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2016 IL App (4th) 150797-U  
NO. 4-15-0797  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
March 2, 2016  
Carla Bender  
4<sup>th</sup> 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
EMONYA HURTADO,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Knecht and Justice Harris 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, Emonya Hurtado, as to her 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 her unfit and determining it was in Z.H.'s best interest to terminate her parental rights. Respondent father, Victor 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 failed to correct the conditions that resulted in other children being taken into care (counts III and IV). These charges stemmed from a December 2013 incident during which respondent threatened her 15-year-old son, E.D., with a bottle, which resulted in respondent engaging in a physical altercation with respondent father. During the altercation, respondent cut respondent father with a knife. Respondents 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 of the petition. Following a February 2014 dispositional hearing, the trial court (1) found respondent was 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. The motion alleged respondent 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)(iii) (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 Z.H. 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 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 following a hotline call. Although the allegations were later deemed unfounded, respondent agreed to continue with an intact-family plan. Respondent denied any ongoing domestic violence within the home, so Beisser focused on ensuring respondent was receiving appropriate prenatal and postnatal care during her pregnancy with Z.H.

¶ 14 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. Beisser continued her involvement in the case for approximately 30 days, during which time she recommended counseling services and domestic-violence classes for respondent. Respondent continued to reside with respondent father.

¶ 15 *b. Karie Kaufman*

¶ 16 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. Kaufman made several referrals for respondent, including (1) individual counseling, (2) parenting classes, (3) domestic-violence classes, and (4) a psychological examination. Respondent successfully completed her parenting classes in June 2014 and her domestic-violence classes in October 2014. She was also engaged in individual counseling after self-referring for treatment at Community Elements. Respondent obtained the psychological evaluation as ordered. Additionally, of her own volition, respondent attended various programs through Family Advocacy in Champaign County, which she successfully completed in March 2015. Respondent was also required to submit to random drug drops, all of which were negative. According to Kaufman, respondent missed three drops in June 2014, one drop in July 2014, two drops in September 2014, one drop in October 2014, and one drop in November 2014.

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

¶ 18 Kaufman reported respondent was employed for approximately one month in August 2014. Respondent's visits with the children were consistent and raised no concerns. She brought a backpack with supplies and was very attentive toward Z.H. However, toward the end of October 2014, CYFS briefly suspended visitation after respondent's counselor, Leah Hamilton, reported respondent made a threat against CYFS caseworkers. Specifically, respondent threatened to shoot six individuals, one for each of the children taken from her.

¶ 19 In December 2014, Kaufman arranged a mediation with respondent regarding the threat and the impact that threat had on respondent's visitation. According to Kaufman, respondent stated that if shooting caseworkers had been her intent, she would have already done it. Respondent did not deny making the threat. As a result of the mediation, respondent was granted supervised monthly visitation with Z.H. at the courthouse. After that time, respondent stopped participating in drug drops. However, she called her caseworker weekly with updates as required.

¶ 20 c. William Kohen

¶ 21 William Kohen, a psychologist, testified he received a referral to evaluate respondent. He had previously evaluated her in 2007. In evaluating respondent, Kohen noticed she had a tendency to minimize the issues she faced. As a result, respondent provided inconsistent information regarding her mental health, thus making it difficult for Kohen to recommend treatment. Intelligence testing reflected respondent had borderline intelligence. Her reading was at an elementary-school level.

¶ 22 Respondent's tests reflected an appropriate parenting attitude. She had a compulsive attitude, was morally oriented, and wanted structure. At the same time, some of her answers reflected depressive feelings. She admitted to feeling depressed over the present case.

¶ 23 Following the psychological testing, Kohen diagnosed respondent with bipolar disorder, alcohol abuse, and cannabis abuse, all in remission. She also had borderline intellectual functioning, a reading disorder, and a possible math disorder. Kohen recommended she continue individual counseling and suggested respondent undergo a psychiatric examination to determine whether she needed medication. At the time, Kohen was aware respondent had her parental rights terminated as to several other children. He determined her prognosis was questionable, given that she had already lost her parental rights as to other children, had a history of drug and alcohol abuse, and had ongoing domestic-violence issues. If she addressed those issues, her prognosis would be more favorable toward her becoming a good parent.

