

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).

2016 IL App (3d) 150797-U

Order filed March 22, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

<i>In re</i> M.K.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
a Minor)	Will County, Illinois,
)	
(The People of the State of Illinois)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-15-0797 & 3-15-0798
)	Circuit Nos. 12-JA-89
v.)	
)	
Amanda M. and James K.,)	Honorable
)	Paula Gomora,
Respondents-Appellants).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice O'Brien and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in finding both parents unfit under section 1(D)(p) of the Adoption Act.

¶ 2 The circuit court of Will County found respondents, Amanda M. and James K., unfit to parent their child, M.K., and terminated their parental rights. Both parents appeal, claiming that the trial court's findings of unfitness are against the manifest weight of the evidence. We affirm.

FACTS

¶ 3

¶ 4

In October 2013, the State filed supplemental petitions against James K. and Amanda M. alleging that M.K., born September 27, 2009, was neglected due to an injurious environment. At the shelter care hearing, Gina Kitakis testified as an investigator with the Department of Children and Family Services (DCFS). She stated that M.K. was four years old but was not potty trained or able to speak clearly. She further testified that Amanda and James' apartment was not clean and that M.K. was sleeping on a urine-stained mattress. Kitakis was concerned for M.K.'s safety because there were pill bottles in the living room within M.K.'s reach and there was a T.V. on a table that was unstable. She noted that in a prior petition, M.K. was unsupervised and pulled a T.V. off the table. It struck him in the head, requiring stitches. Kitakis testified that in this petition, M.K. placed a cell phone in a toaster oven and started a fire. M.K.'s mother, Amanda, was sleeping when the fire started because her anti-anxiety medication made her drowsy. Police were called to the scene. When they arrived, they found M.K. running around naked and the apartment in poor condition.

¶ 5

The court found that immediate removal was necessary because the "apartment was unclean and had hazards within reach of minor, mother did not address her medication issue timely, father was aware that mother's medication made her tired and also knew of [M.K.'s] problem behavior."

¶ 6

On April 30, 2014, the trial court adjudicated M.K. neglected in that his environment was injurious to his welfare. At the dispositional hearing, the trial court made M.K. a ward of the court with the goal of return home and placed him in the custody and guardianship of DCFS.

¶ 7

During the next eleven months, Amanda made some progress toward the goal of reunification. However, both parents refused to address issues of domestic violence. There were

several reports of abuse by James, and Amanda received an order of protection against him. Within months, both parties ignored the order and resumed living together.

¶ 8 In March of 2015, Dr. Nicholas O'Riordan, a licensed psychologist, conducted psychological evaluations of Amanda and James. On May 18, 2015, the State filed motions to terminate parental rights, alleging that Amanda and James were unfit for failing to make reasonable progress toward return of the child within nine months after the adjudication of neglect pursuant to section 1(D)(m)(ii) of the Adoption Act (Act) (750 ILCS 50/1(D)(m)(ii) (West 2012)). The motions further alleged that Amanda and James had an inability to discharge parental responsibilities due to mental illness or impairment as documented by a clinical psychologist and that there was sufficient justification to believe that the inability would extend beyond a reasonable time period pursuant to section 1(D)(p) of the Act (750 ILCS 50/1(D)(p) (West 2012)). The State subsequently struck the allegations of failure to make reasonable progress.

¶ 9 At the termination hearing, Dr. O'Riordan testified that he is a clinical psychologist and that he interviewed both Amanda and James. Prior to the interviews, DCFS provided O'Riordan with their service plans, integrated assessments and quarterly progress reports. O'Riordan reviewed those documents prior to conducting the evaluations. The integrated assessment indicated that Amanda had a long history of bipolar disorder and has been prescribed several psychotropic medications. She had also been a victim of domestic violence in her relationship with James, as well as in previous relationships. The assessment further reported that Amanda lost her parental rights to four other children (James was the father of one) and that James previously lost his parental rights to one child.

