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2016 IL App (3d) 150839-U
(Consolidated with 150840 and 150841)

Order filed April 6, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> J.P., J.P. and M.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-15-0839, 3-15-0840,
	)	and 3-15-0841
Petitioner-Appellee,	)	(Consolidated)
	)	Circuit Nos. 12-JA-182, 12-JA-183,
v.	)	and 12-JA-184
	)	(Consolidated)
Barbara P.,)	
	)	Honorable Timothy J. Cusack,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that mother was an unfit parent and it was in the best interest of the children to terminate mother's parental rights were not against the manifest weight of the evidence.

¶ 2 On March 7, 2013, the State amended the previously filed abuse and neglect petitions on behalf of J.P.(1), J.P.(2), and M.P. alleging both parents provided an environment injurious to the

children's welfare. On February 11, 2015, the State filed separate termination petitions pertaining to each child seeking to terminate mother's parental rights due to her failure to make reasonable progress toward the return home of the children. The trial court found mother unfit as alleged in the termination petitions. The court then found it was in the best interests of the children to terminate mother's parental rights. Mother appeals the trial court's findings of her unfitness and the children's best interests resulting in the termination of her parental rights. We affirm.

¶ 3

BACKGROUND

¶ 4

On August 3, 2012, the State filed separate abuse and neglect petitions on behalf of three children: J.P.(1), born July 6, 2009, J.P.(2), born June 18, 2007, and M.P., born May 27, 2011. The petitions alleged that mother and father lived separately; and father physically abused J.P.(1) and, based on the abuse, father provided an injurious environment to the welfare of all three children. The petitions asked the court to allow the children to reside with mother and enter an order of protection against father. The petitions were consolidated for purposes of juvenile court proceedings. On August 15, 2012, the court entered an order of protection authorizing the children to reside with mother, father to have no contact with the children, and mother to cooperate with the Illinois Department of Children and Family Services (DCFS).

¶ 5

Prior to adjudication, on March 7, 2013, the State filed a "Motion for Shelter Care" claiming mother left the children unattended in a running vehicle for 13 minutes on February 28, 2013, and that mother placed money in father's jail account on five occasions since January 2013. The State also moved to amend the underlying juvenile abuse and neglect petitions to include these counts. On March 14, 2013, the court entered a temporary shelter care order, on behalf of all three children, granting DCFS the right to place the children out of mother's care.

¶ 6 The court held the adjudicatory hearing on the abuse and neglect petitions on August 19, 2013. At the close of the hearing, the court adjudicated J.P.(1) as an abused minor and all three children as neglected minors based on their environments being injurious to their welfare.

¶ 7 On October 30, 2013, the court held a dispositional hearing and found both mother and father dispositionally unfit to care for the children. The court found mother was unfit based on mother's use of illegal drugs during the pending proceedings and mother's decision to continue to spend time with father, who physically abused both mother and J.P.(1). The court found these facts demonstrated that mother continued to choose father in favor of better choices to protect her children's welfare. The court named DCFS the guardian of the children and authorized DCFS to continue foster care placement.

¶ 8 During the dispositional hearing, the court also provided mother with tasks to complete in order to correct the conditions that led to the children being removed from her care. The court ordered mother to complete the following tasks: (1) execute all authorizations for release of information requested by DCFS; (2) cooperate fully and completely with DCFS or designee; (3) obtain a drug and alcohol assessment arranged by DCFS and follow, cooperate and successfully complete any course of treatment recommended; (4) perform two random drug drops per month; (5) submit to a psychological exam and follow the recommendations; (6) participate and successfully complete recommended counseling; (7) participate in a parenting course; (8) participate in a domestic violence course; (9) obtain and maintain stable housing conducive to the safe and healthy rearing of the minors; (10) provide caseworker with any change of address; (11) provide requested contact information to DCFS for anyone DCFS believes has a relationship with the minor(s); and (12) visit as scheduled with the children at times and places set by DCFS and demonstrate appropriate parenting during the visits.

