report filed by Lutheran. In its best-interest report, Lutheran explained it became involved with the family in February 2012, when three of respondent mother's children were taken into protective custody following allegations that respondent, a convicted sex offender, had unsupervised contact with the children. N.M. was taken into protective custody immediately following her birth in November 2012. At the time of the best-interest hearing, respondent was incarcerated with a projected release date in September 2016. In fact, he remained incarcerated throughout the majority of the case, except for a brief six-week period in early 2014. Throughout the pendency of the case, respondent had not maintained contact with the Lutheran caseworkers, participated in any services, or visited with N.M.

¶ 9 The report described N.M. as a "happy and pleasant" two year old who was in specialized care due to having cerebral palsy. Her current foster family had recently decided they could no longer provide permanency for N.M. because her medical condition and need for constant supervision were too overwhelming for their family. However, the family agreed to continue caring for N.M. until Lutheran located another suitable placement.

¶ 10 Due to his lack of participation in services and cooperation with the caseworkers, Lutheran recommended the termination of respondent's parental rights. The trial court agreed with Lutheran's assessment and determined it was in the best interest of N.M. to terminate respondent's parental rights. The court noted respondent had not played a custodial role or any other significant role in N.M.'s life. Further, respondent's incarceration would continue for at least another 18 months. The court found that a life of uncertainty was not in N.M.'s best interest, particularly where she suffered from cerebral palsy and required consistent and constant care.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, respondent argues the trial court's best-interest finding was against the manifest weight of the evidence.

¶ 14 Once the trial court finds a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). At the best-interest stage, the court determines whether the State's case demonstrates by a preponderance of the evidence that termination of parental rights is in the best interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.*

¶ 15 The focus of the best-interest hearing is on determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

"(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).

¶ 16 Respondent asserts the trial court's finding of unfitness did not compel a finding that it was in N.M.'s best interest to terminate his parental rights. See *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002) ("Although a parent may be unfit to have custody of her children, it does not follow automatically the parent cannot remain the children's legal parent with the attendant rights and privileges."). Specifically, respondent argues the grounds of the

State's petition seeking the termination of his parental rights stemmed from his disputed status as a sex offender. We initially note this argument is a mischaracterization of the petition for termination of parental rights. Contrary to respondent's argument, the allegations in the petition did not stem solely from his conviction for a sex offense but also alleged he failed to make reasonable progress or maintain a reasonable degree of interest, concern, or responsibility toward N.M.

¶ 17 Regardless, we find respondent's argument unpersuasive. Respondent contends the trial court lacked sufficient information on the postconviction proceedings from Wisconsin from which respondent asserts his conviction was reversed, and therefore should have given the conviction little weight. First, it appears the court gave that information little to no weight, as the court's ruling focused on N.M.'s special needs and respondent's inability to provide permanency for N.M. Second, despite respondent's argument that he was awaiting documentation as to his conviction in Wisconsin, he has never presented any evidence to the court demonstrating his Wisconsin conviction was overturned. Thus, when presented only with respondent's self-serving statement that his Wisconsin conviction was overturned, the court was not required to believe him. See *Stapp v. Jansen*, 2013 IL App (4th) 120513, ¶ 17, 988 N.E.2d 234 (it is the trial court's duty to determine the credibility of the witnesses).

¶ 18 The overwhelming evidence in the record supports the trial court's best-interest finding. Though it is unfortunate N.M. has not yet found permanence, which is an important consideration for the court, Lutheran was searching for a permanent placement that could address her specialized medical needs while protecting her physical health and safety. See 705 ILCS 405/1-3(4.05)(a) (West 2012). Respondent would not be in a position to provide permanence until *at least* September 2016 when released from custody and, even then, he would need to

participate in services and cooperate with Lutheran prior to the court returning guardianship to him. Given his history with Lutheran, in which he has failed to communicate, cooperate, or participate in services, respondent's ability to provide permanence in the near, or even distant, future is highly unlikely. See 705 ILCS 405/1-3(4.05)(g) (West 2012). His lack of a relationship with N.M. also favors the court's finding, as N.M. has formed no attachment to him. See 705 ILCS 405/1-3(4.05)(d) (West 2012). Additionally, respondent's incarcerations demonstrate he is unable to provide stability for N.M. See 705 ILCS 405/1-3(4.05)(g) (West 2012).

¶ 19 Accordingly, we conclude the trial court's best-interest finding is not against the manifest weight of the evidence.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the trial court's judgment.

¶ 22 Affirmed.