

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 (4th) 150738-U

NO. 4-15-0738

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 22, 2016

Carla Bender

4th District Appellate
Court, IL

In re: Z.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA65
VICTOR HURTADO,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's unfitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In October 2014, the State filed a petition to terminate the parental rights of respondent, Victor Hurtado, as to his child Z.H. (born October 7, 2013). In July 2015, the trial court found respondent unfit. Following an August 2015 hearing, the court determined it was in Z.H.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court erred in finding him unfit and determining it was in Z.H.'s best interest to terminate his parental rights. Respondent mother, Emonya Hurtado, is not subject to this appeal. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In December 2013, the State filed a petition for adjudication of neglect and shelter care, alleging Z.H. was subjected to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2012)) in that (1) he was exposed to domestic violence (count I), (2) the environment placed him at risk of physical harm (count II), and (3) respondent mother failed to correct the conditions that resulted in other children being taken into care (counts III and IV). The December 2013 allegations stemmed from an incident during which respondent mother threatened her 15-year-old son, E.D., with a bottle, which resulted in respondent mother engaging in a physical altercation with respondent. During the altercation, respondent mother cut respondent with a knife. Both parents had ongoing domestic-violence issues, with a record of seven other domestic-violence-related reports since April 2012.

¶ 7 In January 2014, the parties stipulated to count I. Following a February 2014 dispositional hearing, the court (1) found respondents were unfit and unable to care for Z.H., (2) made Z.H. a ward of the court, and (3) appointed the Department of Children and Family Services (DCFS) as the guardian of Z.H.

¶ 8 B. Termination Proceedings

¶ 9 On October 29, 2014, the State filed a motion seeking a finding of unfitness and termination of parental rights. As to respondent, the motion alleged he failed to (1) make reasonable efforts to correct the conditions that were the basis for the removal of Z.H. (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of Z.H. within the initial nine-month period following the adjudication of abuse or neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of Z.H (750 ILCS 50/1(D)(b) (West 2012)). In March 2015,

during the pendency of the fitness proceedings, the State filed an amended motion seeking a finding of unfitness and termination of parental rights, adding an allegation that respondent failed to make reasonable progress toward the return home of the children during any nine-month period after the end of the initial nine-month period following the adjudication of abuse or neglect (750 ILCS 50/D(m)(ii) (West 2012)). Specifically, the State alleged respondent failed to make reasonable progress from September 20, 2014, through March 31, 2015.

¶ 10 *1. Fitness Hearing*

¶ 11 In January 2015, respondent's fitness hearing commenced, spanning numerous nonconsecutive days between January and July 2015. During the hearing, the parties presented the following relevant evidence.

¶ 12 *a. Kelly Beisser*

¶ 13 Kelly Beisser, an intact-family caseworker for the Center for Youth and Family Services (CYFS), testified she began working with the family in September 2013. A July 2013 hotline call resulting in DCFS involvement was deemed unfounded, but respondents agreed to continue with an intact-family plan. Respondents denied any ongoing domestic violence within the home, so Beisser focused on ensuring respondent mother, who was pregnant with Z.H. at the time, was receiving appropriate prenatal and postnatal care. In December 2013, Beisser received a hotline call regarding domestic violence in the home. As a result of that call, DCFS took protective custody of the children and the State initiated the present case.

¶ 14 *b. Karie Kaufman*

¶ 15 Karie Kaufman, a caseworker at CYFS, testified she assumed case-management duties following the February 2014 dispositional hearing. At the time, respondents continued to reside together. She made several referrals for respondent, including (1) individual counseling,

(2) parenting classes, (3) domestic-violence classes, and (4) substance-abuse counseling. Respondent completed his parenting classes and engaged in individual counseling. However, respondent failed to complete his domestic-violence classes or substance-abuse treatment. Despite being referred for a substance-abuse assessment in March 2014, respondent did not begin the assessment until October 2014, nor did he complete any treatment. Respondent's compliance with random drug testing was also poor, as he failed to attend or tested positive on multiple occasions. He failed to appear for (1) 3 drops in February 2014, (2) 1 drop in March 2014, (3) 3 drops in June 2014, (4) 4 drops in July 2014, and (5) 10 drops in between September and November 2014. He also tested positive for cannabis in June, October, and November 2014.

