2016 IL App (2d) 150955-U
No. 2-15-0955
Order filed February 16, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re CHRISTOPHER J. and FRANK W., Minors	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 12-JA-72 12-JA-73
(The People of the State of Illinois, Petitioner-Appellee, v. Cherie G., Respondent-Appellant).	)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings of parental unfitness and best interests determination to terminate parental rights were not against the manifest weight of the evidence.

¶ 2 Respondent, Cherie G., appeals from the trial court's order terminating her parental rights to her two minor children, Christopher J. and Frank W. The trial court found respondent unfit for failing to make reasonable progress toward the return of the children to her within three relevant nine-month periods. 750 ILCS 50/1(D)(m)(ii), (D)(m)(iii) (West 2014). Respondent argues that the evidence does not support the court's finding of unfitness and the determination that termination of her rights is in the children's best interests.

¶ 3 The evidence shows a pattern of respondent pursuing relationships that place the children at risk. Respondent has repeatedly gone against the recommendations of her caseworkers regarding these relationships that turn violent, and therefore, she is no closer to being reunited with her children than when they were taken into protective custody. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Adjudication

¶ 6 Christopher J. was born on August 12, 2007, and Frank W. was born on October 12, 2009. On March 13, 2012, the State filed two, one-count petitions for adjudications of neglect, alleging that respondent placed the children in an environment injurious to their welfare by engaging in domestic violence in the children's presence. The State amended the petitions to specify that the domestic violence involved her paramour at the time, Adam. See 705 ILCS 405/2-3(1)(b) (West 2014).

¶ 7 The Department of Children and Family Services (DCFS) submitted a report explaining how the agency became involved with the family. On February 28, 2012, DCFS received a report of an incident in which respondent was intoxicated and sliced Adam's pants with a knife while attempting to stab him in the leg during an argument. The children witnessed the altercation, and respondent was arrested and charged with aggravated assault and criminal damage to property.

¶ 8 On March 7, 2012, DCFS received a report of another incident in which respondent and Adam were drinking alcohol and began arguing over money. Respondent allegedly climbed on top of Adam and began striking him. Respondent, who exhibited two bumps on her forehead, reported that Adam had grabbed her by the throat, choked her, and pushed her head through a window. Respondent declined to pursue criminal charges against Adam.

¶ 9 DCFS reported that respondent had a history with the agency. Respondent was indicated for substance misuse when Christopher was born with cocaine in his system. Also, DCFS was presently investigating an allegation of inadequate supervision based on respondent leaving the children with family members in Chicago and not returning. Two other investigations involving domestic altercations between respondent and Adam were also pending.

¶ 10 On March 13, 2012, the trial court granted temporary guardianship to DCFS. The court left visitation to the discretion of DCFS and ordered respondent to cooperate with recommended services. Respondent also was ordered to submit to drug and alcohol assessments and random drug testing. On June 8, 2012, respondent stipulated to the factual basis of the neglect petition, and the children were adjudicated neglected.

¶ 11 B. Disposition

¶ 12 On September 12, 2012, the trial court held a dispositional hearing in which it reviewed respondent's progress since the adjudications of neglect. Kayla Evink, a caseworker with Children's Home + Aid Society (CH+A), the DCFS contracting agency that was providing services, submitted a report and testified. Evink testified that respondent was asked to attend classes on domestic violence, parenting, and anger management. Respondent also was asked to complete a substance abuse assessment, mental health assessment, and individual and family counseling. Upon completion of the substance abuse assessment, respondent was to attend Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings.

¶ 13 Evink reported that she had trouble contacting respondent for drug testing because respondent had moved from Winnebago County about one month before the hearing and did not have a working telephone. Evink also described a report that respondent had arrived intoxicated

and continued to consume alcohol at a memorial service for her father on July 7, 2012. Pursuant CH+A's 90-day sobriety policy, respondent could not begin services until October 7, 2012.

¶ 14 Evink testified that respondent had trouble acting appropriately during visits with the children in that she discussed the case after being asked not to. Respondent's drinking concerned Evink. The trial court found that respondent was "unfit, unwilling, and unable" to have guardianship and custody returned to her, and DCFS was granted further custody of the children.

¶ 15 C. Permanency Reviews

¶ 16 1. September 2012 to March 2013

¶ 17 On March 12, 2013, the trial court conducted a permanency review at which Evink testified that respondent had attended two AA meetings, her drug screens were negative, she was cooperating with the services, and she had made significant progress. However, respondent still needed to complete parenting and family therapy. Evink requested discretion to place the children with respondent when appropriate. The court found that respondent had made reasonable efforts between September 2012 and March 2013 and changed the goal to return home within five months.