¶ 9 After several permanency review hearings, on February 11, 2015, the State filed petitions for termination of parental rights (termination petitions) against both parents on behalf of all three children. The termination petitions alleged mother failed to make reasonable progress toward the return home of the children during the nine-month period from May 1, 2014, to February 1, 2015 (relevant period), pursuant to section 50/1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)). On April 15, 2015, mother filed a motion to dismiss the State's termination petitions; however, the court denied mother's motion on April 29, 2015.

¶ 10 I. Fitness Hearing

¶ 11 The fitness hearing for the termination petitions began on July 8, 2015. The court took judicial notice of the adjudicatory and dispositional orders entered in the underlying abuse and neglect proceedings. The State also introduced the following evidence: a certified copy of criminal case No. 12-CF-837, father's conviction for aggravated battery to J.P.(1) and another unrelated child; mother's drug test records; the Human Service Center's (the Center) documents regarding mother's alcohol and drug assessment and counseling appointments; mother's Lutheran Social Service of Illinois (LSSI) individual counseling records where mother focused on the areas she needed to address in order to become a fit parent; LSSI's family visitation records; and LSSI family therapy and group counseling records, including some of LSSI's individual records regarding J.P.(1)'s development and anger control issues.

¶ 12 Mother's drug test results revealed that mother missed scheduled drug tests on May 16, 2014 and August 6, 2014, and that on June 27, 2014, and July 7, 2014, mother tested positive for cannabis. According to the Center's documents, the Center recommended that mother continue receiving drug treatment through the Southside Mission program after mother admitted to using cannabis. The records from LSSI indicate that, although mother completed a parenting class,

mother did not exhibit good parenting skills during visits with the children. Further, on August 5, 2014, mother was discharged from counseling at LSSI due to lack of attendance. Finally, the visitation and family counseling records reveal that, during supervised visitations, mother became overwhelmed with the children, especially J.P.(1), and needed the visitation worker to intervene.

¶ 13 The State called Jennifer Kestel, the family caseworker, to testify regarding mother's progress during the relevant period. Kestel testified that she had been the family's caseworker since March 2014 and was familiar with the dispositional tasks the court assigned to mother. Kestel confirmed mother was to maintain stable housing that was appropriate for the children. At the beginning of the relevant period, mother lived with her brother, which was not suitable housing because mother's brother was convicted of child endangerment. Mother then moved to Southside Mission in August of 2014, and Kestel considered Southside Mission to be stable housing and a good choice for mother. While at Southside Mission, mother completed her drug and alcohol assessment. However, in November of 2014, mother voluntarily decided to leave Southside Mission and live with a friend, Channelle, and the services provided through Southside Mission ended. Two other individuals lived at this residence as well. Kestel could not recall the individuals' names, but one of those male individuals had a sexual charge against him making the home unsuitable for children. Around May of 2014, mother moved into a different apartment with a friend. In Kestel's opinion, apart from Southside Mission, none of mother's housing options were appropriate for the return home of the children.

¶ 14 Kestel testified that she and the foster parents informed mother about all of the children's medical, dental and school appointments. During the relevant period, J.P.(1) and J.P.(2) had three or four scheduled appointments and M.P. had two or three scheduled appointments.

Mother attended one dental appointment for all of the children, but did not attend other appointments for any of the children or a school meeting for M.P.'s individual education plan.

¶ 15 Kestel testified mother completed a drug and alcohol assessment, but mother admitted to using cannabis during her assessment and the assessor recommended continued treatment and counseling at Southside Mission. Mother did not participate in any outpatient drug treatment and ended drug counseling at Southside Mission. Additionally, mother was ordered to successfully complete individual counseling. During the relevant period, mother received some counseling while living at Southside Mission, but the counseling ended after mother left Southside Mission.

