

NOTICE

Decision filed 10/15/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 150189-U

NO. 5-15-0189

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> M.W., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 09-JA-214
)	
Joyce S.,)	Honorable
)	Janet Heflin,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's determinations that the respondent was unfit and that the termination of her parental rights was in the minor's best interest are not contrary to the manifest weight of the evidence.

¶ 2 The respondent, Joyce S., appeals the order entered by the circuit court of Madison County terminating her parental rights of the minor child, M.W. We note that the minor's biological father, Jackie W., is not a party to this appeal. For the following reasons, we affirm.

¶ 3 On November 4, 2007, Joyce S. gave birth to her daughter, M.W. M.W. was born

premature at 23 weeks gestation, and remained hospitalized indefinitely at that time. In July 2008, M.W. was transferred to Ranken Jordan Hospital, a pediatric specialty hospital in Maryland Heights, Missouri, due to her medical complexities. As a result of her premature birth, M.W. was developmentally delayed, suffered from bronchopulmonary dysplasia, cerebral atrophy, and eczema, and required both a G-tube and a tracheotomy.

¶ 4 The State's participation in this case began on January 11, 2009, after the State was notified that Joyce S. physically assaulted a respiratory therapist at Ranken Jordan Hospital, in an attempt to prevent the therapist from providing medical care to M.W. Joyce S. was removed from the hospital and arrested, and the Illinois Department of Children and Family Services (DCFS) was immediately contacted.

¶ 5 On August 21, 2009, the State filed a neglected child petition, requesting that M.W. be adjudicated a ward of the court because Joyce S. and Jackie W. did not provide the proper or necessary support, education, medical, or other remedial care for the minor's well-being. Specifically, the petition alleged that both parents had failed to complete necessary specialized medical training and had failed to provide adequate care to and supervision over M.W., and that Jackie W. had failed to visit M.W.

¶ 6 The petition also alleged that M.W. was an abused minor because Joyce S. had created a substantial risk of physical injury to M.W. by means which would likely cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function. The petition further alleged that Joyce S. had a history of violent crimes, had physically assaulted a medical staff member, had become verbally belligerent towards hospital staff, and had attacked M.W.'s aunt and cousin with a knife. In addition,

the petition alleged that Joyce S. failed to take prescribed bipolar medication and was incapable of caring for M.W. due to her own developmental, behavioral, and mental health impairments.

¶ 7 A shelter care hearing was scheduled for August 21, 2009. The circuit court determined that there was probable cause for the filing of the State's petition. The court awarded temporary custody to DCFS.

¶ 8 On November 19, 2009, the circuit court entered adjudicatory and dispositional orders finding that M.W. was an abused and neglected minor as defined by section 2-3 of the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2008)). Specifically, the court entered an adjudicatory order finding that M.W. was neglected because Joyce S. and Jackie W. had failed to provide support, education, and remedial care (705 ILCS 405/2-3(1)(a) (West 2008)), and that the minor was in substantial risk of physical abuse (705 ILCS 405/2-3(2)(ii) (West 2008)). The court entered a dispositional order finding, for reasons other than financial circumstances alone, that Joyce S. and Jackie W. were unfit and unable to care for, protect, train, educate, supervise, or discipline the minor, and that placement with her parents was contrary to her health, safety, and best interest. The court placed custody and guardianship with DCFS.

¶ 9 On July 15, 2010, M.W. was discharged from Ranken Jordan Hospital, roughly two years and eight months after her birth. M.W. was placed with her maternal aunt, Ileatha Suggs, as she had received specialized medical training to care for M.W.

¶ 10 On June 26, 2014, M.W. was removed from her aunt's home due to pending criminal allegations against M.W.'s maternal uncle who resided in the home. On July 17, 2014, M.W. was placed with her current foster parents, Rebekah and Jeff Strate.

