2016 IL App (5th) 150368-U

NO. 5-15-0368

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re M.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 13-JA-121
	)	
Temarcus S.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determination that the respondent was unfit is not contrary to the manifest weight of the evidence.

¶ 2 The respondent, Temarcus S., appeals the judgment of the circuit court of St. Clair County terminating his parental rights to M.S. He argues that the circuit court's determination that he was unfit because he failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of M.S. is contrary to the manifest weight of the evidence. He does not challenge the circuit court's determination that

termination of his parental rights was in the minor's best interests. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 Temarcus S. and Latoya M. are the biological parents of M.S., who was born on October 15, 2013.[1] On November 4, 2013, the State filed a petition for the adjudication of wardship alleging that M.S. was neglected and dependent in that she had been born premature and at birth tested positive for opiates, marijuana, cocaine, and amphetamines. The petition further alleged that upon her release from the hospital, M.S. would require a high-calorie formula and two to three medical visits per week for the first few months of her life. With respect to Temarcus S., the petition alleged that he had not verified that he had appropriate housing or necessary accommodations to care for M.S.'s special needs or reliable transportation to take her for her medical visits. Following a shelter care hearing, M.S. was placed in the custody of the Department of Children and Family Services (DCFS) and a summons hearing was scheduled for November 25, 2013.

¶ 4 Temarcus S. appeared on November 25, 2013, but Latoya M. did not and was found to be in default. Temarcus S. also appeared at the next two court dates, including a hearing on March 24, 2014, at which he was ordered to cooperate with DCFS and comply with the terms of his service plan. He did not appear at the May 5, 2014, adjudicatory hearing, however, and was found to be in default. Following that hearing M.S. was adjudicated a neglected minor and made a ward of the court. The court ordered M.S. to remain in DCFS custody and set a permanency goal of returning M.S. home in five

[1]Latoya M. is not a party to this appeal.

months. Following a June 23, 2014, hearing, at which Temarcus S. did not appear, the court prohibited visitation absent further order of the court.

¶ 5 A permanency hearing was scheduled for October 6, 2014. In anticipation of that hearing, Caritas Family Solutions (Caritas) submitted a report stating that Temarcus S.'s service plan included requirements related to parenting, anger management, housing, income, and random drug screenings. The report stated that Temarcus S. had not completed any of his services, did not keep appointments with his caseworker, and had not visited with M.S. since December 2013. The report further stated that despite a diligent search, the caseworker had been unable to find viable addresses for either parent. Following a hearing, the circuit court entered a permanency order finding that Temarcus S. had not made reasonable efforts toward returning M.S. home and that the permanency goal of returning M.S. home had not been achieved because Temarcus S. had not made progress on his service plan. A permanency review hearing was scheduled for March 2, 2015.

¶ 6 Prior to the March 2, 2015, hearing, DCFS submitted a report stating that Temarcus S.'s service plan included requirements related to parenting education groups, random drug screens, anger management counseling, housing, and income. The report stated that Temarcus S. had not completed the parenting education program or anger management counseling, and while he had submitted one clean drug test in January 2014, he had not made himself available to complete additional drug screens since that time. The report further stated that drug screens and anger management counseling were still deemed necessary because respondent had been convicted of battery, possession of drug

paraphernalia, and resisting a peace office in September 2014. Temarcus S.'s source of income was unknown and his housing status was unknown until February 2015, when a foster care supervisor found that he was being held in the St. Clair County jail on a theft charge. The supervisor visited Temarcus S. in jail and advised him that DCFS was pursuing termination because of his lack of progress on his service plans, and that services were still available to him if he chose to utilize them. Temarcus S. last made contact with DCFS in March 2014 when he scheduled an appointment that he did not keep. Following the hearing, the court entered a permanency order finding that Temarcus S. had not made reasonable progress in returning M.S. home and changing the permanency goal to substitute care pending termination of parental rights.

¶ 7 On March 5, 2015, the State filed a petition to terminate the parental rights of both parents. With respect to Temarcus S., the petition alleged that he was unfit as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) in that (1) he had abandoned M.S., (2) he had failed to maintain a reasonable degree of interest, concern, or responsibility as to her welfare, and (3) he had deserted her for more than three months next proceeding commencement of the proceedings. A hearing on the petition was set for April 13, 2015.

¶ 8 A DCFS report submitted in anticipation of the April 13, 2015, hearing stated that Temarcus S. had not participated in any of his service plan goals. The report further stated that after Temarcus S. was located in jail in February 2015 he was provided with the name and contact information of his caseworker but never contacted her. The hearing

was continued to July 27, 2015. Prior to the hearing, DCFS again reported that Temarcus S. had not participated in any of his service plan tasks.

