2016 IL App (2d) 160110-U
No. 2-16-0110
Order filed July 11, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Lamont J., Shakyra J., Marquita J., Markel J., and Marquis J.,	)	Appeal from the Circuit Court of Winnebago County.
Minors.	)	Nos. 13-JA-541, 13-JA-542, 13-JA-543, 13-JA-544, 13-JA-545
(The People of the State of Illinois, Petitioner-Appellee, v. Kira N.-J., Respondent, Appellant).	)	Honorable Francis M. Martinez, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found respondent-mother unfit and terminated her parental rights.

¶ 2 Kira N.-J. and Mark J. are the biological parents of five young children: Lamont J., Shakyra J., Marquita J., Markel J., Marquis J. The oldest child is Lamont J., who was roughly six years old when this case began. (Mark is not a party to this appeal.)

¶ 3 The family previously lived together in a house in Winnebago County. At the time, Kira and Mark were not married, and Mark was not named as the father on any of the children's birth certificates. On August 7, 2013, the family's neighbor called the police and reported hearing

sounds consistent with hitting, screaming, and crying emanating from the family's home. When police arrived, Mark admitted that he hit Shakyra (then age 4) with a belt six or seven times across her back for wetting her bed, which caused bruises to her body. Kira told the police that she was in the shower at the time of the corporal punishment and did not know what was happening. The police arrested Mark, and the State charged him with aggravated battery to a child. Mark did not post bond and remained in custody for several months. Based on this incident of excessive corporal punishment, in November 2013, the State filed neglect petitions alleging that all five children were in an environment that was injurious to their welfare.

¶ 4 On January 9, 2014, Kira and Mark were arraigned on the State's neglect petitions. The court ordered both parents to cooperate with the Department of Children and Family Services (DCFS) and to remain free of all illegal drugs and alcohol. Because Mark was not named as the father on any of the children's birth certificates and Mark and Kira were unmarried, the trial court granted Kira temporary custody of the children.

¶ 5 On February 10, 2014, Mark posted bond and was released from custody. The following day, Kira was charged with theft in Winnebago County. On March 17, 2014, Kira posted bond and was released from custody. That same day, Kira and Mark were married. Shortly thereafter Kira and Mark absconded from Winnebago County with the children. (The record is unclear as to where they went.) Both Kira and Mark missed court dates in their respective criminal cases; ultimately, warrants were issued for their arrest. The trial court held an adjudication hearing on April 3, 2014, in Kira's and Mark's absence. The court found the children were neglected.

¶ 6 A dispositional hearing was held on April 30, 2014, while Kira and Mark were still on the run. The trial court noted that Kira was a fugitive of the court and that the children's whereabouts were unknown. The court found that Kira and Mark were unable or unwilling to parent the

children or to provide for their welfare. The court awarded guardianship and custody of the children to DCFS with the discretion to place the children in traditional foster care. The court set the children's permanency goal as return home within 12 months. The court also entered a no-contact order prohibiting Kira and Mark from communicating with the children once the children were placed in foster care.

¶ 7 On May 1, 2014, the children were located by DCFS and placed in traditional foster care. On May 2, 2014, Kira pled guilty to theft and was sentenced to two years' probation. On June 16, 2014, the trial court lifted the no-contact order and allowed her to visit the children monthly. The trial court also admonished Kira and Mark that if they failed to cooperate with DCFS or engage in recommended services, then the State could file petitions to terminate their parental rights.

¶ 8 At the first permanency hearing in October 2014, the trial court found Kira and Mark had not made reasonable efforts towards the family's reunification. The State's evidence at the hearing showed that Kira was minimally cooperative with service providers; she had been discharged from parenting class for lack of attendance, failed to engage in individual therapy, failed to provide documentation to her caseworkers, and was non-compliant with her probation. The State's evidence also showed that in August 2014, Mark pled guilty to the charge of aggravated battery to a child and was sentenced to three years' imprisonment. (For context, we note that Mark's involvement in these court hearings and ordered services largely ended with his guilty plea.) The trial court ordered that the children's permanency goal would remain set at return home.

¶ 9 The next permanency hearing was in April 2015. The results of genetic testing were returned to the parties and, at the start of the hearing, the trial court adjudicated Mark the father

of all five children. The State's evidence at the hearing showed that Kira failed to complete a parenting class, missed five drug drops, tested positive for marijuana twice, and failed to follow instructions to enter drug treatment by January 2015. The trial court found that Kira and Mark had not made reasonable efforts or reasonable progress during the review period, and the children's permanency goal was changed to substitute care pending the termination of parental rights.

