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May 21, 2018
Carla Bender
4th District Appellate
Court, IL

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NOS. 4-18-0028, 4-18-0029 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Si. J., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 15JA116
v. (No. 4-18-0028)	)	
Shane Jackson,	)	
Respondent-Appellant).	)	
----------	)	
In re S.J., a Minor	)	No. 16JA39
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0029)	)	Honorable
Shane Jackson,	)	Karen S. Tharp,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Knecht 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 On December 29, 2017, the trial court terminated the parental rights of respondent, Shane Jackson, as to his children, S.J. (born September 25, 2014) and Si. J. (born April 12, 2016). Respondent mother, Tasheneka Thigpen is not a party to this appeal. On appeal, respondent argues the court's fitness and best-interest findings were against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Proceedings

¶ 5 1. *S.J.*

¶ 6 In June 2015, the State filed a petition for adjudication of wardship, alleging S.J. was neglected, pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)), in that his environment was injurious to his welfare when he resided with respondent due to exposure to domestic violence between respondent and Thigpen. In November 2015, the trial court entered an adjudicatory order finding S.J. neglected after Thigpen stipulated that S.J.'s environment was injurious to his welfare because of the domestic violence. Following a December 2015 dispositional hearing, the court (1) determined respondent was unfit and unable to care for S.J., (2) made S.J. a ward of the court, and (3) placed guardianship of S.J. with the Department of Children and Family Services (DCFS).

¶ 7 2. *Si. J.*

¶ 8 In April 2016, the State filed a petition for adjudication of wardship, alleging Si. J. was neglected in that her environment was injurious to her welfare (1) as evidenced by her sibling, S.J., being adjudicated neglected due to domestic violence; and (2) respondent and Thigpen's failure to make reasonable progress toward having S.J. returned to their care and remaining in the care of DCFS. See 705 ILCS 405/2-3(1)(b) (West 2014). In August 2016, the trial court entered an adjudicatory order finding Si. J. neglected after respondent and Thigpen stipulated that Si. J.'s environment was injurious to her welfare. Following a September 2016 dispositional hearing, the court (1) determined respondent was unfit and unable to care for Si. J., (2) made Si. J. a ward of the court, and (3) placed guardianship of Si. J. with DCFS.

¶ 9 B. Termination Proceedings

¶ 10 In June 2017, the State filed petitions to terminate respondent's parental rights. The petitions alleged respondent failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to S.J. and Si. J. (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions that were the basis of removal (750 ILCS 50/1(D)(m)(i) (West 2016)); (3) make reasonable progress toward the return of S.J. and Si. J. within nine months after an adjudication of neglect, specifically November 4, 2015, to August 4, 2016, as to S.J. and August 24, 2016, to May 24, 2017, as to Si. J. (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (4) make reasonable progress toward the return of S.J. during any nine-month period following an adjudication of neglect, specifically August 4, 2016, to May 4, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)). We note the State cited to the injurious environment provision of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2014)) in the petitions to terminate. We have included the proper provisions from the Adoption Act defining "unfit person" (750 ILCS 50/1(D) (West 2016)).

¶ 11 In October 2017, Thigpen executed a final and irrevocable consent to the adoption of S.J. and Si. J. by respondent's mother, Erica Thomas. On December 8, 2017, after respondent declined to sign a direct consent for the adoption of S.J. and Si. J., the court proceeded to respondent's fitness hearing.

¶ 12 1. *Fitness Hearing*

¶ 13 Over the course of two days, the trial court heard the following evidence.

¶ 14 a. Angie Westlake

¶ 15 Angie Westlake testified she worked as the Center for Youth and Family Solutions (Solutions) caseworker for respondent from June 2015 to January 2016, and again from June 2017 to October 2017. Westlake indicated that in June 2015, DCFS removed S.J.

Westlake created a service plan for respondent. Respondent's service plan included housing, domestic violence services, counseling, visitation, employment, and parenting classes.

¶ 16 In June 2017, when Westlake reentered the case, both Si. J. and S.J. were in care. Since Westlake lacked information on a current address for respondent, she attempted to contact him. Ultimately, between June 2017 and October 2017, Westlake had no contact with respondent, and to her knowledge respondent failed to exercise his visitation with S.J. or Si. J. During this period, the service plan for respondent remained unchanged. Westlake testified respondent had not made any progress toward reunification and that she never came close to returning either S.J. or Si.J. to respondent's care.

¶ 17 b. Emily Roberts

¶ 18 Emily Roberts testified she worked as the Solutions caseworker from January 2016 to June 2017. However, her involvement in the case ended in April 2017, when she took a leave of absence. Roberts stated when she entered the case respondent's goals were to engage in counseling, visitation, parenting classes, domestic violence classes, and obtain housing and employment.

