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FILED
June 27, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 180062-U

NOS. 4-18-0062, 4-18-0063, 4-18-0064, 4-18-0065 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re T.M., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-18-0062) Arwilda Musson, Respondent-Appellant).	)	Appeal from the Circuit Court of Vermilion County No. 15JA120
In re T.M., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-18-0063) Dontae Luster, Respondent-Appellant).	)	
In re T.J., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-18-0064) Arwilda Musson, Respondent-Appellant).	)	No. 15JA121
In re T.J., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-18-0065) Tyson Jones, Respondent-Appellant).	)	Honorable Charles C. Hall, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's termination of parental rights.

¶ 2 Arwilda Musson is the mother of T.M. (born December 23, 2015) and T.J. (born June 23, 2005). Dontae Luster is the father of T.M. Tyson Jones is the father of T.J. This is a consolidated appeal regarding the termination of Musson's, Jones' and Luster's parental rights (collectively, the parents).

¶ 3 In December 2015, the State filed a petition for adjudication of wardship, arguing that T.M. and T.J. were neglected minors. 705 ILCS 405/23(1) (West 2014). In May 2016, the trial court found T.M. and T.J. to be neglected minors, made them wards of the court, and placed them in the custody and guardianship of the Department of Children and Family Services (hereinafter DCFS).

¶ 4 In March 2017, the State filed petitions to terminate the parental rights of the parents. 750 ILCS 50/1(D)(b), (m)(i), (ii) (West 2016). In October 2017, the trial court conducted a termination hearing. In November 2017, the trial court found that the State had proved by clear and convincing evidence that the parents were unfit. In pertinent part, the court found that the parents had failed to make reasonable progress toward the return of T.M. and T.J. within nine months after an adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 5 In December 2017, the trial court conducted the best-interest portion of the termination hearing. In January 2018, the trial court terminated the parental rights of the parents, concluding that it was in T.M.'s and T.J.'s best interests.

¶ 6 The parents appeal, arguing that the trial court's (1) fitness determination and (2)

best-interest determination were against the manifest weight of the evidence. We disagree and affirm.

¶ 7 I. BACKGROUND

¶ 8 A. The Adjudication of Wardship

¶ 9 Musson is the mother of T.M. and T.J. Luster is the father of T.M. Jones is the father of T.J. In December 2015, the State filed a petition for adjudication of wardship, arguing that T.M. and T.J. were neglected minors. 705 ILCS 405/23(1) (West 2014).

¶ 10 In May 2016, the trial court found T.M. and T.J. to be neglected minors, made them wards of the court, and placed them in the custody and guardianship of DCFS. In July 2016, the court admonished the parents that they risked the termination of their parental rights unless they cooperated with DCFS, complied with the terms of their service plans, and corrected the conditions that required T.M. and T.J. to be placed in the care of DCFS.

¶ 11 B. The Petitions To Terminate Parental Rights

¶ 12 In March 2017, the State filed petitions to terminate the parental rights of the parents. In pertinent part, the State asserted that the parents were unfit because they (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to T.M.'s and T.J.'s welfare; (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of T.M. and T.J. within nine months after an adjudication of neglect; and (3) failed to make reasonable progress toward the return of T.M. and T.J. within nine months after an adjudication of neglect. 750 ILCS 50/1(D)(b), (m)(i), (ii) (West 2016)

¶ 13 C. The Termination Hearing

¶ 14 In October 2017, the trial court conducted a termination hearing regarding the parental rights of the parents. The following witnesses testified.

¶ 15 1. *Rebecca Woodard*

¶ 16 Rebecca Woodard, a child welfare specialist with DCFS, testified that she was the caseworker for the parents from December 2015 to September 2016. Woodard stated that Musson (1) only attended 8 out of 20 supervised child visits, (2) tested positive for cocaine on multiple occasions, (3) refused a court-ordered drug test, and (4) changed her residence multiple times during December 2015 to September 2016. Woodard testified that Jones expressed a desire to have his child back but refused to cooperate with DCFS. She also stated that Luster refused to cooperate with DCFS.