¶ 10 The involuntary termination of parental rights is a two-step process. First, the court must find, by clear and convincing evidence, that a parent is an unfit person as defined in section 1(D) of the Adoption Act. 705 ILCS 405/2-29 (West 2012); 750 ILCS 50/1(D) (West 2012). Second, once a finding of parental unfitness is made under section 1(D) of the Adoption Act, the court considers whether it is in the best interest of the child that parental rights be terminated. *Id.*; see also *In re J.L.*, 236 Ill. 2d 329, 337 (2010); *In re E.B.*, 231 Ill. 2d 459, 472 (2008); *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 11 In June 2015, the State filed petitions to terminate Kira's and Mark's parental rights over each of the five children. The State alleged that Kira and Mark were unfit on multiple grounds under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). The allegations with respect to Kira and Mark were identical concerning each of the five children. With respect to each child, the petitions alleged as follows. Count I of the petitions alleged that Kira and Mark had failed to maintain a reasonable degree of interest, concern, or responsibility for the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); count II alleged that Kira and Mark had failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal within any nine-month period after the minor was adjudicated neglected (750 ILCS 50/1(D)(m)(i) (West 2012)); count III alleged that Kira and Mark had failed to make reasonable

progress toward the return of the minor within any nine-month period after the minor was adjudicated neglected (750 ILCS 50/1(D)(m)(ii) (West 2012)); and count IV alleged that Kira and Mark had failed to protect the minor from conditions in the environment injurious to his or her welfare (750 ILCS 50/1(D)(g) (West 2012)). With respect to counts II and III, the State alleged that the applicable nine-month periods were "4/3/14 to 1/3/15 and/or 9/16/**15** to 6/16/**15**." (Emphasis added.)

¶ 12 The fitness hearing began on November 19, 2015, and was concluded on January 6, 2016. Toward the end of closing arguments, the assistant State's attorney pointed out that there was a scrivener's error in the State's petition concerning the nine-month periods for the efforts and progress counts. The State noted that the second nine-month period "should be" September 16, 20**14** to June 16, 2015. Kira's counsel then responded, "And, Judge, I would have no objection. I knew that's what the State meant." The trial court judge acknowledged the error and indicated that he would "correct it."

¶ 13 On February 1, 2016, the court announced its decision finding Kira and Mark were unfit on all four grounds alleged in each of the State's petitions. On February 4, 2016, the court held a best-interests hearing. Afterwards, the trial court noted the children's need for stability and permanency, and the progress that the children had made in foster care. The court then determined that it was in the children's best interest to terminate Kira's and Mark's parental rights. Kira timely appealed. (Again, Mark is not a party to this appeal.)

¶ 14 Before this court, Kira does not challenge the trial court's best-interests determination; however, she does raise two contentions concerning the finding of her unfitness. First, citing *In re B'Yata I.*, 2014 IL App (2d) 130558-B, she contends that the cause should be remanded to the trial court for a determination of which nine-month period the trial court relied on in finding she

had failed to make reasonable efforts (count II) and reasonable progress (count III). Second, Kira contends that the court's findings that she both failed to maintain a reasonable degree of interest, concern, or responsibility (count I) and failed to protect the children (count IV) were against the manifest weight of the evidence.

¶ 15 We need only address Kira's first contention, which concerns reasonable efforts (count II) and reasonable progress (count III). We note that Kira does not challenge the trial court's underlying factual findings that she failed to make reasonable efforts or reasonable progress. Thus, if we determine there was no error concerning at least one of those unfitness counts, we may affirm the trial court's finding of Kira's unfitness. See *In re C.W.*, 199 Ill. 2d 198, 210 (2002) (a finding on any one ground under section 1(D) of the Adoption Act is sufficient to enter a finding of parental unfitness). Since the underlying facts are not in dispute, our standard of review is *de novo*. *In re R.A.B.*, 197 Ill. 2d 358, 362 (2001).

¶ 16 In general, Kira is correct that in order for us to meaningfully review a finding of unfitness based on nine-month periods, the trial court must specify the relevant time period upon which it was relying in determining that a parent has failed to make reasonable efforts or reasonable progress. See, *e.g.*, *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 40; *In re R.L.*, 352 Ill. App. 3d 985, 997-98 (2004). But here the trial court was specific. In its oral ruling, the court stated that "from April of 2014 to February of 2015 [Kira] failed to minimally comply with the Service Plan and make [reasonable] efforts or progress." Though that time frame was longer than the first time period the State alleged in its petition by a matter of weeks, the difference was trivial. And our independent review of the record convinces us that the trial court limited its consideration to the relevant evidence within the applicable timeframe. Still, the fact remains that in this case, we are not left to speculate—as we were in *In re B'Yata I.*—concerning what time

period and evidence the trial court actually considered.

¶ 17 Kira further argues that the second time period referenced in the State's petition as filed—"9/16/**15** to 6/16/**15**" (emphasis added)—does not "add[ ] up to nine months" and is therefore "problematic." Kira neglects to address the fact that in the trial court, after the error in the State's petition was pointed out, her attorney acknowledged the mistake, stating that she "knew *** what the State meant[,]" and further acquiesced in the petition's correction. Since the petition was amended, with Kira's counsel's acquiescence, Kira could not have been prejudiced by the error in the original version of the State's petition. More importantly however, the trial court did not rely on this time period in rendering its determination on either reasonable efforts or reasonable progress.

¶ 18 We reiterate that Kira does not challenge the evidence concerning the trial court's findings on reasonable efforts (count II) and reasonable progress (count III). However, we note that there was ample evidence to sustain the court's determination of her unfitness on either count. Furthermore, we reiterate that Kira does not challenge the trial court's best-interests determination. In light of the foregoing, we affirm the judgment of the circuit court of Winnebago County finding Kira unfit and terminating her parental rights.

¶ 19 Affirmed.