¶ 11 On December 1, 2014, the State filed a motion for termination of parental rights and for appointment of a guardian with the power to consent to adoption, alleging that Joyce S. was unfit because she had (1) failed to maintain a reasonable degree of interest, concern, or responsibility for M.W.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failed to make reasonable efforts to correct the conditions that were the basis of the removal of M.W. within nine months after an adjudication of abuse and neglect (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) failed to make reasonable progress towards M.W.'s return within any nine-month period after the end of the initial nine-month period following an adjudication of abuse and neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 12 On April 2, 2015, the circuit court conducted a hearing on the State's motion to terminate parental rights. Amanda Ramsey, a child program case nurse employed by the Illinois Mentor program, and assigned to M.W.'s case since October 2012, testified as to the fitness of Joyce S. to parent and care for M.W. She explained that M.W. had extensive daily treatment needs, which included pulse monitoring, feedings, and medication administration through a G-tube, as well as the prevention of infection associated with the G-tube and tracheotomy.

¶ 13 Ramsey testified that Joyce S. regularly attended M.W.'s medical appointments; however, she explained that Joyce S. lacked the cognitive ability to understand the necessary training that was required to properly care for M.W. Further, she explained

that Joyce S. was unreceptive to medical staff assistance at times. She testified that Joyce S. often began verbal altercations, threatened nurses, and ignored medical providers' orders. She explained that Joyce S. would become agitated during visits and often lacked realistic expectations of M.W.'s ability to eat and take care of herself. In fact, Ramsey testified that in October 2014, Joyce S. fed M.W. too fast, which in turn caused aspiration pneumonia. Ramsey believed that Joyce S. could not provide adequate care to M.W.

¶ 14 We note that Joyce S. maintains that the circuit court erred in finding that she was unfit based on her inability to discharge parental responsibilities pursuant to section 1(D)(p) of the Illinois Adoption Act (750 ILCS 50/1(D)(p) (West 2012)), due to the State's inability to provide competent evidence regarding her mental condition from a licensed psychiatrist, licensed clinical social worker, or clinical psychologist. However, this is a consideration irrelevant in the court's finding of unfitness. Rather, the State alleged, and the court concluded, as stated above, that Joyce S. was unfit pursuant to section 1(D)(m)(ii). Thus, the respondent's contention is meritless.

¶ 15 On May 1, 2015, the circuit court conducted a best interest hearing. Rebecca Auge, M.W.'s nurse since August 20, 2014, testified. Auge testified that she worked with M.W., Monday through Friday from 7 a.m. to 5 p.m., as she was in need of 24-hour continuous medical attention. Auge testified that M.W. required feedings every three hours, blood sugar monitoring, observation of her pole socks every second while she slept and at least every hour when awake, as well as regular oxygen therapy and routine lab work. Auge explained that during visits she often had to redirect Joyce S. to properly care for M.W. In addition, Joyce S. was often unreceptive to assistance and displayed an

unwillingness to learn the ever-changing care techniques necessary to ensure M.W.'s safety and well-being.

¶ 16 On May 1, 2015, Angela Lefler, the program supervisor at Children's Home and Aid, assigned to M.W.'s case since May 2013, testified as to the minor's best interest. According to Lefler, the goals of Joyce S.'s service plan were psychological evaluation, anger management treatment, mental health services, individual counseling, parenting classes, medical training, housing, and income.

¶ 17 Joyce S. completed psychological evaluations on December 6, 2010, and April 4, 2014. Lefler explained the December 6, 2010, psychological evaluation results, which indicated that Joyce S. had posttraumatic stress disorder, bipolar disorder depressed type, dysthymic disorder, learning disabilities, and general anxiety with panic attacks. Joyce S. was recommended to participate in trauma therapy, parenting education, medical training, ongoing mental health treatment, and behavioral counseling focused on identifying triggers and learning new adaptive coping skills.