¶ 10 O'Riordan met with Amanda for three hours, during which he administered psychological tests and personality surveys. Based on his review of prior assessments and his personal evaluation of Amanda, he noted that she had long history and diagnosis of bipolar disorder. He concluded that she still suffered from the disorder. She also had developed a "very ingrained personality disorder primarily with borderline traits." Her reported IQ was 74. O'Riordan noted that Amanda demonstrated "surprisingly poor" abilities in the cognitive test, in the borderline range. He suspected an IQ deterioration from the time she was a teenager.

¶ 11 O'Riordan concluded that Amanda suffers from mental illness. He described her borderline personality disorder as an "instability of relationships, thriving off of emotional turmoil, poor sense of self, poor sense of where she is and where she is going. It's basically the emotional instability." He observed that she has a long history of instability with no concrete plan for resolving her issues, despite having the continued services of a psychiatrist and a therapist. He did not see any prospect for change in the near future.

¶ 12 O'Riordan found Amanda's relationship with James concerning. During the eight years they had been together, Amanda and James continually engaged in hostile and violent behavior. O'Riordan stated that Amanda was not able to change this behavior. He testified that James becomes violent when Amanda has online relations with other men, yet Amanda continues to engage in online relationships and to have physical relationships with other men. Amanda had orders of protection against James amended so that she could live with James and only call the police if he became aggressive. O'Riordan noted that Amanda and James have broken up and reconciled many times and that Amanda had no real concept of the timeline or what that meant. He believed Amanda relied on James as the sole provider; he provided her with food and a place to live. Amanda exhibited no ability to live on her own or outside of a dependent relationship.

¶ 13 Regarding the unclean state of the home, Amanda dismissed the allegations. She felt that it was appropriate for M.K. to play in the house naked all day since he was in the apartment. Amanda does not work and does not socialize with friends. She reported that "she was an addict to the internet and Pepsi and reading recovery books." During the interview, O'Riordan also noted that Amanda appeared disheveled and unclean. He testified that her poor hygiene was so dramatic that he asked Amanda about it and she told him that she had not bathed recently.

¶ 14 O'Riordan recognized that Amanda had been in therapy and counseling and noted that she had failed to make any changes. Although she also expressed confidence in her ability to care for M.K. and provide for his daily needs, she was unable to present a clear plan for housing and income that could be accomplished within a few years. O'Riordan testified that had Amanda been in therapy for six months, he would have recommended continuing treatment but at this point "enough had been done that the boy deserved permanency." His prognosis of Amanda's ability to acquire minimal parenting skills was "extremely poor to the point of being non-existent."

¶ 15 O'Riordan performed a similar psychological evaluation of James. During the interview, James admitted that he had a confrontational relationship with Amanda, but he did not express much emotion. He said that he gets upset and angry when Amanda interacts with men online and becomes even more upset when she brings other "lovers" into the home. He admitted that he and Amanda were involved in a domestic violence incident the day before the evaluation.

¶ 16 O'Riordan stated that based on his review of the DCFS documents and assessments and his personal evaluation of James, James suffered from "a personality disorder, but more predominant features would be schizoid, tends to be isolated, few friends, socially inept." He testified that James' IQ was 86, which falls in the low to average range, but noted that his thought

processes were not complex and that he does not think in advance. He stated that James has no concrete plan for M.K., other than leaving him in Amanda's care while he works. In his written evaluation, he quoted James as saying, "I have no idea how to get [M.K.] back if she isn't there to watch him." Based on his evaluation, O'Riordan diagnosed James with "neglect of child, subsequent encounter, and unspecified personality disorder." O'Riordan acknowledged that a previous psychological evaluation completed by other psychiatrists concluded that James did not meet the criteria for any psychological disorder.

¶ 17 O'Riordan testified that he also completed a risk assessment for domestic violence with James. The assessment indicated that James was at a high risk of repeating violence against Amanda. James expressed a need for friends but admitted that Amanda is his only friend. O'Riordan noted that Amanda is his only friend but that conflict between them is inevitable.

