

NOTICE

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2015 IL App (4th) 150631-U
NOS. 4-15-0631, 4-15-0633 cons.

FILED
December 3, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Edgar County
v. (No. 4-15-0631))	No. 13JA2
AUTUMN KENNEDY,)	
Respondent-Appellant.)	
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)	No. 13JA3
In re: Z.K., a Minor)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-15-0633))	Honorable
AUTUMN KENNEDY,)	Matthew L. Sullivan,
Respondent-Appellant.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The order of the trial court finding it in the best interests of the minors to terminate respondent mother's parental rights is affirmed.
- ¶ 2 In January 2013, the State filed a neglect petition as to T.W. (a male minor born July 8, 2008) and Z.K. (a female minor born November 7, 2009). Respondent, Autumn Kennedy, is the mother of the minors. In April 2013, the trial court found the minors neglected as the result of physical abuse by respondent's paramour. In June 2013, custody and guardianship were placed with the Department of Children and Family Services (DCFS). Thereafter, an amended motion for termination of respondent's parental rights was filed in March

2015. By an order dated July 1, 2015, the trial court terminated respondent's parental rights as to both minors. Respondent appeals, contending the court's finding she was unfit was against the manifest weight of the evidence, as was the finding it was in the minors' best interests to terminate her parental rights.

¶ 3 We affirm.

¶ 4 I. BACKGROUND

¶ 5 On April 2, 2013, respondent admitted T.W. and Z.K. were neglected because their environment was injurious to their welfare as a result of respondent's failure to protect them from physical abuse by her paramour, pursuant to statute (705 ILCS 405/2-3(1)(b) (West 2012)). At the June 4, 2013, dispositional hearing, respondent agreed the children should be made wards of the court and DCFS would have guardianship and custody of both minors.

¶ 6 At a permanency hearing on June 3, 2014, Lindsay Howell, the foster-care caseworker for T.W. and Z.K., testified she had no contact with respondent since January 30, 2014. Respondent had last visited with the children on February 11, 2014. Respondent's whereabouts and living arrangements had been unknown for most of the case. Respondent had been unsuccessfully discharged from all services and had no contact with Howell for many months. The court changed the permanency goal from return home in 12 months to substitute care pending court determination of termination of parental rights.

¶ 7 On February 19, 2014, the State filed a motion to terminate parental rights. On December 2, 2014, the father of the minors surrendered his parental rights. He is not a party to this appeal. On March 10, 2015, the State filed an amended motion for termination of parental rights, alleging respondent was unfit for the following reasons: she (1) had abandoned the minors (750 ILCS 50/1(D)(a) (West 2014)); (2) had failed to maintain a reasonable degree of

interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)); (3) had deserted the minors for more than three months preceding the commencement of the amended motion (750 ILCS 50/1(D)(c) (West 2014)); (4) had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children from her (750 ILCS 50/1(D)(m)(i) (West 2014)); and (5) failed to make reasonable progress toward the return of the children to her within nine months after the adjudication of neglected minors under section 2-3 of the Juvenile Court Act of 1987 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 8 The trial court heard evidence of unfitness on April 28, 2015. Amber Houston, a foster-care caseworker, testified T.W. and Z.K. were taken into protective custody on January 17, 2013, following a hotline report from their school. T.W. had a "goose egg" on his head, marks on his cheek and neck, and a "busted lip." As a result of an investigation, respondent's paramour was charged with abusing T.W. and was serving a sentence of imprisonment in the Department of Corrections (DOC).

¶ 9 According to respondent's service plan, she was to complete parenting education, anger management, individual psychotherapy, and obtain a safe, stable home and a legal means of support so she could meet her family's basic needs. Respondent was also to complete domestic-violence education. Although she was dismissed from the parenting classes for non-attendance, she was able to apply what she learned to her parenting skills and so was rated satisfactory on this goal.

¶ 10 Respondent rated "unsatisfactory" on the goals of individual psychotherapy, financial support, anger management, safe and stable home, and domestic-violence education. Between April 2, 2013, and January 2, 2014, respondent did not successfully complete any of her service-plan goals, other than parenting classes. From the adjudicatory hearing to date, she had

not completed any of those goals.

¶ 11 Despite being offered weekly visitation, respondent had not seen the children since February 18, 2014, and her visits had been inconsistent from October 2013 until February 2014. Houston knew of no reason preventing respondent from exercising her visitation with the children. Respondent was living in the same town where the children were in foster care. Respondent had provided no support, supplies, or toys to the children while the case had been pending. The last time respondent was in court was June 3, 2014, when she showed up late.