¶ 9 A bifurcated hearing on the State's petition was held on July 27, 2015. Vicki Jerashen, a foster care case manager for Caritas, testified as follows. She had been assigned to M.S.'s case since February 25, 2015. Temarcus S. completed an integrated assessment on January 15, 2014, and service plan was put in place in February 2014. His service plan required him to participate in substance abuse counseling, anger management counseling, and parenting classes. He was also required to maintain appropriate housing, secure employment or a legal means of income, and cooperate with DCFS. Temarcus S. had not provided a drug drop since August 2014, when he tested positive and was graded unsatisfactory. His last clean drug drop was in January 2014. He was also graded unsatisfactory with respect to his parenting classes and anger management counseling goals because he never participated in these services. He never provided any rent or utility receipts to demonstrate that he had appropriate housing, and failed to provide any proof of employment or a legal means of income. Temarcus S. could have asked his caseworker for assistance in obtaining housing and employment. Temarcus S. had no contact with Caritas from October 2014 to the end of February 2015. Temarcus S. had weekly visits scheduled with M.S., but he only attended three visits before disappearing. His last visit with M.S. occurred in February 2014, and his last contact with M.S. was in June 2014. He never sent her any birthday cards or presents.

¶ 10 Temarcus S. testified as follows. He visited with M.S. regularly for the first two months she was in care, until he had to move away. He last saw M.S. in February 2014.

Shortly after he completed his integrated assessment he traveled to Colorado, without telling his caseworker. He returned to Illinois around the end February or beginning of March 2014 and met with his caseworker, but they did not get along. He traveled back to Colorado to stay with family because he was homeless. He returned to Illinois after about three months, but did not contact his caseworker. He was in jail from September 2014 to October 2014. He testified that spoke with his caseworker by phone after getting out of jail, "but I never met up with her because I had transportation problems and everything, and I ended up getting incarcerated again." Between October 2014 and February 2015, he had no home, income, or transportation. In February 2015, he went back to jail, where he remained as of the date of the hearing.

¶ 11 At the conclusion of the fitness portion of the hearing, the circuit court found that the State had proved by clear and convincing evidence that Temarcus S. was unfit in that he had failed to maintain a reasonable degree of interest, concern, or responsibility as to M.S.'s welfare.

¶ 12 After a brief recess, the court proceeded with a best-interests hearing, after which the circuit court found that termination of Temarcus S.'s parental rights was in M.S.'s best interests. We need not set forth the evidence adduced at the hearing or the court's factual findings because Temarcus S. does not challenge this part of the judgment.

¶ 13 At the conclusion of the hearing, the circuit court advised Temarcus S. that he had the right to appeal and that if he wished to appeal, he had to "file the appropriate paperwork within 30 days of today's date." The court also advised him that if he were unable to afford an attorney one would be provided for him at no cost.

¶ 14 On August 4, 2015, the defendant filed a letter with the court stating:

> "I Temarcus [S.] is [*sic*] writing to inform you that I will [*sic*] like to appeal the previous case #13JA121."

On August 27, 2015, the circuit court appointed counsel to represent Temarcus S. on appeal. That same day, counsel filed a notice of appeal on Temarcus S.'s behalf.

¶ 15 We must first address the State's argument that this appeal must be dismissed for want of jurisdiction because the notice of appeal was untimely. The State contends that the August 27, 2015, notice of appeal filed by appointed counsel was filed one day late, and that the August 4, 2015, letter cannot be construed as a notice of appeal because it does not comply with the requirements of Supreme Court Rule 303 (eff. Jan. 1, 2015).

¶ 16 In *In re Joseph M.*, 405 Ill. App. 3d 1167 (2010), the respondent appealed an order of the circuit court of Randolph County finding him subject to involuntary admission. The respondent filed *pro se* a notice of appeal that stated, in its entirety, " 'Joe Henry M[.] will [*sic*] like to appeal my case November 19, 2008, State Illinois Circuit Court for the 20th Judicial Circuit Randolph County Courthouse.' " *Id.* at 1171. The State argued that the notice of appeal failed to confer jurisdiction on this court because it failed to comply with various requirements of Rule 303. *Id.* We disagreed, finding that the notice of appeal was sufficient to confer jurisdiction because it fairly and accurately identified the order appealed from and the relief sought, and that the State suffered no prejudice, as demonstrated by its filing of an appellate brief. *Id.* at 1171.