¶ 24 d. Debbie Nelson

¶ 25 Debbie Nelson, the director of services for Cognition Works, testified she received a referral for respondent to engage in the IMPACT and CHANGE programs to address respondent's issues with domestic violence. Respondent successfully completed both programs. According to Nelson, whether a person actually implemented the lessons taught within the programs would not necessarily impact a person's ability to complete the program.

¶ 26 e. Leah Hamilton

¶ 27 Leah Hamilton, a counselor with Community Elements, testified respondent began counseling in April 2014 after self-referring to the program. Hamilton created a treatment plan that would help respondent deal with stressors in her life, primarily, the pending case. Respondent was referred to both group and individual counseling. As to group counseling, respondent was suspended from the program after attending only two of her first six classes. She said she did not attend group therapy because her caseworker did not require it. In group therapy, she would have learned distress tolerance, emotion regulation, and interpersonal skills.

¶ 28 Although respondent failed to complete group therapy, she participated in individual counseling with Hamilton until February 2015, when Hamilton went on maternity leave. Her treatment was ongoing, with respondent consistently attending 30 of 41 sessions. In individual counseling, respondent learned to handle stressors and her emotions. Respondent reported using her coping skills, and Hamilton determined she was making reasonable progress in the ongoing counseling. However, Hamilton also believed respondent needed continued counseling.

¶ 29 In October 2014, Hamilton reported a threat made by respondent against CYFS caseworkers. According to Hamilton, respondent threatened, if her parental rights were terminated at the January 2015 court hearing, she would shoot and kill six people because that was the number of children DCFS had taken from her. She believed that would help others to understand her feelings. Hamilton noted respondent had been irrational during that entire counseling session. During subsequent counseling sessions, respondent withdrew her threats and denied she had the ability to access any firearms.

¶ 30 f. Edwin Hawkes

¶ 31 Edwin Hawkes, a case manager for Community Elements, testified he began providing community support for respondent in August 2014. He assisted respondent with applications for employment and housing and also provided emotional support.

¶ 32 The day after respondent made a threat against CYFS, she met with Hawkes. Respondent apologized for her threat. Hawkes did not believe she would have been willing to hurt anyone, and the threat did not impact her community-support services. Hawkes said respondent communicated to him that she loved her children and wanted to be a good mother. He believed she was trying to make progress with her services.

¶ 33

g. Respondent

¶ 34 In addition to corroborating the testimony provided by other witnesses regarding her cooperation with the service plan, respondent testified she completed various programs through the Family Advocacy Center of Champaign County, including: (1) Parent Café, Concrete Help in Time of Need; (2) Parent Café, Parent Resilience; (3) Putting Our Families Back Together; and (4) Family Table Workshop. She explained she started calling the caseworkers for services in December 2013, after DCFS removed Z.H. from her home.

¶ 35 Respondent also addressed her threat to CYFS. Respondent explained she was frustrated because she was complying with the service plan but the case was not moving forward. Respondent was particularly attached to Z.H. because she suffered medical complications during that pregnancy that nearly resulted in her and Z.H.'s deaths.

¶ 36 Respondent said her visits with Z.H. always went well. She said she always came prepared for visits, and Z.H. did not want her to leave. Respondent said she faithfully attended drug drops until the termination proceedings commenced. She said she would do anything that would allow Z.H. to return home.

¶ 37 Following the domestic-violence incident with respondent father in December 2014, respondent testified she was on the waiting list with Land of Lincoln legal services to obtain a divorce. Respondent father had not resided with her since December 2014.

¶ 38

h. The Trial Court's Findings

¶ 39 In July 2015, the trial court found respondent unfit where she failed to (1) make reasonable progress toward the return home of Z.H. during the initial nine-month period following the adjudication of neglect, and (2) maintain a reasonable degree of responsibility for Z.H. Specifically, the court determined respondent failed to maintain a reasonable degree of

responsibility for Z.H. due to the ongoing pattern of domestic violence between respondents, which included respondent allowing respondent father back in the home despite his acts of violence. The court also found respondent demonstrated a lack of responsibility when she threatened caseworkers in October 2014 and had another domestic dispute with respondent father in December 2014, even though those events were past the initial nine-month period following adjudication. Additionally, the court determined respondent failed to make reasonable progress toward the return home of Z.H. because she failed to put her counseling, classes, and other services to use, as evidenced by her continued involvement in a violent relationship and her threat of violence against the caseworkers.