¶ 12 Houston stated respondent had not exhibited any degree of interest, concern, or responsibility for the children's welfare since February 2014.

¶ 13 Respondent chose not to testify or present any evidence at the fitness hearing. The trial court found respondent unfit pursuant to statute (750 ILCS 50/1(D)(a), (b), (c), (m)(i), (m)(ii) (West 2014)).

¶ 14 On June 23, 2015, the trial court held the best-interests hearing. Caseworker Houston testified T.W. and Z.K. had been in foster care with Andy and Shelly Goodwin since December 26, 2013. Both children expressed their desire to stay with the Goodwins, who were interested in adopting them. The children and the Goodwins showed affection for each other and the children had a sense of security in the Goodwins' home. Houston testified to her opinion termination of respondent's parental rights was in the children's best interests. The children were comfortable and their needs were being met in the Goodwins' home. T.W. and Z.K. stated they loved the Goodwins and wanted to stay in that home. Houston also testified the children do not ask about their mother.

¶ 15 The foster mother, Shelly Goodwin, testified she quit her job to be a full-time mother to T.W. and Z.K. When T.W. first arrived, he was a very angry little boy, hitting

himself, having outbursts, and never laughing. Now, Goodwin testified, T.W. is a chatterbox, laughs all the time, and is very happy. The children and the Goodwins are attached to each other. In Shelly's opinion, it would be horrible and very disruptive for the children if they were removed from the Goodwins' custody. She and her husband intend to adopt the children if respondent's rights are terminated.

¶ 16 Andy Goodwin testified similarly to Shelly.

¶ 17 Respondent testified next. She admitted there was a period of time when she did not visit the children or do what was required of her by the service plan. She stated she had started therapy and it was her opinion it would be better for the children to be with her rather than a foster family.

¶ 18 On cross-examination, respondent admitted she had not visited the children since February 2014, almost a year and a half. She did not start working on the service plan until after the fitness hearing in April 2015. Respondent also admitted the children had not had a stable home until they lived with the Goodwins.

¶ 19 The trial court found it in the children's best interests to terminate respondent's parental rights.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, respondent argues the State failed to prove her unfit by clear and convincing evidence and the trial court's order terminating her parental rights was not in the best interests of the minors.

¶ 23 A. Fitness Determination

¶ 24 A parent will be deemed unfit if the State proves, by clear and convincing

evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 25 We note the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). Accordingly, we begin our analysis with respondent's argument the trial court's finding she failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare was against the manifest weight of the evidence.

¶ 26 When considering whether a parent is unfit for failure to maintain a reasonable degree of interest, concern, or responsibility for a child, "the parent's efforts to communicate with and show interest in the child, not the success of those efforts," are key. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 68, 824 N.E.2d 221, 226 (2005) (quoting *In re Adoption of Syck*, 138 Ill. 2d 255, 279, 562 N.E.2d 174, 185 (1990)). The State is required to prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). As noted above, we will reverse a finding of unfitness only where it is against the manifest weight of the evidence. *In re C.W.*, 199 Ill. 2d 198, 211, 766 N.E.2d 1105, 1113 (2002).

¶ 27 The evidence at the fitness hearing showed respondent had not visited her children in over a year. Nothing prevented her from exercising her visitation rights. She had not been hospitalized or incarcerated between February 2014 and April 28, 2015. She lived in the same town as the children. She did not provide any supplies or gifts to the children or call them

at the foster home. Respondent had not even begun working on her service plan at the time of the fitness hearing. The evidence overwhelmingly supported a finding of unfitness on the basis respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare.

28 B. Best-Interests Determination

¶ 29 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the children's interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interests stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* at 364, 818 N.E.2d at 1227. 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 children's best interests those rights be terminated. *Id.* at 366, 818 N.E.2d at 1228.

¶ 30 When considering whether termination of parental rights is in a child's best interests, 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 2014). These include the following:

"(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, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults

believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(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)(a) to (j) (West 2014).

¶ 31 The trial court's finding termination of parental rights is in a child's best interests will not be reversed on appeal 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).

¶ 32 Here, the children were in a loving, stable foster home. The Goodwins were willing to adopt T.W. and Z.K., the children were attached to the Goodwins, and the Goodwins loved them and were meeting all of the children's needs. Respondent did not begin to perform the bulk of her obligations under the service plan until *after* the fitness hearing. Her inconsistency in visiting the children and her later total abstention from visitation was harmful to her children. Clearly, the children wanted to stay with the Goodwins, and equally clearly, their placement with the Goodwins was in their best interests. The trial court did not err in so finding.

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.