¶ 17 The *pro se* letter Temarcus S. filed on August 4, 2015, is very similar to the *pro se* notice of appeal in *In re Joseph M.* It stated that Temarcus S. was seeking appellate

review of an order entered in his case, and it identified that case by its trial court number. The letter fairly and accurately identified the order appealed from and the relief sought. Moreover, as in *In re Joseph M.*, the State filed a brief on appeal responding to Temarcus S.'s arguments, demonstrating that it suffered no prejudice. Consequently, we find that the August 4, 2015, letter, which was filed within 30 days of the judgment, was sufficient to confer jurisdiction on this court.

¶ 18 Having determined that we have jurisdiction, we turn to the substantive issue on appeal. Temarcus S. argues that the circuit court's determination that he was an unfit person because he failed to maintain a reasonable degree of interest, concern, or responsibility as to M.S.'s welfare is contrary to the manifest weight of the evidence. He contends that he visited regularly with M.S. and attended all court hearings prior to leaving the area, which was necessitated by his homelessness and inability to find work. He maintains that he was unemployed, homeless, and without transportation during the pendency of the proceedings, and was out of the area or incarcerated much of the time. He also contends that his first caseworker never provided any assistance in obtaining services because she did not like him.

¶ 19 The Juvenile Court Act of 1987 establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2012). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.*

A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 20 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2012). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 21 The circuit court found Temarcus S. to be unfit on the basis that he had failed to maintain a reasonable degree of interest, concern, or responsibility as to M.S.'s welfare (750 ILCS 50/1(D)(b) (West 2014)). Because the statute is stated in the disjunctive, any of the three elements may be considered as an independent basis for unfitness. *In re J.B.*, 2014 IL App (1st) 140773, ¶ 51. In determining whether a parent has shown a reasonable degree of interest, concern, or responsibility for a minor's welfare, the court must consider the parent's efforts to visit and maintain contact with the minor, as well as other indicia of interest, such as inquiries into the child's welfare. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). The court should focus on the parent's efforts rather than his or her success (*In re M.J.*, 314 Ill. App. 3d 649, 656 (2000)), and in evaluating those

efforts, the court must consider circumstances which might have impacted those efforts, such as poverty, lack of transportation, the parent's need to resolve other life issues, and actions and statement of others which hinder visitation (*In re Adoption of Syck*, 138 Ill. 2d 255, 278-79 (1990)). A parent is not fit simply because he or she has shown some interest in the minor. *In re M.J.*, 314 Ill. App. 3d at 657. Rather, the interest, concern, or responsibility must be objectively reasonable. *Id*. A parent's failure to comply with the directives of a service plan is tantamount to a failure to maintain a reasonable degree of interest, concern, or responsibility as to child's welfare. *Id*.

¶ 22 The record reveals that Temarcus S. failed to complete or even attempt to complete any of his service plan goals. Although Temarcus S. argues that he was unable to complete these tasks because of homelessness, lack of employment, and lack of transportation, Jerashen testified that her agency could have provided assistance with housing and employment, and we note that the court's January 13, 2014, order required DCFS to provide Temarcus S. with a bus pass upon request. Instead, Temarcus S. left the state without telling his caseworker. He returned in February or March 2014 and met with his caseworker, but decided that she did not like him and left the state again, this time for three months. His next contact with his caseworker came in October 2014, when he was released from jail. Although he spoke with her, he did not meet with her. Jerashen testified that her agency had no further contact with Temarcus S. until February 2015, when a foster care supervisor found that he was being held in the county jail. The supervisor told Temarcus S. that services were still available to him and gave him

Jerashen's contact information, but he never contacted her. Nothing in the record supports Temarcus S.'s assertion that his first caseworker refused to work with him.

¶ 23 Temarcus S. testified that he visited with M.S. regularly for the first two months she was in care, but Jerashen testified that Temarcus S. last visited with M.S. in February 2014 and last had contact with her in June 2014. We recognize that on June 23, 2014, the circuit court entered an order prohibiting visitation, but Temarcus S. presented no evidence that he ever took any steps to have visitation restored.

¶ 24 Based on the evidenced adduced at the fitness hearing, we cannot find that the circuit court's determination that Temarcus S. was unfit for having failed to maintain a reasonable degree of interest, concern, or responsibility as to M.S.'s welfare is contrary to the manifest weight of the evidence. As noted above, Temarcus S. does not contest the circuit court's determination that termination of his parental rights is in M.S.'s best interests. Consequently, we need not review that part of the circuit court's judgment.

¶ 25 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 26 Affirmed.