¶ 16 In April 2014, following a report of a domestic-violence incident with respondent mother, respondent moved out of the family home. In June 2014, respondent mother reported respondent had again engaged in domestic violence and she thereafter made plans to file for divorce. When respondent mother reported the domestic-violence incident, Kaufman observed visible signs of abuse. Despite respondent mother's intention to file for divorce, in October 2014, respondent moved back in with her. They resided together until December 2014, when respondent mother reported another domestic-violence incident. At that time, respondent was arrested and remained incarcerated until March 2015. Respondent was released after respondent mother signed an affidavit exonerating respondent and refusing to press charges.

¶ 17 Kaufman reported respondent often failed to inform her about moving until after he had moved. Respondent maintained employment, working for a cleaning company and for Plasti-Pak until his arrest. Respondent's visits with the children were consistent and raised no concerns. However, toward the end of October 2014, respondent stopped attending visits and participating in services. Around that same time, Kaufman suspended respondent's visits due to

threats respondent mother made against her counselors. Respondent's visits resumed in February 2015, when he was released from jail. He participated in one visit, which went well. Following his release from jail, respondent did not reengage in any of the recommended services.

¶ 18 c. William Kohen

¶ 19 William Kohen, a psychologist, testified he evaluated respondent for counseling in June 2014. Kohen stated respondent had a history of criminal behavior. Respondent appeared to be of average intelligence and his scores reflected appropriate parenting attitudes. However, he did not feel responsible for DCFS's involvement in the case. As a result of the evaluation, Kohen diagnosed respondent with cannabis abuse based on his self-reported usage and antisocial personality disorder. Kohen therefore recommended respondent engage in individual counseling and obtain a substance-abuse evaluation. Kohen believed respondent's pattern of domestic violence would likely recur if he continued his relationship with respondent mother.

¶ 20 d. Debbie Nelson

¶ 21 Debbie Nelson, the director of services for Cognition Works, testified she received a referral for respondent to engage in the CHANGE program for domestic violence. Respondent began the program in April 2014 but did not successfully complete it. He attended for approximately one month before he was terminated from the program after he admitted engaging in two incidents of domestic violence with respondent mother. Respondent reentered the program in May 2014 but was again terminated for committing another act of domestic violence. While respondent was attending the program, he was an active participant and appeared to be making progress. Respondent also reported being the victim of respondent mother's domestic violence.

¶ 22 e. Josh Hagerstrom

¶ 23 Josh Hagerstrom, a therapist with CYFS, testified he received a referral to provide individual counseling for respondent. In April 2014, respondent started counseling sessions and attended consistently until October 2014, at which time he stopped attending. Respondent did not successfully complete counseling, though Hagerstrom testified respondent had been making progress.

¶ 24 f. Respondent

¶ 25 Respondent testified he is the father of Z.H. Respondent testified he was referred for anger-management and parenting classes. He successfully completed two parenting classes. He was engaged in anger-management classes in December 2014, but he did not complete the classes due to his incarceration. He also did not complete a drug assessment for eight months due to difficulty in obtaining identification. Once he obtained identification, he stopped attending sessions due to repeated contact with police. After he was released from jail in March 2015, he waited for Kaufman to refer him to more services, but she never did. He said he had not attempted to speak with her about services. He testified he felt that he "was going up against a brick wall." According to respondent, his relationship with Kaufman changed after she thought he might try to carry out respondent mother's threats despite his assurances he had nothing to do with respondent mother's threats.

¶ 26 Prior to respondent mother's threats, respondent said visits were going well. The one visit he had after his incarceration also went well. Respondent testified he was ready and willing to participate in services, as he had been ready and willing since before April 2014.

¶ 27 g. The Trial Court's Findings

¶ 28 In July 2015, the trial court found respondent unfit as to the grounds alleged in counts I, II, and IV of the amended motion seeking a finding of unfitness. The court noted

respondent participated in services to an extent for a period of time. However, when he became dissatisfied with the process, he simply stopped participating. After respondent was released from incarceration, he failed to engage in any services. Even prior to his incarceration, he had withdrawn from services. Most significantly, the court noted, respondent continued to engage in acts of domestic violence that ultimately resulted in his incarceration.

¶ 29

2. Best-Interest Hearing

¶ 30

In August 2015, the trial court convened a best-interest hearing. Respondent presented no evidence. The best-interest report stated Z.H. had been placed with his maternal aunt and uncle since he was six weeks old, and they were committed to adopting him. He had strongly bonded to his foster family, referring to his foster parents as "mommy" and "daddy." The family also had a biological daughter who was a sibling figure for Z.H. The best-interest report described Z.H. as a "healthy, happy, and active child" as well as even-tempered. He attended a Head Start program and was not in need of any services. Accordingly, Kaufman recommended terminating respondent's parental rights.