¶ 18 Lefler also explained the psychological evaluation results from April 4, 2014, which indicated that Joyce S. had posttraumatic stress disorder, generalized anxiety, persistent depressive disorder, persistent hallucinations in full remission, and other specified schizophrenia spectrum. The evaluation results concluded that reunification was not appropriate at that time, as a result of Joyce S.'s impaired cognitive abilities and the presence of multiple psychiatric diagnoses, as well as M.W.'s complex medical needs. Given her history of mental health concerns, she was recommended for continued

psychiatric and other psychological intervention and treatment, participation in anger management, and continued supervised visitation.

¶ 19 A permanency hearing report filed on February 10, 2015, indicated that mental health counseling remained a service plan goal for Joyce S. Lefler testified that Joyce S. had failed to provide documentation that she regularly took prescribed medication. Lefler explained that it was obvious when Joyce S. was medicated, noting that without medication she was easily triggered. Lefler further explained that Joyce S. failed to employ coping skills from counseling, as there had been a number of incidents where she had difficulty controlling her temper with medical staff, as well as with M.W.

¶ 20 A permanency hearing report filed on April 2, 2015, indicated that parenting and visitation remained service goals for Joyce S. Lefler testified that despite Joyce S.'s completion of parenting classes in 2012, 2013, and 2014, parenting remained a service plan goal because she continued to possess unrealistic goals for M.W. and failed to employ new parenting skills. Lefler explained that Joyce S. would often treat M.W. as a normal seven-year-old, failing to take into consideration her limitations due to her medical complexities. As a result, Joyce S. would become agitated when caring for M.W.

¶ 21 Lefler testified that despite Joyce S.'s attendance at most of M.W.'s medical appointments, aside from July 2014 through August 2014, when she was incarcerated at Cook County jail in Chicago, Illinois, medical training remained a service plan goal. Lefler testified that Joyce S. failed to fully participate in trainings provided by hospital staff. She explained that Cardinal Glennon Hospital requested that trainings with Joyce

S. cease until it was more medically foreseeable that M.W. would be discharged. She further testified that while M.W. was placed with Ileatha Suggs, case notes indicate that Joyce S. was disengaged in training, had refused to change diapers in the past, and often relied heavily on home health nurses to care for M.W.

¶ 22 Lastly, Lefler testified that Joyce S. had failed to maintain stable housing throughout the life of the case, and that her current one-room studio apartment was not suitable to meet M.W.'s needs. Lefler maintained that Joyce S. was incapable of caring for M.W. as she was unstable, unreceptive to assistance, and lacked appropriate insight regarding M.W.'s extensive medical needs.

¶ 23 After hearing the evidence on April 2, 2015, and May 1, 2015, the circuit court made the following findings: the State had proven that Joyce S. had failed to make reasonable progress toward M.W.'s return during any nine-month period following the adjudication pursuant to section 1(D)(m)(ii) of the Adoption Act; and that the State had proven that termination of Joyce S.'s parental rights was in the best interest of M.W. Joyce S. filed a timely appeal on May 21, 2015.

¶ 24 We consider first the respondent's contention that the circuit court erred in finding Joyce S. unfit to parent M.W. Joyce S. argues that the circuit court failed to consider her completion of all services at one point during the duration of this case, except for fully understanding the minor's medical needs, and obtaining and maintaining suitable housing at all times through the life of the case. She maintains that her mental condition, for which she has received treatment, has precluded her from making reasonable progress at

all times. Joyce S. further argues that she has consistently visited M.W. over the life of the case for which a noticeable bond exists.

¶ 25 In response, the State maintains that aside from Joyce S.'s completion of many service plan tasks, she received unsatisfactory ratings due to a lack of progress in demonstrating learned skills, and that she failed to present evidence that her mental conditions have precluded her from making reasonable progress towards the completion of her service plan.