¶ 40

## *2. Best-Interest Hearing*

¶ 41 In August 2015, the trial court convened a best-interest hearing. Although the court's written order indicates respondent did not appear for the hearing, the transcript of the proceeding clearly reflects respondent's presence. The State presented no additional evidence, but respondent called several witnesses.

¶ 42 At the hearing, Jennifer Ball, a counselor at Community Elements, testified she had been counseling respondent weekly regarding stress management and coping strategies since February 2015. One of the major stressors, respondent's relationship with respondent father, had been relieved since they ended their relationship. Respondent was cooperative with her services and regularly attended counseling sessions. According to Ball, respondent expressed a strong desire to have a relationship with Z.H.

¶ 43 Joy Palmer, respondent's sister, testified she and respondent had a very close relationship. Palmer testified respondent had a difficult pregnancy with Z.H., so respondent was happy and excited when Z.H. was finally born and able to go home. According to Palmer,

respondent talked to her about the mistakes she made and the steps she was taking to rectify her mistakes.

¶ 44 Mary Davis, respondent's mother, testified she had seen changes in respondent over the past three to four years. Respondent was experiencing fewer mood swings and learning from her DCFS services. Davis described her as acting more like an adult. Respondent would frequently call Davis for advice or to talk about her services, and Davis considered herself part of respondent's support network. Respondent had started a job at McDonald's and would help provide financially for Davis when needed. When Z.H. was born, Davis recalled respondent's concern DCFS would take him away. Respondent would often call Davis crying because she missed Z.H. and expressed her love for him. Davis, who had custody of two of respondent's other children, noted how respondent interacted with the children and how the children loved her. According to Davis, respondent was always asking about the children's welfare and schooling, and she would buy items for the children when she had extra money.

¶ 45 Respondent testified she was young and immature when her oldest child was born but, since then, she had matured. She admitted that she did not always comply with DCFS services when her other children were taken into protective custody due to her immaturity. However, she learned her mistakes and poor choices impacted her relationship with her children. She also maintained communication with her teenage son, who was serving a juvenile sentence, and offered him advice and support as needed.

¶ 46 When respondent was pregnant with Z.H., she was excited to bring him home to a child-friendly home. She felt like he was a miracle baby due to the serious medical conditions she and Z.H. faced throughout her pregnancy. Respondent said she was concerned about DCFS

taking Z.H. from her, as caseworkers had removed other children, so she communicated with DCFS during her pregnancy to ensure she purchased items like a proper bed.

¶ 47 With respect to the present case, respondent testified she completed all of her services within six months. Even when she was in the hospital with a medical issue, she checked herself out so she would not miss any scheduled appointments. Respondent said she learned a lot through her programs, particularly her counseling through Cognition Works. Respondent testified she would be the best parent for Z.H., and she would do anything to have him returned to her.

¶ 48 In preparation for the best-interest hearing, Kaufman prepared a best-interest report for the trial court's consideration. 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. He attended a Head Start program, and he was not in need of any services. Accordingly, Kaufman recommended terminating respondent's parental rights.

¶ 49 After considering the evidence, the trial court found it was in Z.H.'s best interest to terminate respondent's parental rights. The court noted respondent's growth throughout the years, but it emphasized the hearing was about the best interest of Z.H. The court found Z.H. was presently in a home that offered safety and permanency in a family dedicated to helping him grow. Accordingly, the court concluded, "it's clear to the [c]ourt that the best interests factors, and relying particularly on [Z.H.'s] need for stability, permanence, safety, continuity, those things favor granting the request for termination of parental rights."

¶ 50 This appeal followed.

¶ 51 II. ANALYSIS

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

¶ 53 A. Fitness Finding

¶ 54 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.* "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009). The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604.

¶ 55 The trial court found respondent unfit because she failed to (1) 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 (2) maintain a reasonable degree of responsibility as to the welfare of Z.H. (750 ILCS 50/1(D)(b) (West 2012)).

¶ 56 "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 progress toward the return home of Z.H.