¶ 18 At the time of the hearing, respondent was no longer living with Adam. Instead, respondent resided with Robert W., Frank's father, who had not yet engaged in services as requested. Evink reported an incident in which Robert objected to supervised visitation in the home. Robert refused to leave the home so respondent could spend time with the children, and he yelled and cursed in front of the children. Christopher asked Robert to allow the children to visit, but Robert kept arguing. He eventually left. CH+A advised against returning the children to respondent while she was living with Robert. Evink testified that CH+A would assist respondent with obtaining aid for her own housing.

¶ 19 2. March 2013 to September 2013

¶ 20 On September 10, 2013, the trial court conducted another permanency review in which Evink reported that respondent had completed individual counseling and classes on parenting and domestic violence. However, respondent was unemployed and uncooperative. Respondent failed to give Evink certificates of AA or NA attendance, and Evink's only means of communicating with respondent was through email, which had proven unreliable. Evink received no phone calls from respondent to discuss the case during the review period.

¶ 21 Respondent was no longer living with Robert and had moved into a one-bedroom apartment. She told Evink that she intended to move to Peru, Illinois, but Evink was unaware of any plans to do so. Respondent was continuing her relationship with Robert, even though her service plan encouraged her to refrain from relationships that were abusive and volatile and that did not promote a substance-abuse-free lifestyle. Respondent's history with Robert and his unsatisfactory progress during the review period indicated that the relationship was not conducive to respondent satisfying her plan requirements.

¶ 22 Evink unsuccessfully attempted to complete home visits with respondent on July 29, 2013, and August 31, 2013. During the second attempt, Evink noticed that part of respondent's apartment door was broken in several areas and the dead-bolt lock forcefully removed. In the apartment, Evink observed the dead-bolt on a table next to a glass filled with a substance that looked like beer. Evink knocked and yelled for respondent, but she remained sleeping on the couch. Twice-monthly visitation with the children was recommended, but respondent had not visited them in three months. Respondent's lack of communication with Evink and lack of visitation with the children caused Evink to advise against returning the children to respondent.

¶ 23 Respondent was directed to remain drug- and alcohol-free, but she missed three drug tests from March 2013 to October 2013, which were deemed to be positive. One of the children told Evink that respondent had used alcohol, so Evink scheduled another substance abuse assessment, which respondent did not complete. The court found that respondent had not made reasonable efforts or progress between March 2013 and September 2013.

¶ 24 3. September 2013 to March 2014

¶ 25 On March 11, 2014, the court conducted another permanency review, which respondent did not attend. Evink testified that she and respondent had minimal contact during the review period because respondent still did not have a working phone or reliable email. Respondent had not provided Evink with verification of attending AA or NA meetings. At the time, respondent was pregnant with the child of her new paramour, Kevin. Evink received a report that respondent was "using." Respondent had not yet completed the additional substance abuse assessment, and her lack of communication with Evink hindered drug testing.

¶ 26 Respondent was repeatedly encouraged to "refrain from engaging in relationships that are abusive and volatile" and to "utilize skills learned from classes when confronted with a domestic dispute." However, her new relationship with Kevin was reportedly violent, and visitation reports indicated that respondent had bruises when the children went to see her. Evink referred respondent for additional counseling upon completion of the outstanding substance abuse services because respondent's new relationship was violent and she had missed several appointments.

¶ 27 Respondent asked Evink to include Kevin in the visits with the children. Respondent was unemployed and living with Kevin in his uncle's home. A background check showed that Kevin had eight arrests and two convictions in his criminal history. Kevin had violated three orders of

protection and had been charged with telephone harassment, assault, and damage to property. Kevin also had been arrested for possession of a controlled substance. Evink opined that it was in the children's best interests to exclude Kevin from visitation. Respondent was offered weekly visitation, but her visits were "very sporadic." The court found that respondent had not made reasonable efforts or progress during the relevant period.

¶ 28 4. March 2014 to July 2014

¶ 29 On July 29, 2014, the trial court conducted a final permanency review. Respondent did not attend and her counsel did not know her whereabouts. Shelly Angelos, a child welfare supervisor of CH+A, reported that respondent still had not completed the follow-up substance abuse assessment, the individual and family counseling, the required random drug testing, or the regular visitation with the children. Respondent's visits continued to be "sporadic." The court found that respondent had not made reasonable efforts or progress during the review period and changed the goal from return home to substitute care pending court determination on the termination of parental rights.

