2016 IL App (1st) 152264-U
No. 1-15-2264
January 26, 2016

SECOND DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF MARIAH W.,	)	Appeal from the
	)	Court Circuit of
Minor-Respondent-Appellee,	)	Cook County.
	)	
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	11 JA 56
	)	
Petitioner-Appellee,	)	
	)	
v.	)	The Honorable
	)	Kimberly D. Lewis,
GLORIA W.,	)	Judge Presiding.
	)	
Respondent-Appellant).	)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

O R D E R

¶ 1 *Held*: Where a sound strategic purpose might have led appellant's attorney not to object to some exhibits, the failure to object does not show ineffective assistance of counsel. The appellate court considers the entire record on appeal when determining whether the trial court's findings of fact are against the manifest weight of the evidence.

¶ 2 Following a bench trial, the trial court terminated Gloria W.'s parental rights with respect to her daughter, Mariah W. On appeal, Gloria argues that she received ineffective assistance of counsel, the trial court committed plain error by allowing hearsay into evidence, and the trial court's findings were against the manifest weight of the evidence. We find that Gloria

has not overcome the presumption that her attorney had sound strategic reasons for her challenged choices, the trial court did not commit plain error, and the evidence supports the trial court's findings. Therefore, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 Gloria gave birth to Mariah on December 6, 2009. In January 2011, Gloria brought Mariah to a hospital to get treatment for an eye injury. The doctor who examined Mariah contacted the Department of Children and Family Services (DCFS) because Gloria's answers to his questions raised concerns for Mariah's safety and Gloria's ability to take care of her. The trial court granted DCFS's petition for temporary custody of Mariah. DCFS placed Mariah in the care of Gloria's sister, and later Gloria's cousin took care of Mariah.

¶ 5 DCFS began providing services to improve Gloria's ability to parent Mariah. DCFS personnel investigated Gloria's medical history. In 2005, doctors had diagnosed Gloria as suffering from schizoaffective disorder. She had several admissions to a nursing and rehabilitation center from 2005 to 2007, and that center transferred Gloria to a hospital when it could no longer handle her "combative, hostile, aggressive" behavior. Gloria's father brought her to a second hospital in 2007, and her mental illness led to her residence in a nursing home from May 2007 until February 2009. Doctors noted that her condition improved somewhat with medication.

¶ 6 In April 2011, three months after the injury to Mariah, the therapist working with Gloria reported that, despite the prescription of medication, Gloria "appear[ed] to present with active psychotic symptoms," which included "disorganized speech, tangential thought

patterns, boundary issues, inappropriate affect, delusions of persecution and grandeur, bizarre dress and poor personal hygiene."

¶ 7 In June 2011, the trial court found Mariah neglected due to her injurious environment. The court named D. Jean Ortega Piron of DCFS as Mariah's guardian. Gloria appealed from the dispositional order and the appellate court affirmed the trial court's order. *In re M.W.*, 2011 IL App (1st) 111930-U.

¶ 8 DCFS continued to provide services and assess Gloria's progress. In July 2011, the caseworker reported that Gloria had made satisfactory progress, as she had participated in therapy and parenting classes. But Gloria's therapist reported in August 2011 that Gloria "continue[d] to appear to display behaviors indicative of active psychosis," and that therapy had not helped. The therapist recommended suspending therapy until medication improved Gloria's condition.

¶ 9 In a comprehensive evaluation of Gloria's ability to parent, performed from June to November 2011, a team working for DCFS concluded that Gloria continued to suffer from schizoaffective disorder. According to the report:

> "[Gloria] appears to have limited insight into her own mental health condition. *** [Gloria] has poor judgment. *** [Gloria] also appears to struggle with parenting choices such as nutrition and developmental needs. Her lack of insight and poor judgment increase the risk of harm if Mariah were to be returned to her care. Despite her reported compliance with her medication treatment, [Gloria] continues to present with symptoms of her mental illness, including disorganized thoughts, poor hygiene and self-care skills, and inappropriate behavior with her daughter.

> [Gloria] is at high risk for future maltreatment or neglect of her child due to her limited insight, poor judgment, and history of noncompliance with treatment." (Emphasis in original.)