¶ 26 The Adoption Act provides a two-stage process for involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2012). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* When determining a parent's fitness, the court does not consider the best interests of the child but, rather, must focus on whether the parent's conduct falls within one or more of the several grounds of unfitness as described in section 1(D) of the Adoption Act. *In re G.L.*, 329 Ill. App. 3d 18, 23 (2002). Each case concerning parental unfitness is *sui generis* and requires a close analysis of its unique facts. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). Consequently, factual comparisons to other cases by reviewing courts are of little value. *Id.*

¶ 27 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility

and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001). Further, the circuit court is given broad discretion and great deference in matters involving minors. *Id.* Thus, a circuit court's determination that clear and convincing evidence of a parent's unfitness has not been shown will not be disturbed on review unless it is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is readily apparent. *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005).

¶ 28 With respect to the circuit court's finding that Joyce S. was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act, the benchmark for determining reasonable progress encompasses the parent's compliance with the service plan, as well as the court's directives, in light of the conditions which led to the minor's removal, and in light of other conditions which later became known and which would prevent the court from returning the minor to the parent's custody. *In re Joshua K.*, 405 Ill. App. 3d 569 (2010).

¶ 29 Here, the completion of many service plan tasks are still in need of attention, which includes parenting classes, anger management treatment, mental health services, medical training, and housing. Although the circuit court indicated that Joyce S. completed parenting classes, this task remains a service plan goal, as she has failed to utilize learned parenting skills during visitation and possesses unrealistic expectations of M.W.

¶ 30 The circuit court also indicated that Joyce S. underwent two psychological evaluations in 2010, and again in 2014, and successfully completed anger management in 2012. However, Joyce S. was recommended for anger management treatment following

the most recent psychological evaluation in 2014, but failed to comply. In addition, the court indicated that she was rated unsatisfactory for mental health counseling, due to inconsistent attendance, lack of progress, and failure to take prescribed medication.

¶ 31 The circuit court recognized that Joyce S. consistently attended M.W.'s medical appointments; however, testimony supported the court's determination that Joyce S. repeatedly failed to learn the proper training to care for M.W., and that she was often unreceptive to the advice of medical professionals. Lastly, testimony reveals that Joyce S. has demonstrated an inability throughout the life of the case to maintain stable housing. Thus, we conclude that the circuit court's determination finding Joyce S. to be unfit is supported by the record and is not against the manifest weight of the evidence.

¶ 32 The next issue we consider is whether the circuit court erred in finding that the State proved by a preponderance of the evidence that termination of Joyce S.'s parental rights was in the best interest of M.W. The State argues, and we agree, that there is ample evidence to support the court's determination.

¶ 33 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the child's best interest to terminate parental rights. 705 ILCS 405/2-29(2) (West 2012). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004).

¶ 34 When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). A circuit court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 35 The record reveals that M.W. has lived with her current foster parents, Rebekah and Jeff Strate, since July 17, 2014. On May 1, 2015, Lefler explained that the Strates are medically licensed through the State of Illinois to provide 100% of the care for medically fragile children, and wish to adopt M.W. at this time. The Strates continually receive ongoing medically specialized training and provide M.W. with a specialized foster home that meets her complex needs. In addition, Lefler testified that M.W. has flourished in her new setting, has gained weight, and has bonded with the entire Strate family, which includes the Strates' adopted 18-year-old son, 7-year-old daughter, and 17-

year-old foster child. M.W. refers to her foster parents as "mom" and "dad." Lefler testified that it would be detrimental to remove M.W. from the Strates' care.

¶ 36 While it is clear that Joyce S. loves M.W., the record supports the circuit court's conclusion that she has failed to maintain her own significant mental health issues. M.W. is a seven-year-old girl with significant medical complexities who is thriving in a specialized foster home with foster parents who are medically trained to provide for her physical, emotional, and psychological needs, and that removal from her current home would be detrimental to her well-being. Thus, the record supports the court's finding that Joyce S.'s instability, coupled with M.W.'s ever-changing, complex medical conditions, make her unable to care for and ensure M.W.'s safety. Therefore, we conclude that the circuit court's termination of Joyce S.'s parental rights was not against the manifest weight of the evidence. Accordingly, we affirm the judgment of the circuit court of Madison County.

¶ 37 Affirmed.