¶ 19 During the time Roberts served as the caseworker, respondent received weekly two-hour supervised visits with S.J. and Si. J., who came into care in April 2016. Respondent attended 26 out of 76 visits. Roberts noted that transportation issues led to her offering respondent bus passes for visits and services. Respondent missed visits because of work or he overslept; therefore, Roberts occasionally changed the dates and times of visits to accommodate respondent's work schedule.

¶ 20 During the period of August 2016 to April 2017, respondent began parenting classes but never finished. Roberts testified that respondent, after seeing his counselor twice,

discontinued counseling. After resolving who would pay for domestic-violence services, respondent began participating in classes between December 2016 and April 2017. At times, Roberts faced difficulty contacting respondent, and she testified respondent failed to maintain a fixed address. Roberts stated as far as she knew, respondent did meet his goal of maintaining employment. Roberts testified overall respondent received unsatisfactory ratings on his service plans during her time as caseworker; therefore, at no time did she come close to returning S.J. or Si. J. to respondent's care.

¶ 21 S.J. and Si. J. were placed with respondent's mother, Erica Thomas. Respondent and his mother shared a volatile relationship, with little contact. Thomas told Roberts that at times, her only contact with respondent took place through Facebook.

¶ 22 c. Respondent

¶ 23 Respondent testified S.J. came into care because of domestic violence. Specifically, Thigpen tried to stab him and told the police respondent put his hands on her. Respondent acknowledged he knew about his service plans, and what he needed to complete in order to get his children back. While respondent admitted he heard Westlake and Roberts testify, he offered a different explanation for many of their assertions.

¶ 24 Respondent testified he completed and passed the parenting classes in November or December of 2016, but he lost his certificate. He also testified he gave the certificate to Roberts. Respondent stated he went to counseling more than two times, but he stopped because he did not have a mental-health issue. Respondent explained he did not finish the domestic-violence services because of money. According to respondent, initially he attended the domestic-violence class without paying $15 a class, but eventually payment became a requirement in order to progress. Then, respondent stopped attending.

¶ 25 Respondent disagreed that he attended only 26 out of 76 visits with S.J. and Si. J., but rather he believed he attended at least half of the visits. Respondent stated that because of transportation issues, he utilized, when provided, bus passes. Respondent testified that if he did not have any money to buy his children food, he did not visit them. Respondent also testified he spent most of his money on legal fees for a driving under the influence (DUI) case. In September 2016, respondent received a DUI for driving under the influence of Xanax without having a prescription. Four days after purchasing a car, respondent received a DUI. After receiving a sentence of supervision, respondent neglected to tell his caseworker about the DUI because as he did not think it was any of her business.

¶ 26 Respondent acknowledged not being successful on every goal in his service plan, but he pointed out his continuous employment, except for between February 2017 and July 2017. In February 2017, respondent lost his job at the Corner Pub because of a problem "dealing with other people." Respondent started a new job at Subway in July 2017.

¶ 27 d. Trial Court's Findings

¶ 28 After hearing the evidence, the trial court found, by clear and convincing evidence, respondent unfit on four separate grounds. The court noted domestic violence as the primary issue leading to S.J.'s removal. The primary issue leading to Si. J.'s removal was S.J. being in care and respondent and Thigpen not having made reasonable progress toward S.J.'s return. In deciding if respondent made reasonable progress as to S.J., the court considered the dates of November 2015 through August 2016 and August 2016 through May 2017. As for Si. J., the court considered the dates of August 2016 through May 2017.

¶ 29 The trial court determined respondent failed to succeed at any goal other than employment. Respondent by his own admission never maintained stable housing. The court

noted that given the December 2016 case review, rating respondent unsatisfactory as to the parenting classes, respondent lacked credibility in his assertion that he provided the caseworker the certificate given he failed to bring the certificate to court.

¶ 30 Respondent admitted going to counseling and then stopping. The trial court observed that the purpose of counseling was not only to address mental illness, but also to address interpersonal relationship issues. The court noted there had been relationship issues between respondent and Thigpen and respondent lost his a job due to his inability to "deal" with other people. The court suggested respondent missed an opportunity to address those issues because respondent did not believe he was mentally ill and refused to go.

¶ 31 Respondent claimed he could not afford the $15 domestic-violence class fee but the trial court believed that respondent's inability to pay resulted from respondent paying legal fees for his DUI case. The court stated the DUI case was the caseworker's business because it dealt with whether or not respondent was capable of caring for his children and assessing the need for additional services.