¶ 10 In January 2012, Gloria's caseworker wrote that Gloria's "[p]rognosis is poor at this time. There is significant concern regarding the level of [Gloria's] ability to safely parent Mariah due to the severity that her mental health impacts her daily functioning." The caseworker said that Gloria "demonstrates lack of impulse or anger control," and she lacked a supporting system that could help her parent Mariah. The caseworker concluded that Gloria "is unable to adequately protect the child from risk of harm."

¶ 11 The caseworker repeated the same basic findings in her assessment dated July 2, 2012. Gloria's condition had not improved.

¶ 12 The Juvenile Court Clinic performed a more extensive assessment in December 2012. The psychologist reported that Gloria suffered from "mental impairment" with "a Full Scale IQ of 67." The psychologist summarized:

> "It is evident that her Schizoaffective Disorder, Bipolar Type and Borderline Intellectual Functioning significantly limit her capacity to respond to problems and crises in a focused, judicious and appropriate manner. ***
>
> ***
>
> *** It is this psychologist's clinical opinion, with a reasonable degree of psychological certainty, that [Gloria's] current inability to discharge parental responsibilities will likely extend throughout her lifetime. Schizoaffective Disorder, Bipolar Type is a chronic and unremitting illness that tends not to be one that individuals recover from,

> but one that individuals experience and must manage their entire lifetimes. Even though she reports, as do records and [Gloria's therapist], that she is medication compliant, her symptoms have not fully remitted, as evidenced by her ruminations, tangential thinking, and occasional incoherence. In addition, she has a long history of occasional non-compliance with medication, which indicates it is not fully clear if she would sustain compliance for decades to come, especially if she plans to become pregnant again and/or is not monitored by DCFS. Furthermore, [Gloria's] mental impairment of Borderline Intellectual Functioning is an unchanging and lifelong condition that does not improve with age or additional learning and training. It is highly likely that [Gloria's] diagnoses will render her unable to discharge parental responsibilities for Mariah, or any child, for her lifetime."

¶ 13 In April 2013, Gloria signed a form stating that, if her cousin sought to adopt Mariah, Gloria would consent to the adoption and the termination of her parental rights. The trial court entered a new permanency order setting adoption by the cousin as the new goal. Because of the new permanency order, DCFS stopped providing services to Gloria. The State offered early intervention services for Mariah due to Mariah's developmental delays.

¶ 14 In September 2013, the day care that had looked after Mariah told Gloria's cousin that Mariah could not return. Gloria's cousin did not adopt Mariah. The trial court vacated Gloria's conditional consent to adoption and the termination of her parental rights. DCFS placed Mariah with a new foster parent, unrelated to Gloria, in May 2014. The State filed a new petition for termination of Gloria's parental rights, arguing that Gloria failed to make reasonable progress toward the return of her child, and Gloria's mental illness or impairment

rendered her unable to discharge her parental responsibilities. See 750 ILCS 50/1(D)(m); (D)(p) (West 2014).

¶ 15 The bench trial on the petition to terminate Gloria's parental rights took place in May and July 2015. The State relied on the testimony of a caseworker, the evaluations dated March 2011, December 2012 and April 2015, and the DCFS service plans dated March 2011, July 2011, January 2012, July 2012, December 2012, June 2013, December 2013, and July 2014. Gloria's attorney did not object to any of the exhibits.

¶ 16 In the April 2015 evaluation, the psychologist wrote that Gloria "did not recognize instances *** of potential danger and therefore was unable to safely protect a child. *** [Gloria] did not know how to respond when a school had indicated that her child may be in need of special education services. *** Results from this measure indicated that [Gloria] did not have the capacity to establish and maintain herself in a parental role with a child and to provide the structure and safety a child needs." The psychologist concluded, "[Gloria's] well below average intellectual functioning, the oddities in her thinking and distorted manner in which she perceives reality, inability to recognize danger and capacity to establish and maintain herself in a parental role, makes it unlikely she would ever be able to safely and adequately care for a child without the risk of neglect and other forms of child mistreatment."