¶ 57 "Reasonable progress" is "an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17, 14 N.E.3d 26. To establish reasonable progress, the trial court must find some "measurable or demonstrable movement toward the goal of return of the child." *In re M.S.*, 210 Ill. App. 3d 1085, 1093, 569 N.E.2d 1282, 1287 (1991). In measuring the parent's progress, the court should consider "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, 752 N.E.2d 1030, 1050 (2001). A parent demonstrates reasonable progress when the court finds it would be able to return the child to the parent's custody in the near future. *A.S.*, 2014 IL App (3d) 140060, ¶ 17, 14 N.E.3d 26. When the petition alleges a parent failed to make reasonable progress in the initial nine months following adjudication, the calculation of that period begins from the date the court enters the order finding the children neglected. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

¶ 58 In this case, respondent asserts the trial court's finding she failed to make reasonable progress was against the manifest weight of the evidence where the record demonstrates she engaged in and, for the most part, completed the services recommended by her caseworker. However, the difficulty with this case rests not with respondent's completion of recommended services, but her progress in light of the condition which gave rise to Z.H.'s removal—domestic violence. DCFS initially took protective custody of Z.H. following a domestic-violence incident, and respondent later stipulated Z.H. was in an injurious environment because he was subjected to domestic violence within the home.

¶ 59 Despite completing two domestic-violence classes aimed at teaching respondent to stay away from domestic violence, respondent continued in her volatile relationship with respondent father for the majority of the case. They lived together until April 2014, at which time the two engaged in a domestic dispute. Respondent father then moved out of the home, but the two continued their relationship. This ongoing domestic violence prompted the court to find a lack of reasonable progress during a May 2014 permanency hearing. Despite the court placing respondent on notice that the ongoing domestic violence was untenable, respondent was again involved in a domestic-violence incident with respondent father in June 2014. At that point, respondent ended the relationship and initiated divorce proceedings. Her attempt to leave the volatile relationship was short-lived, however, as the respondent father moved back into respondent's home by October 2014. Thus, despite her domestic-violence classes and counseling to help her better assess the risks domestic violence created for Z.H., respondent continued in a volatile relationship with ongoing domestic violence. This supports the trial court's finding that respondent failed to make reasonable progress toward the return home of Z.H. See *In re K.H.*, 346 Ill. App. 3d 443, 452, 804 N.E.2d 1108, 1116 (2004) (mother properly found unfit for failure to make reasonable progress in addressing domestic violence within the home).

¶ 60 Accordingly, we conclude the trial court's finding of unfitness was not against the manifest weight of the evidence. Given our finding on this ground, we need not consider any other basis upon which the court relied in determining respondent to be unfit.

¶ 61 B. Best-Interest Finding

¶ 62 Respondent next asserts the trial court erred in terminating her parental rights. We disagree.

¶ 63           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.

¶ 64           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." *Id.*

¶ 65 Here, the trial court noted respondent's growth as she continued through her DCFS services, stating there was "no doubt" she had matured. The court also noted the importance of Z.H.'s family ties, preserving his identity, and his identification with the concept of home. We therefore find unpersuasive respondent's argument that "[t]he [c]ourt ignored everything [respondent] said."

¶ 66 In making its decision, the trial court properly observed the hearing was about the best interest of Z.H., not respondent. Since Z.H. had been taken into protective custody, respondent had been involved with at least three domestic-violence incidents with respondent father, two of which resulted in visible injuries to respondent, yet she declined to pursue charges against respondent father or follow through with divorce proceedings. Without evidence to support her contention she was addressing her domestic-violence issues within the home, the court could not be assured of her ability to provide a safe and stable home for Z.H.

¶ 67 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.

¶ 68 Respondent asserts the trial court improperly considered the best-interest report in making its decision, as the report had not been admitted into evidence. Respondent offers no

authority that would lead us to believe the court's consideration of the report was inappropriate. We further find that argument unpersuasive, because at a best-interest hearing the court may use any reports submitted in anticipation of the hearing in reaching its decision. See *Jay. H.*, 395 Ill. App. 3d at 1070, 918 N.E.2d at 289. We also find the record fails to support respondent's contention the court considered only the best-interest report and recommendations by counsel, where the court specifically stated it considered "the evidence offered, the prior order [finding respondent unfit] \*\*\*, the written reports that have addressed this, and the recommendations of the attorneys." The court also noted it considered the best-interest factors.

¶ 69 Accordingly, because we conclude the facts in this case do not clearly demonstrate the trial court should have reached the opposite result, we hold the court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 70 III. CONCLUSION

¶ 71 For the foregoing reasons, we affirm the trial court's judgment.

¶ 72 Affirmed.