¶ 16 Kestel testified that, throughout the relevant period, mother continued to deny that father abused J.P.(1), and Kestel believed mother would not protect her children from future physical abuse. Kestel's opinion, in part, was based on mother's continued contact with father during the relevant period. DCFS reduced mother's visits with her children to one hour per week because of mother's continued relationship with father, including one specific incident. During one visit, mother told the children that she had seen their father, gave the children paper airplanes father made for them, and told the children to write father a thank you letter for the paper airplanes. Mother's conduct was prohibited by DCFS and Kestel had previously informed mother that she should not bring gifts for the children, without the children's therapists' approval, and that mother should not discuss father during her visits with the children.

¶ 17 Mother also testified during the fitness hearing. Mother stated that she was not notified of two to three medical appointments that she missed, and that she was unable to attend M.P.'s individual education plan meeting because she was scheduled to work. Mother explained that she was unable to obtain subsidized housing because she did not have her children in her care. Further, mother stated that she participated in the drug treatment program at Southside Mission,

and did not use cannabis after leaving Southside Mission. Lastly, mother informed the court that she was not romantically involved with the children's father.

¶ 18 On October 21, 2015, the trial judge found that the State proved by clear and convincing evidence that mother was an unfit parent as alleged in the termination petitions. The court then scheduled the best interest hearing.

¶ 19 II. Best Interest Hearing

¶ 20 On November 25, 2015, the court held the best interest hearing. The court received the best interest report and the CASA report as evidence for the State.

¶ 21 The best interest report stated that J.P.(1) and J.P.(2) were currently living in a traditional foster home together with their foster parents. The foster parents were prepared to adopt J.P.(1) and J.P.(2), and provided for the basic needs of both children, including glasses for J.P.(1). Due to J.P.(1)'s frequent angry outbursts, he broke numerous pairs of glasses while in foster care. The foster parents used their own money to buy J.P.(1) higher quality glasses because the medical card only provided for plastic frames. The caseworker testified that J.P.(1)'s bedroom, which he shared with his 16-year-old foster brother, was appropriate. J.P.(1) attended kindergarten and first grade at Dunlap Grade School. In kindergarten, J.P.(1) did very well, both academically and behaviorally. However, J.P.(1) struggled behaviorally during first grade. The foster parents, LSSI, and the school were diligent in ensuring J.P.(1)'s needs were met by the school system. The school met with LSSI and the foster parents biweekly to report on J.P.(1)'s progress.

¶ 22 Next, the report discussed that J.P.(1) was on track developmentally, but he struggled with anger control. When J.P.(1) was first placed in his foster home, he had violent rages three to five times per day that would last up to two hours. J.P.(1) stabilized over the past year and

was able to decrease those rages to one to two times per month. However, during the eight to ten weeks prior to the best interest report, J.P.(1) began to struggle with more anger issues again. The foster family had been diligent with the reward systems, positive praise, giving J.P.(1) a safe place to rage so he did not harm himself or others, and talked to him about his behavior afterward. J.P.(1) was admitted on October 9, 2015, and spent 1.5 weeks, at the Lincoln Prairie Behavioral Unit for a psychiatric hospitalization. While there, he was diagnosed with ADHD and PTSD. J.P.(1) began taking Ritalin, which improved J.P.(1)'s ability to complete a task before becoming frustrated. J.P.(1) continued outpatient monitoring at Lincoln Prairie Behavioral Health Center to best meet J.P.(1)'s needs.

¶ 23 According to the best interest report, during his supervised visits with his mother, J.P.(1) had varied emotions during the course of visitation. During one visit, J.P.(1) went into a rage with his mother, and she was unable to redirect him and asked the staff to handle his behavior. In the foster home, J.P.(1) sometimes asked to see his biological mother and said he loved her, however, J.P.(1) also reported that he did not trust her. J.P.(1) had not seen father in over three years. When generally asked about father, J.P.(1) showed fear and often needed reassurance that his father was not getting out of prison any time soon. J.P.(1) was very close to his foster mother and father. J.P.(1) enjoyed playing at the gym with his foster mother and attending Cub Scouts with his foster father. Since joining this foster family, J.P.(1) resided in a safe upper middle class home in the Dunlap area. J.P.(1) developed friends in the neighborhood and was involved in seasonal sports, such as playing football on JFL and participating in swim lessons.