¶ 17 The trial court found that Gloria had failed to make reasonable progress toward the return of Mariah, and her mental illness and impairment rendered her incapable of taking care of Mariah. The court quoted the 2015 evaluation in its ruling, particularly noting that the psychologist found that Gloria's condition made it unlikely she could ever safely care for a child.

¶ 18 The trial court proceeded immediately to the issue of whether termination of Gloria's parental rights would serve Mariah's best interests. The foster mother testified about her bond with Mariah and her ability to provide a safe and nurturing environment for Mariah. The foster mother wished to adopt Mariah. The caseworker testified about Mariah's special needs as a developmentally delayed child. In the caseworker's opinion, the foster family provided an appropriate environment for Mariah's development, and adoption by the foster family would serve Mariah's best interests.

¶ 19 The court found that termination of Gloria's parental rights would serve Mariah's best interests. The court appointed Debra Dyer-Webster of DCFS as guardian with the right to consent to Mariah's adoption. Gloria now appeals.

¶ 20 ANALYSIS

¶ 21 Gloria argues on appeal (1) her attorney provided ineffective assistance of counsel by failing to object to the admission of the reports into evidence; (2) the trial court committed plain error by allowing the reports into evidence; and (3) the court's findings concerning Gloria's fitness and Mariah's best interests are against the manifest weight of the evidence.

¶ 22 Ineffective Assistance of Counsel

¶ 23 For claims of ineffective assistance of counsel in juvenile neglect cases, the appellant must show that her counsel's representation fell below an objective standard of reasonableness, and the deficiencies prejudiced the appellant. *In re D.M.*, 258 Ill. App. 3d 669, 674 (1994). The appellant must overcome the presumption that counsel had sound strategic reasons for her actions. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32.

¶ 24 Gloria claims that her attorney should have objected to the reports as hearsay. The objection, if sustained, would have required the State to put on the witness stand the psychologists and social workers who wrote the reports. The record on appeal includes nothing about whether Gloria's attorney interviewed the psychologists and social workers who treated Gloria and reported on her condition. On this silent record, we cannot conclude that Gloria's attorney failed to interview all witnesses necessary for her to prepare for trial. See *In re Ch. W.*, 399 Ill. App. 3d 825, 829-30 (2010); *People v. Ligon*, 365 Ill. App. 3d 109, 122 (2006). Interviews may well have persuaded the attorney that the treaters' testimony would damage Gloria's case even more than the reports did. Gloria presents no evidence that her attorney could have elicited useful testimony from the authors of the reports if they had testified at trial. In this case, as in *Charles W.*, 2014 IL App (1st) 131281, ¶ 38, the attorney may have made a strategic decision not to object to the hearsay. Gloria has not overcome the presumption that her attorney had sound strategic reasons for choosing not to object to the reports admitted into evidence.

¶ 25 Plain Error

¶ 26 Gloria also argues that the trial court committed plain error when it admitted the reports into evidence. Gloria's attorney, in the brief on appeal, candidly admits that "Reviewing courts [in Illinois] have not addressed whether a court ordered evaluation prepared in anticipation of litigation is admissible as a business record, under a hearsay exception as a certified and delegated record." The State claims that the courts have resolved the issue, adversely to Gloria's argument. See *In re Kenneth J.*, 352 Ill. App. 3d 967, 982-84 (2004). We find that we need not address the State's contention.

¶ 27 "The term 'plain' as used in the plain-error doctrine is synonymous with 'clear' and is the equivalent of 'obvious.' [Citation]. This means that an appellate court cannot correct an 'error' unless the error is clear or obvious under current law." *People v. Givens*, 237 Ill. 2d 311 (2010). Because Gloria concedes that no controlling precedent obviously required the court to strike the exhibits from the record, we cannot find plain error.

¶ 28 Fitness

¶ 29 The trial court found that Gloria's mental illness and impairment rendered her unfit to parent Mariah. To prove that mental illness or impairment makes a parent unfit, "the State must (1) present competent evidence that the parent suffers from a mental impairment, mental illness, or mental retardation sufficient to prevent her from discharging a parent's normal responsibilities; and (2) there must be sufficient evidence to conclude that the inability will extend beyond a reasonable time period." *In re M.M.*, 303 Ill. App. 3d 559, 566 (1999); see 750 ILCS 50/1(D)(p) (West 2014).