¶ 30 D. Termination of Parental Rights

¶ 31 On October 17, 2014, the State petitioned for termination of respondent's parental rights and the power to consent to adoption. At a pretrial conference on October 22, 2014, Zachary Chadwick, the current caseworker, submitted a report recommending that respondent complete an additional substance abuse assessment, complete individual and family counseling, complete random drug screens, and maintain visitation with the children.

¶ 32 From November 19, 2014, through September 3, 2015, the trial court held several hearings on respondent's unfitness, and the State presented evidence of respondent's progress during the permanency review periods. The trial court found respondent unfit for failing to make

reasonable progress toward the return of the minors (1) from June 8, 2012, to March 8, 2013, which was the nine-month period after the adjudication of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2014)) and (2) from March 8, 2013, to December 8, 2013, and from December 8, 2013, to September 12, 2014, which were the two nine-month periods following the end of the initial mine month period (see 750 ILCS 50/1(D)(m)(iii) (West 2014)).

¶ 33 The cause proceeded to a best interests hearing. Chadwick, Robert, and the foster mother testified, and we discuss in our analysis the evidence presented. The court found that it was in the children's best interests to terminate respondent's parental rights and entered a judgment doing so. This timely appeal followed.

¶ 34 II. ANALYSIS

¶ 35 Respondent appeals from the termination of her parental rights. A parent's right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of that right is a drastic measure. *In re Haley D.*, 2011 IL 110886, ¶ 90. Accordingly, the Juvenile Court Act of 1987 (Juvenile Court Act) provides a two-stage process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014). Initially, the State must prove that the parent is unfit. 705 ILCS 405/2-29(2), (4) (West 2014); 750 ILCS 50/1(D) (West 2014); *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). We will reverse the trial court's finding of unfitness only if it was against the manifest weight of the evidence. A determination of unfitness is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 36 If the court finds the parent unfit, the petitioner must then show that termination of parental rights would serve the child's best interests. 705 ILCS 405/2-29(2) (West 2014); *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. As our supreme court has noted, at the best-interests phase, "the 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 (2004). Section 1-3(4.05) of the Adoption Act (705 ILCS 405/1-3(4.05) (West 2014)) sets forth various factors for the trial court to consider in assessing a child's best interests. The petitioner bears the burden of proving by a preponderance of the evidence that termination is in the best interests of the minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). A trial court's best-interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 37 A. Unfitness

¶ 38 Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, but any one of the grounds, if properly proven, is sufficient to enter a finding of unfitness. *In re Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. Proof of parental unfitness must be clear and convincing, and a trial court's finding of unfitness will not be disturbed unless it is against the manifest weight of the evidence, *i.e.*, unless the opposite conclusion is clearly evident. *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. The trial court is generally in the best position to assess the credibility of the witnesses and, therefore, we will not reweigh or reassess credibility on appeal. As cases concerning parental unfitness are *sui generis*, unique unto themselves, courts generally do not make factual comparisons to other cases. *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44.

¶ 39 The Adoption Act specifies the following among the grounds for a finding of parental unfitness:

> "(m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor *** or (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m) (West 2014).

¶ 40 Under an objective standard, reasonable progress requires, at a minimum, the parent make measurable steps toward the goal of reunification through compliance with court directives, service plans or both. *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). The trial court must consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m) in determining whether a parent has made reasonable progress toward the return of the children. *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 41 Here, the trial court found respondent unfit for failing to make reasonable progress toward the return of the minors (1) from June 8, 2012, to March 8, 2013, which was the nine-month period after the adjudication of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2014)) and (2) from March 8, 2013, to December 8, 2013, and from December 8, 2013, to September 12, 2014, which were the two nine-month periods following the end of the initial nine-month period (see 750 ILCS 50/1(D)(m)(iii) (West 2014)). We need address respondent's lack of progress during only the third nine-month period, from December 8, 2013, to September 12, 2014, because it supports the finding of unfitness. See *Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. The last two permanency review periods span the relevant period.

¶ 42 The court heard ample evidence that respondent did not comply with the service plan during the permanency review period from September 2013 to March 2014. Evink reported she had minimal contact with respondent, who did not have a working telephone or reliable email. Respondent did not verify attendance at AA or NA meetings, and Evink received a report that respondent had been "using" while pregnant. Respondent had not completed the additional substance abuse assessment. Respondent had missed six appointments and was reportedly engaging in domestic violence with Kevin, which caused Evink to refer respondent to additional counseling.