¶ 32 The trial court noted that by his own admission, respondent made only half of his scheduled visits; and while he disputed the caseworker's characterization, he failed to provide documentation as to having made more visits. Solutions provided respondent with the opportunity to obtain bus passes, regardless of whether he utilized them. The court asserted visitation did not need to involve respondent providing food to S.J. and Si. J., but rather provided an opportunity for the children to see respondent and vice versa.

¶ 33 The trial court found that even if respondent made half the visits, he did not show a reasonable degree of interest, concern, or responsibility for the welfare of S.J. or Si. J. Respondent, by ceasing to continue counseling or domestic-violence services, did not make

reasonable efforts to correct the conditions that were the basis for removal. Finally, the court determined that respondent did not make reasonable progress toward having the children returned to his care, where he failed to engage in the offered services, made only half of the scheduled visits, did not maintain stable housing, and never progressed to unsupervised visitation.

¶ 34 2. *Best-Interest Hearing*

¶ 35 Immediately following the fitness hearing, the trial court held a separate best-interest hearing. The trial court heard the following evidence.

¶ 36 a. Lindsey Miller

¶ 37 Lindsey Miller testified as the current Solutions caseworker. At the time of the best-interest hearing, Miller had been the caseworker a little under two months, having taken the case over in October 2017.

¶ 38 Miller testified she interacted with S.J., Si. J., and Thomas on three occasions since becoming caseworker. Miller noted at the time of her visits S.J. was three years old and Si. J. was one year old. Miller observed S.J. and Si. J. interact with Thomas, and she characterized their relationship as appropriate. Miller stated both S.J. and Si. J. referred to Thomas as "mom" and looked to her when they needed something. Thomas lived in a two-bedroom home with S.J., Si. J., Thomas's 15-year-old son, and her 12-year-old daughter. Miller did not have a chance to see S.J. or Si. J. interact with the other two children.

¶ 39 According to Miller, Thomas signed permanency commitment forms and indicated her willingness to adopt the children. Miller testified S.J. expressed interest in staying with Thomas. Miller asked S.J. if he felt safe with Thomas, and he said yes. Miller did not observe respondent interact with S.J. or Si. J. In her time as caseworker, there were no visits

between respondent and his children. Because respondent's last visit with S.J. and Si. J. was in April 2017, Miller determined it was not in the children's best interests to continue visitation with respondent. Miller noted S.J. never asked about respondent. However, Miller acknowledged that she never asked S.J. about respondent.

¶ 40 Miller opined there would be no harm to either S.J. or Si. J. in terminating respondent's parental rights because they were stable, happy, and healthy in their placement, and respondent had not completed services.

¶ 41 b. Respondent

¶ 42 Respondent testified he and Thomas did not get along, but that he video chatted with his children more than twice a week, usually through his younger brother or sister. Respondent indicated S.J. recognized him and identified him as "dad" and he believed Si. J. recognized him as well. Respondent stated Si. J. smiled when she saw him. Upon being questioned about who authorized video communication, respondent maintained that he informed Westlake and Roberts that he engaged in video communications with his children. Respondent asserted he had to go through his younger siblings to communicate with his children because Thomas deliberately interfered with his ability to see or communicate with his children.

¶ 43 Respondent testified he planned to look into renting a two-bedroom home with the idea that the lease would begin in early January 2018 and that the children would live with him. Respondent stated his children needed him. Finally, Respondent testified to preferring to not deal with the people in the juvenile court system and that prior to the removal of S.J. from his care, S.J. was doing fine.

¶ 44 c. Trial Court's Findings

¶ 45 The trial court found, by a preponderance of the evidence, it was in the best interests of S.J. and Si. J. to terminate respondent's parental rights. The court found respondent's testimony as to whether he had informed the caseworkers of his video communication with the children to be inconsistent and contradictory. The court found the video chats were improper contacts with the children because they were unauthorized by the agency and unsupervised. In considering the best interest of the children, the court did not find significant the fact that the children recognized respondent as their father.

¶ 46 The trial court stated respondent did himself no favors when he testified that he did not want to deal with the juvenile court system anymore. The court determined that respondent's statement implied he did not want to engage in the services put in place for him. The court suggested respondent would have benefited from the services based on his domestic-violence issues with Thigpen, the loss of his job due to his inability to get along with others, and his inability to get along with his own mother.

¶ 47 The trial court asserted video communication was not the same as visitation. The court determined after considering all the best-interest factors that S.J. and Si. J. appeared to be stable, well cared for, and happy in their current placement, and further, the court could not see that in the foreseeable future the children could achieve permanence with respondent given his attitude and lack of progress to date.