¶ 30 Here, at least two psychologists submitted reports stating that Gloria suffered from both a mental illness, schizoaffective disorder, and mental impairment, reflected in her low IQ. Both concluded that the illness and impairment prevented Gloria from discharging her normal responsibilities as a parent. In particular, they found that the illness and impairment left Gloria unable to recognize and protect her child from dangers, and made Gloria likely to neglect or otherwise mistreat her child. The detailed accounts of prior incidents and evidence of Gloria's disorganized thought supported the psychologists' conclusions. The evidence supports the finding that illness and impairment rendered Gloria unfit to parent Mariah.

¶ 31 The court also found that Gloria's inability to parent would extend beyond a reasonable time period. Again, the psychologists in their reports emphasized that Gloria suffered from a chronic mental illness that patients usually must manage throughout their lives, and even medication had failed to make Gloria fit to parent Mariah. Gloria's mental impairment also "is an unchanging and lifelong condition." Accordingly, one psychologist said explicitly that "[i]t is highly likely that [Gloria's] diagnoses will render her unable to discharge parental responsibilities for Mariah, or any child, for her lifetime." Another psychologist concluded similarly that Gloria's condition "makes it unlikely she would ever be able to safely and adequately care for a child without the risk of neglect and other forms of child mistreatment."

¶ 32 Gloria argues that because the trial court quoted only the second psychologist, we must ignore the first psychologist's report and other evidence in the record when we determine whether the manifest weight of the evidence supports the trial court's findings of fact. We disagree. The record does not show that the trial judge ignored evidence in the record when she made her findings. To determine whether the court's findings have adequate support in the record, we consider the entire record. See *People v. Richardson*, 234 Ill. 2d 233, 251-52, 259 (2009); *In re Sparrow*, 59 Ill. App. 3d 731, 740 (1978).

¶ 33 The record as a whole shows that Gloria has suffered from schizoaffective disorder for at least ten years. While medication improves Gloria's control of her moods, it does not render her capable of safely attending to Mariah's needs. The record supports the trial court's conclusion that Gloria's inability to parent Mariah would extend beyond a reasonable time period. See *M.M.*, 303 Ill. App. 3d at 567.

¶ 34 Because the record supports the finding of unfitness, we need not address Gloria's argument that the manifest weight of the evidence requires reversal of the finding that she failed to make reasonable progress toward the return of her child. See *M.M.*, 303 Ill. App. 3d at 567.

¶ 35 Best Interests

¶ 36 Finally, Gloria challenges the trial court's finding that termination of her parental rights will serve Mariah's best interests. "When determining whether termination of parental rights is in a child's best interests, a court must consider the following factors in the context of the child's age and developmental needs: (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." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1071-72 (2006).

¶ 37 The incident that brought Mariah to the attention of DCFS, and the opinions of the psychologists and social workers, support a conclusion that terminating Gloria's parental rights would improve Mariah's safety and welfare. Mariah has already gone through several disruptive changes as she went from Gloria's care to three different foster families. Keeping Mariah with her current foster family serves Mariah's need for permanence. See *In re J.L.*,

308 Ill. App. 3d 859, 865-66 (1999). The social worker found that Mariah's foster family had bonded with Mariah and provided her a safe and nurturing environment. Therefore, the record supports the trial court's finding that termination of Gloria's parental rights would serve Mariah's best interests.

¶ 38 CONCLUSION

¶ 39 Gloria has not overcome the presumption that her attorney made a sound strategic decision not to put Gloria's psychologists on the witness stand. The failure to object to the psychologists' reports does not show ineffective assistance of counsel. Due to the absence of binding precedent on the issue, we cannot say that the trial court committed plain error when it admitted the psychologists' reports and other documents into evidence. The manifest weight of the evidence supports the trial court's findings that Gloria's mental illness and impairment prevented her from adequately parenting Mariah, and that terminating Gloria's parental rights would best serve Mariah's interests. Accordingly, we affirm the trial court's judgment.

¶ 40 Affirmed.