¶ 24 J.P.(2) resided in the same traditional foster home with her brother, J.P.(1). According to the best interest report, J.P.(2)'s basic and medical needs were all being met. J.P.(2) was dressed in appropriate clothing and had many age appropriate toys. She was enrolled in the third grade at

Dunlap Grade School, and J.P.(2)'s teacher reported that she was doing well in school and had many friends. J.P.(2) had an individual educational plan for speech services and continued to make progress. J.P.(2) progressed through developmental milestones appropriately and demonstrated developmental abilities that were above or at age level. J.P.(2) continued to attend weekly counseling at the Center for Prevention of Abuse, had a close relationship with her counselor, and appeared to be open and honest during sessions. The counselor reported that J.P.(2) had guilt because she could not protect J.P.(1) from their father's abuse.

¶ 25 According to the best interest report, J.P.(2) was very affectionate with her mother and craved her mother's attention during their scheduled visitations. J.P.(2) was sad that she could not be with her mother, but was starting to grasp the idea that she will likely not return to her mother's care. J.P.(2) often got disappointed when her mother made promises of special gifts, but then did not follow through. J.P.(2) rarely spoke of her biological father and generally called him by his first name. J.P.(2) was very close with her foster mother and began to call her "mom." She was very comfortable with her foster mom and they shared similar interests, including participating in Girl Scout activities, baking and shopping. J.P.(2) was integrated into the foster home she shares with her brother, J.P.(1). She had friends, attended church, and was involved in seasonal sports.

¶ 26 M.P. resided in a different traditional foster home. M.P. was also being well taken care of and his foster parents want to adopt M.P. M.P.'s basic and medical needs were all being met in foster care. M.P. had appropriate clothing and many age appropriate toys. M.P. was enrolled in pre-K at South School in Chillicothe, and had an individual education plan for speech delay. In the past, M.P. struggled with behaviors in the academic setting, however, since attending pre-

K and attending home daycare, his behaviors dramatically improved. Similarly, M.P.'s tantrums at home improved since being in a stable environment.

¶ 27 During scheduled visitations, M.P. was playful with his mother, however, he knew her only as "Mommy Barbie", and appeared to be unaware of his biological relationship to her. M.P. did not know his biological father. M.P. was very bonded with his foster parents. He enjoyed helping his foster mother garden and camping with his foster father. In the spring, M.P. was going to play park district baseball.

¶ 28 All children formed close bonds with their foster parents and, while they know and love their biological mother, they sought love and affection from their foster parents. J.P.(1) and J.P.(2) have told the caseworker they wanted to live with their mother, but they also said they would be okay with staying in their foster home. Due to M.P.'s young age, his foster home has been the only home he has known.

¶ 29 Finally, the caseworker's report discussed that the three children had been able to maintain a relationship with each other due to the concerted efforts of their foster families. All three children thrived in their foster homes. Conversely, the caseworker recognized mother was unwilling to complete the court-ordered services, maintained her belief that father did not physically abuse J.P.(1) and continued to maintain contact with father. Therefore, the caseworker recommended that the court: award DCFS guardianship with the right to consent to medical and adoption of J.P.(1), J.P.(2) and M.P., terminate mother's and father's parental rights, and find that DCFS/LSSI made reasonable efforts to reunite the family.