¶ 48 Accordingly, the court entered an order terminating respondent's parental rights.

¶ 49 This appeal followed. We docketed respondent's appeal in regard to Si. J. as No. 4-18-0028 and respondent's appeal in regard to S.J. as No. 4-18-0029. We have consolidated respondent's cases for review.

¶ 50 II. ANALYSIS

¶ 51 On appeal, respondent argues the trial court erred in finding him unfit and determining it was in S.J.'s and Si. J.'s best interests to terminate his parental rights. We address these arguments in turn.

¶ 52 A. Fitness Finding

¶ 53 In a proceeding to terminate parental rights, 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). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). Evidence of unfitness based on any ground enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) is enough to support a finding of unfitness, even where the evidence may not be sufficient to support another ground. *In re C.W.*, 199 Ill. 2d 198, 210, 766 N.E.2d 1105, 1113 (2002). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Jordan V.*, 347 Ill. App. 3d at 1067. The trial court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.*

¶ 54 The trial court found respondent unfit on four different grounds: (1) respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to S.J. and Si. J. (750 ILCS 50/1(D)(b) (West 2016)); (2) respondent failed to make reasonable efforts to correct the conditions that were the basis of removal (750 ILCS 50/1(D)(m)(i) (West 2016)); (3) respondent failed to make reasonable progress toward the return of S.J. and Si. J. within nine months after an adjudication of neglect, specifically November 4, 2015, through August 4, 2016, as to S.J. and August 24, 2016, through May 24, 2017, as to Si. J. (750 ILCS 50/1(D)(m)(ii)

(West 2016)); and (4) respondent failed to make reasonable progress toward the return of S.J. during any nine-month period following an adjudication of neglect, specifically August 4, 2016, through May 4, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)). We turn first to the reasonable-progress grounds.

¶ 55 The trial court's finding that respondent failed to make reasonable progress toward the return of the children within nine months following the adjudications of neglect was not against the manifest weight of the evidence. Reasonable progress is measured by an objective standard that considers the progress made toward the goal of returning the child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391, 757 N.E.2d 613, 617 (2001). Specifically, reasonable progress includes a parent's compliance with service plans and court directives, in light of the condition that gave rise to the removal of the child. *In re C.N.*, 196 Ill. 2d 181, 216, 752 N.E.2d 1030, 1050 (2001).

¶ 56 During the relevant time period (August 2016 through May 2017), service plans called for (1) stable housing; (2) domestic-violence services; (3) parenting classes; (4) counseling; (5) visitation; and (6) employment. The evidence established respondent failed to provide caseworkers with a fixed address. Respondent also failed to complete domestic-violence services and parenting classes. Respondent attended counseling only twice before refusing to attend because he claimed he did not have mental-health issues. The evidence further established respondent attended 26 of 76 scheduled visits, despite caseworkers accommodating his schedule and helping to arrange transportation. Finally, although employed during most of this period, respondent lost his job in February 2017 due to his inability to "deal" with others.

¶ 57 Given respondent's failure to complete the required service plans, we cannot say the trial court's determination respondent failed to make reasonable progress toward having S.J.

or Si. J. returned to his care within nine months following the adjudications of neglect was against the manifest weight of the evidence. Because we have upheld the trial court's findings as to one ground of unfitness, we need not review the other grounds. See *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001).

¶ 58 B. Best-Interest Finding

¶ 59 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 trial court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62.

¶ 60 The focus of the best-interest hearing is to determine the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2014). 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 person available to care for the child." *Id.*

¶ 61 The trial court in considering the relevant best-interest factors concluded that the record showed S.J. lived in a relative foster placement starting at eight months old and Si. J. began living in relative foster placement as an infant. Both S.J. and Si. J. demonstrated a close bond with Thomas, as evidenced by the children calling Thomas "mom" and looking to her when in need of something. Thomas signed permanency commitment forms and indicated her willingness to adopt the children.

¶ 62 Conversely, respondent cannot provide stability and permanence for S.J. or Si. J. Respondent testified that he does not speak to his mother and that he did not want to deal with the juvenile court system. This mindset evidenced itself in the failure of respondent to take the necessary steps to place him in the position to provide, in the near future, permanency for his children. Although, respondent argued he could offer permanence to the children because he had a good job, he had yet to obtain stable housing. Moreover, the evidence showed respondent

failed to visit the children in over eight months. Respondent has not shown that he can provide S.J. or Si. J. with the necessary stability or permanence they deserve.

¶ 63 Accordingly, we conclude the trial court's finding it was in S.J.'s and Si. J.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 64 III. CONCLUSION

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

¶ 66 Affirmed.