¶ 43 Respondent's service plan encouraged her to "refrain from engaging in relationships that are abusive and volatile" and "utilize skills learned from classes when confronted with a domestic dispute." However, respondent ignored these goals by maintaining what was reported to be a violent relationship with Kevin. Respondent had bruises when the children went to see her.

¶ 44 As further evidence of respondent's poor judgment, she asked Evink to include Kevin in visitation with the children. A background check revealed Kevin's criminal history, which included drugs and episodes of violence, and Evink advised against including Kevin in visitation.

¶ 45 Evink also reported that respondent's visitation with the children was unsatisfactory. Respondent was offered weekly visits, but her participation was "very sporadic."

¶ 46 At the July 29, 2014, permanency review, Angelos reported that respondent had not completed her substance abuse assessment or individual and family counseling. She had not complied with random drug testing or maintained regular visitation with the children. Angelos again described visitation as "sporadic."

¶ 47 From December 14, 2013, to March 1, 2014, respondent attended one of seven scheduled visits. Between June 7, 2014, and August 2, 2014, respondent missed four more visits. The court found that respondent had not made reasonable efforts or progress during the relevant review periods and determined that it was in the best interests of the children to change the goal from return home to substitute care pending court determination on termination of parental rights.

¶ 48 Under an objective standard, respondent did not make measurable steps toward the goal of reunification through compliance with the court directives or the service plans. Respondent cannot reasonably argue that the finding of unfitness for failure to make reasonable progress toward reunification with the children between December 8, 2013, and September 12, 2014, is against the manifest weight of the evidence. Respondent was no closer to the return home of her children at the end of the nine-month period than she was at the beginning.

¶ 49 B. Best Interests

¶ 50 Once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interests. Respondent cannot establish that the trial court's best-interests finding is against the manifest weight of the evidence. A review of the factors set forth in section 1-3(4.05) of the Adoption Act (705 ILCS 405/1-3(4.05) (West 2014)) supports the court's determination that an adoption would be the best option for providing the children stability and permanency.

¶ 51 At the time of the best-interests hearing, Christopher was eight years old and Frankie was five years old. Although there was evidence that the children would miss respondent if her parental rights were terminated, the children had been residing in the same foster home for three

years, which the trial court pointed out was a substantial portion of their lives, considering their young ages.

¶ 52 The evidence also shows that the foster parents care for all the children's needs by providing a nurturing environment, stability, adequate food, medical care, and emotional support. 705 ILCS 405/1-3(4.05)(a) (West 2014). The children's close relationships and positive interactions with their foster parents support a finding that their current placement will allow them to develop their identities. 705 ILCS 405/1-3(4.05)(b) (West 2014)). Christopher understands that respondent is his mother, but he and Frankie call their foster parents "mom" and "dad" and view them as their parents. 705 ILCS 405/1-3(4.05)(c) (West 2014). The children have bonded with their foster parents, and the caseworker reported that the children are very loving and affectionate with them. The foster parents reciprocate the affection and are quick to comfort the children when they are not feeling well. The caseworker opined that removing the children from their foster parents' home would likely cause anxiety, fear, abandonment, and detachment issues. 705 ILCS 405/1-3(4.05)(d) (West 2014). Although Frankie was too young to truly understand what adoption means, Christopher said he was excited to live with his foster parents long-term. 705 ILCS 405/1-3(4.05)(e) (West 2014). The foster parents integrated the children into their family, and the children view the family as their own. 705 ILCS 405/1-3(4.05)(f) (West 2014)). The children's need for stability and continuity of relationships is reflected in their demonstrated progress in the loving and stable home of the foster parents, with whom they have developed strong bonds. 705 ILCS 405/1-3(4.05)(g) (West 2014). The children are doing well in their current placement, and the foster parents expressed a strong commitment to providing the best for them, including permanency in the family. The foster mother testified to the reciprocal attachment, which shows that it is in the best interests of the

children to remain with the foster parents. 705 ILCS 405/1-3(4.05)(j) (West 2014). Given the foregoing evidence, we cannot say that a conclusion opposite to the one reached by the trial court is clearly apparent. Respondent cannot establish in this appeal that the court's best-interests determination is against the manifest weight of the evidence.

¶ 53 III. CONCLUSION

¶ 54 We conclude that neither the finding of unfitness nor the best-interests determination is against the manifest weight of the evidence. We therefore affirm the judgment of the circuit court terminating respondent's parental rights.

¶ 55 Affirmed.