¶ 18 O'Riordan acknowledged that based on cognitive ability, James should be able to make successful parenting decisions. However, he noted that James' personality and his history of neglect and abandonment prevented him from making new choices. O'Riordan testified that James has found a way to survive through work and that places a great deal of emphasis on his ability to work. On the final page of his evaluation, O'Riordan concluded that he has "no prognosis" for James achieving minimal parenting abilities because of his history of losing contact with his children, his expressions of hopelessness, and his inability to end his detrimental relationship with Amanda. He could not say that James would be able to achieve parenting abilities within a reasonable time period. O'Riordan noted that James could only provide a safe environment for M.K. if he established his own home with a care plan that did not involve Amanda, but there was no indication James was motivated to do that.

¶ 19 Kymberle West, a caseworker for Lutheran Children and Family Services (LCFS), testified that she worked with both Amanda and James. She stated that Amanda had moved out of James' home for a brief period of time. However, at the time of the hearing, Amanda was living with James. West also indicated that James successfully completed a domestic violence course as of July 2015 but admitted this was not the first time James had attended domestic violence classes.

¶ 20 Chuck Lederman, a clinical social worker for LCFS, was called by Amanda and James to testify on their behalf. He testified that he assessed both parents in April of 2015. During his assessment of Amanda, he noted that she had a very strong attachment to her son. She was seeing a therapist and wanted her child to be returned home. She had also updated her medication with her doctor and was benefiting from psychotherapy. He opined that, at a minimum level, Amanda had the ability to reasonably parent M.K. Lederman also concluded that James had certain minimal qualities necessary to parent M.K. Based on his review of various records, interviews and testing, Lederman opined within a reasonable degree of certainty that James had the mental and emotional capacity to fulfill his parental responsibilities.

¶ 21 The trial court found by clear and convincing evidence that Amanda and James were unfit parents in that they had an inability to discharge parental responsibilities based on mental impairment or illness and that there was sufficient justification to believe that the inability shall extend beyond a reasonable time. The case then proceeded to a best interest hearing where the court found that it was in the best interest of M.K. to terminate both parents' rights.

¶ 22 ANALYSIS

¶ 23 Section 1(D)(p) of the Adoption Act defines parental unfitness as the "[i]nability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed

clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation *** and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period." 750 ILCS 50/1(D)(p) (West 2012). To prove a parent unfit under section 1(D)(p) of the Act, the State must (1) present competent evidence that the parent suffers from a mental impairment, mental illness, or mental retardation sufficient to prevent the discharge of normal parental responsibilities, and (2) present sufficient evidence to conclude that the inability will extend beyond a reasonable time period. 750 ILCS 50/1(D)(p) (West 2012); *In re Cornica J.*, 351 Ill. App. 3d 557, 566 (2004). Mental impairment includes personality disorders. *In re C.M.*, 319 Ill. App. 3d 344, 359-60 (2001). "[A] diagnosis of depression, anxiety, personality disorder or even schizophrenia does not automatically render a parent unfit." *In re A.T.*, 2015 IL App (3d) 140372, ¶16. It is the parent's conduct and behavior that determines fitness, not the label associated with the conduct or behavior. *Id.*

¶ 24 To reverse a trial court's finding that there was clear and convincing evidence of parental unfitness, we must conclude that the finding was against the manifest weight of the evidence. *In re Adoption of Syck*, 138 Ill. 2d 255, 274 (1990). A finding is against the manifest weight of the evidence only where an opposite conclusion is clearly evident. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The rationale underlying this standard is that the trial court's opportunity to view the parties and evaluate their testimony is superior to that of a reviewing court. *In re K.S.T.*, 218 Ill. App. 3d 431, 435 (1991). In determining whether the trial court's finding is against the manifest weight of the evidence, we are mindful that each case of parental unfitness is *sui generis*. *In re S.R.*, 326 Ill. App. 3d 356, 361 (2001).