¶ 31

The trial court found it was in the best interest of Z.H. to terminate respondent's parental rights. The court noted Z.H. was very young and needed a parental figure. According to the court, respondent "made it clear that he is not going to take remedial steps that will enable him to be in a position where he could, one, be restored to custody, or two, play a positive role in his child's life." Therefore, the court found respondent would only serve as a destructive influence in Z.H.'s life.

¶ 32

This appeal followed.

¶ 33

II. ANALYSIS

¶ 34 On appeal, respondent argues the trial court erred in finding him unfit and determining it was in Z.H.'s best interest to terminate his parental rights. We address these arguments in turn.

¶ 35 A. Fitness Finding

¶ 36 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.*

¶ 37 The trial court found respondent unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for DCFS taking Z.H. into custody (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return home of Z.H. during the initial nine-month period following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of Z.H. (750 ILCS 50/1(D)(b) (West 2012)).

¶ 38 "When multiple grounds of unfitness have been alleged, a finding that any one allegation has been proved is sufficient to sustain a parental unfitness finding." *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001). Therefore, we begin by examining whether the trial court erred by finding respondent failed to make reasonable efforts toward the return home of Z.H.

¶ 39 " 'Reasonable effort' is a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal." *In re R.L.*, 352 Ill. App. 3d 985, 998, 817 N.E.2d 954, 966 (2004). The trial court must focus on the amount of effort subjectively

reasonable for the particular parent. *Id.* The court must determine whether a parent made reasonable efforts within the initial nine-month period following adjudication. *In re D.F.*, 208 Ill. 2d 223, 239, 802 N.E.2d 800, 810 (2003). That nine-month period begins on the date the court adjudicates the minor child as neglected. *Id.*

¶ 40 In this case, Z.H. was removed from respondent's care due to domestic violence between himself and respondent mother. Though respondent mother was the instigator during the domestic-violence incident which resulted in Z.H. being taken into DCFS custody, the record demonstrates respondent also engaged in domestic violence. DCFS records reflected 12 domestic-violence incidents between respondents from April 2012 through December 2013. Even after Z.H. was removed from respondents' care, their tumultuous relationship continued, off and on, until December 2014. In December 2014, respondents ended their relationship after respondent was arrested for domestic battery against respondent mother. Though Kaufman referred respondent to domestic-violence classes to address his anger issues, respondent failed to complete those classes. In fact, he was unsuccessfully discharged twice due to self-reported, repeated acts of domestic violence.

¶ 41 While respondent showed some efforts by completing his parenting classes, attending counseling, and engaging in visitation with Z.H., he failed to (1) participate in substance-abuse treatment after admitting cannabis use and testing positive on numerous occasions, (2) consistently provide drug drops when requested, (3) complete individual counseling, and (4) complete domestic-violence classes. Rather than improving his efforts over the initial nine-month period following adjudication, the record reflects respondent's efforts toward correcting the conditions that resulted in Z.H.'s removal waned over time.

¶ 42 Accordingly, when looking at the effort subjectively reasonable for respondent, we conclude the trial court's finding of unfitness as to this ground was not against the manifest weight of the evidence.

¶ 43 B. Best-Interest Finding

¶ 44 Respondent next asserts the trial court erred in terminating his parental rights. We disagree.

¶ 45 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108,126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 46 The focus of the best-interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

- "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cultural, and religious;
- (d) the child's sense of attachments ***[;]

* * *

- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 47 Here, respondent had not completed most of the services recommended by DCFS. He had not participated in substance-abuse counseling despite his self-reported cannabis usage, nor had he completed individual counseling. Perhaps more telling, respondent failed to complete his domestic-violence classes because he continued to accrue domestic-violence offenses. Although the reported violence occurred between respondent and respondent mother, without completing his classes, respondent remained a risk to the physical safety of Z.H. Because he failed to comply with services, respondent is in no position to provide permanence to Z.H. in the foreseeable future.

¶ 48 Conversely, Z.H. is thriving with his foster family, which is willing to provide permanence through adoption. Z.H. is happy, healthy, adapting to school, and has bonded to his foster family, the only family he has been with since he was six weeks old. It is in his best interest to remain with a family that has provided permanence for him where respondent cannot.