¶ 30 During the best interest hearing, mother testified that she has a strong bond with J.P.(1) and J.P.(2) and both children expressed a desire to reside with her. Mother said that she worked at Burger King and just interviewed for a job at Culver's, so she would be able to support her

family. Mother claimed that the children asked about their cousins and other relatives and asked why they could not see them. Mother did not want the court to terminate her parental rights because she felt like her relationship with her children would only get worse and the children would eventually forget her maternal relationship with the children.

¶ 31 Next J.P.(1) and J.P.(2)'s foster mother testified at the best interest hearing that J.P.(1) had violent behavior that was still not completely resolved. J.P.(1) had a recent outburst where he threatened to kill his foster family. After addressing this incident, according to foster mother, she and her husband maintained their desire to care for and adopt J.P.(1). She also testified that she had seen overall improvement in J.P.(1)'s behavioral issues since his placement in their home.

¶ 32 Finally, father testified at the best interest hearing. Father expressed his disapproval of the current treatment of J.P.(1) and his other children in foster care.

¶ 33 On November 25, 2015, the court found it was in the best interest of the children to terminate mother's parental rights regarding J.P.(1), J.P.(2) and M.P.¹ The court adopted the guardian *ad litem's* argument which recognized mother rejected the notion that father physically abused J.P.(1) causing the court to conclude the children's physical safety and welfare should be balanced by the court in favor of termination of mother's parental rights. In addition, the court weighed the children's identity issues in favor of termination because the foster families spent years bonding with the children while maintaining healthy bonds between all siblings who were residing in separate foster homes. Finally, regarding the children's sense of attachment and children's wishes and long term goals, the facts showed the children, especially J.P.(1) and

¹ The court also terminated father's rights.

J.P.(2), struggled with a lot of emotions regarding father's physical abuse directed toward both J.P.(1) and their mother.

¶ 34 The court noted J.P.(1), who was in first grade, did not want to be adopted and stated that he loved his mother even though he also articulated feelings of distrust with respect to his mother. The trial court found it troublesome that the three siblings were separated; however, because they were still able to see each other through coordinated activities by the foster families, the court found the separate household situation was not against the children's best interest. In regard to J.P.(1)'s violent outbursts, the court noted that "[t]o suggest that continued foster care will continue to increase his violent behavior, I don't think that's well placed." Further, the court determined that J.P.(1) needed stability to allow him to get over these anger issues and put the past behind him. The court entered the dispositional order terminating mother's parental rights on December 3, 2015. On December 7, 2015, mother filed a timely notice of appeal.

¶ 35 ANALYSIS

¶ 36 On appeal, mother argues the trial court committed reversible error by finding her unfit as a parent for the children. Additionally, mother argues that the trial court's determination that it is in the best interest of the children to terminate her parental rights was against the manifest weight of the evidence. The State contends that the trial court correctly found that mother failed to make reasonable progress toward the return of her children and that it was in the best interest of the children to terminate mother's parental rights.

¶ 37 The judicial proceedings for a termination petition consist of a two-step, bifurcated process. 705 ILCS 405/2-29 (West 2014); 750 ILCS 50/1(D) (West 2014). The court first conducts a fitness hearing and, if the court adjudicates the parent unfit based on the allegations in

the termination petition, the court then conducts a separate dispositional or "best interest" hearing to determine whether it is in the best interest of the children that the parent's rights be terminated. 705 ILCS 405/2-29(2) (West 2014); *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). In the present case, mother is challenging both the court's unfitness and best interest findings.

¶ 38

I. Finding of Unfitness

¶ 39

On review, this court will not reverse the trial judge's finding of parental unfitness unless it is contrary to the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001) (citing *In re D.L.*, 191 Ill. 2d 1, 13 (2000)). For a finding to be against the manifest weight of the evidence, the opposite result must clearly be the proper result. *Id.* (citing *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)). This court gives great deference to the trial court's decision since "it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence." *D.F.*, 201 Ill. 2d at 498-99.