¶ 25

I. Fitness of Mother

¶ 26 Amanda argues that the trial court finding that she was an unfit parent based on mental illness is against the manifest weight of the evidence. She claims that her diagnosed personality disorder does not automatically lead to the court's conclusion that she is unable to discharge her parental responsibilities.

¶ 27 While we agree that a diagnosed personality disorder does not result in a finding of unfitness *per se*, here the record establishes that Amanda has a mental inability sufficient to preclude her from discharging normal responsibilities regarding M.K. O'Riordan testified that Amanda has been diagnosed with borderline intellectual functioning, bipolar disorder and borderline personality disorder. After reviewing Amanda's records and conducting a thorough psychological evaluation, O'Riordan agreed with those diagnoses. He further noted that Amanda has a long history of bipolar disorder and has developed an ingrained personality disorder with borderline traits.

¶ 28 In addition, O'Riordan testified that Amanda's personality disorder prevents her from fulfilling her parental responsibilities. He observed that Amanda has been in therapy for eight years and has not improved. During that time, she had her parental rights to four other children terminated. The record also shows that Amanda has a significant history of mental impairment, that she has been in a long-term abusive relationship with M.K.'s father, and that she is unable to change her behavior to better her parenting abilities. Although she is utilizing the services of a therapist, she exhibits a lack of appreciation for the detrimental effects of her behavior on M.K. Moreover, the physical appearance and under development of M.K. demonstrates that Amanda has an inability to discharge her parental responsibilities. Thus, the record shows that the State provided clear and convincing evidence from a clinical psychologist indicating that Amanda has a mental impairment and that her inability to parent will extend beyond a reasonable time.

Accordingly, the trial court's finding that Amanda was unfit under section 50/1(D)(p) is not against the manifest weight of the evidence.

¶ 29 II. Fitness of Father

¶ 30 James also claims that the State failed to prove that he has a mental impairment sufficient to preclude him from discharging normal parental responsibilities. Specifically, he argues that O'Riordan's diagnosis of an unspecified personality disorder, without more, fails to demonstrate that he is unable to parent M.K.

¶ 31 Initially, we note that O'Riordan testified that he diagnosed James with an unspecified personality disorder. He also testified that he is a licensed clinical psychologist, and both parties stipulated to his qualifications. Thus, the State presented competent evidence from a licensed professional that James suffered from a mental impairment. See *In re C.M.*, 319 Ill. App. 3d at 359-60 (a personality disorder is a mental impairment under section 1(D)(p) and may provide a basis for a finding of unfitness).

¶ 32 The record also provides clear and convincing evidence that James suffers from a mental impairment sufficient to prevent the discharge of normal parental responsibilities. In his evaluation, O'Riordan stated that James' personality disorder causes him to withdraw emotionally. As a result of his mental impairment, James fails to think ahead or consider the consequences of his choices. James also continues to rely on Amanda as the primary caregiver and has no other plan for M.K.'s care. O'Riordan testified that James does not have a support system or social contacts that could provide assistance. In O'Riordan's opinion, James is doing all that he can and is unable to develop an emotional bond with M.K. O'Riordan determined that there was no prognosis for James achieving minimal parenting abilities. He could not say that James would ever be capable of discharge his parental responsibilities based on his

psychological assessment. The trial court was free to accept O'Riordan's opinion as credible evidence of James' inability to parent M.K. The record also demonstrates that James is unable to end his negative relationship with Amanda and that he cannot provide for M.K. without her. Evidence showed that James could only provide a safe, supportive environment for M.K. if he established a new home on his own, a choice he was unwilling and unmotivated to make.

¶ 33 In this case, James' conduct and behavior, in addition to his mental impairment, demonstrate that he has an inability to discharge his parental responsibilities as to M.K. that will extend beyond a reasonable time period. The trial court's finding that James was an unfit parent under section 1(D)(p) of the Act is not against the manifest weight of the evidence.

¶ 34 CONCLUSION

¶ 35 The judgment of the circuit court of Will County is affirmed

¶ 36 Affirmed.