¶ 40

In the instant case, the court ordered mother to complete certain tasks at the dispositional hearing. The court found mother unfit due to her failure to make reasonable progress toward completing these tasks to have the children returned to her care during the relevant period from May 1, 2014, to February 1, 2015, pursuant to section 50/1(D)(m)(ii) of the Adoption Act. 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 41

Our supreme court has determined that "the benchmark for measuring a parent's 'progress toward the return of the child' *** encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress "requires a measurable or demonstrable movement toward the goal

of reunification." *In re B.W.*, 309 Ill. App. 3d 493, 499 (1999) (citing *In re K.P.*, 305 Ill. App. 3d 175, 180 (1999)).

¶ 42 In the case at bar, on August 19, 2013, the court adjudicated J.P.(1) as an abused and neglected minor, and J.P.(2) and M.P. as neglected minors. On October 30, 2013, the court ordered mother to complete the several tasks to correct the conditions which led to the removal of the children. Although mother completed a parenting class, mother did not find or maintain suitable housing for her and her children, mother did not appear for two random drug drops, mother failed two other drug drops that showed cannabis in her system, and mother was discharged from counseling for a lack of attendance. Further, the caseworker raised concerns about mother's ability to parent, citing occasions where mother became overwhelmed with her children during scheduled supervised visits. Finally, during the relevant period, the caseworker felt that mother was still denying that the father had abused J.P.(1). Mother also disregarded the rules of visitation and spoke to the children about their father, in spite of the no-contact order of protection between father and the children. Further, contrary to the rules regarding visitations and gifts, mother brought paper airplanes for the children, made by their father, and then told them to write their father a thank you letter.

¶ 43 Given the evidence presented at the fitness hearing, the State proved by clear and convincing evidence that mother was unfit as alleged in the termination petitions. We conclude that the trial court's finding that mother had not made reasonable progress during the relevant period was not contrary to the manifest weight of the evidence.

¶ 44 **II. Best Interests Hearing**

¶ 45 During the best interest hearing, the State had to prove by a preponderance of the evidence that it was in the children's best interest to terminate mother's parental rights. *In re*

D.T., 212 Ill. 2d 347, 358 (2004). A trial court's best interest finding will not be disturbed on appeal unless the finding is contrary to the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 46 Following a finding of unfitness, the focus of the proceedings shift to consider only the best interests of the child. *In re D.T.*, 212 Ill. 2d at 364. Therefore, at the best interests hearing, “the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.” *Id.*; *S.D.* at ¶ 34.

¶ 47 In making this determination, the court considers statutory factors “in the context of the child’s age and developmental needs.” 705 ILCS 405/1-3(4.05) (West 2014). These statutory factors include: (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; (4) the child’s sense of attachment, including love, security, familiarity, and continuity of relationships with parent figures; (5) the child’s wishes and goals; (6) the child’s community ties; (7) the child’s need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the persons available to care for the child. *Id.*

¶ 48 In making its determination, the trial court considered these factors, and found that it was in the best interest of the children to terminate mother's parental rights. Specifically, mother's continued relationship with the father and her denial that father abused J.P.(1) brought into question the children's safety. Additionally, M.P. had created a life with his foster family in the only home he can remember. Further, the other children were attached to their foster parents and the relationships they had developed in their foster homes. While J.P.(1) and J.P.(2) expressed a desire to live with their mother, they also loved their foster parents and had stated they would be okay to stay there. J.P.(1) and J.P.(2)'s foster mother testified that, since the time J.P.(1) has

been with her, she has seen an improvement in his behavioral issues. The evidence showed that the stability and consistency of the foster home have clearly benefited, and will continue to benefit, the children. Finally, both sets of foster parents signed permanency commitments and want to adopt these children and provide them with a permanent home. Based on the evidence presented in the record, the trial court's best interest finding was not against the manifest weight of the evidence.

¶ 49

CONCLUSION

¶ 50

We conclude the trial court did not err by terminating mother's parental rights. For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 51

Affirmed.