¶ 17 2. *Jill Miller*

¶ 18 Jill Miller, a child welfare specialist with DCFS, stated that she had been the caseworker for the parents since September 2016. Miller testified that Musson (1) failed to complete her court-ordered treatment program for drug and alcohol abuse at the Gateway Foundation, (2) had tested positive for cocaine, (3) infrequently attended supervised child visits, and (4) infrequently attended mental health counseling. Miller also stated that Musson often had no contact with her children for several months and that DCFS often canceled visits because of Musson's drug use, lack of contact, or her failure to submit to a drug test. Miller stated that Jones failed to cooperate with DCFS. She noted that Luster expressed some interest in his child but failed to cooperate with DCFS prior to his incarceration in September 2016.

¶ 19 3. *Gwendolyn Meeks*

¶ 20 Gwendolyn Meeks, a counselor at New Directions Treatment Center (hereinafter New Directions), stated that Musson was her former client. Meeks testified that Musson was successfully discharged from their drug assessment program. Meeks stated that Musson regularly attended their services.

¶ 21 4. *Vaya Anderson*

¶ 22 Vaya Anderson, the clinical supervisor at New Directions, testified that Musson attended their alcohol and drug assessment programs. However, she also stated that Musson tested positive for cocaine on one drug test.

¶ 23 5. *Arwilda Musson*

¶ 24 Musson testified that, after being homeless, she now had her own apartment. She stated that she was successfully discharged from New Directions and received a certificate in parenting from the Family Advocacy Center. Musson admitted to testing positive for cocaine on multiple drug tests.

¶ 25 6. *Dontae Luster*

¶ 26 Luster stated that he had resided in the Illinois Department of Corrections since September 2016. Luster stated that he could not care for his daughter while he was in prison but directed DCFS to give T.M. to his mother. Luster admitted that he knew about his child in February 2016 but did not contact DCFS until September 2016.

¶ 27 D. The Trial Court's Fitness Determination

¶ 28 In November 2017, pursuant to a written order, the trial court found that the State had proved by clear and convincing evidence that the parents were unfit. In pertinent part, the court found that the parents had failed to make reasonable progress toward the return of T.M. and T.J. within nine months after an adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2016). The court also found that the parents failed to make reasonable efforts to correct the conditions that were the basis for the removal of T.M. and T.J. *Id.* § 1(D)(m)(i). Likewise, the court found that the fathers had failed to maintain a reasonable degree of interest, concern, or responsibility as to T.M.'s and T.J.'s welfare. *Id.* § 1(D)(b).

¶ 29 E. The Best-Interest Hearing

¶ 30 In December 2017, the trial court conducted the best-interest portion of the termination hearing. The following testimony was presented.

¶ 31 1. *Jill Miller*

¶ 32 Miller testified that T.M. was placed in foster care a few days after her birth. She stated that T.M.'s foster parents expressed a desire to adopt her and that T.M. had bonded with her foster parents. Miller stated that T.J. was placed in foster care and that DCFS was searching for a permanent placement for T.J. She stated that T.M. and T.J. have sibling visits twice a month.

¶ 33 Miller testified that Musson had not been making progress in DCFS services. She noted that Musson had not visited her children since July 2017. Likewise, prior to July 2017, Miller stated that Musson infrequently attended supervised visits and often was unable to attend visits because she was unable to pass a drug test. She stated that T.M. had never resided with Musson and had no emotional attachment to her. Likewise, she stated that T.J. did not want to live with Musson.

¶ 34 Miller stated that, at first, Luster did not want to parent T.M. and refused to engage in DCFS services. Miller noted that Luster later changed his mind and stated that he was open to parenting T.M. after his incarceration. However, Luster had never met T.M. and only sent her a few letters. Miller testified that Jones refused to engage in DCFS services. Further, Miller stated that T.J. had only visited his father a few times and that they did not have a real relationship.

¶ 35 Ultimately, when recommending what was in the best interests of the children, Miller testified as follows:

"Q. Do you believe it's in the best interest of the children that parental rights are terminated?

A. Yes.

Q. And why is that?

A. Because the parents have not been able to engage in [DCFS] services, [and they] have shown very little interest in their children. The children need permanency.

Q. And that's for both children?

A. Yes.

Q. In regards to all three parents?

A. Yes."

¶ 36 2. *The Parents*

¶ 37 Musson testified that, after being homeless, she now had her own apartment and had remained at this apartment for over six months. Musson stated that she had income from the Temporary Assistance for Needy Families program (hereinafter TANF). On cross-examination, she conceded that TANF is only a temporary assistance program. Likewise, Musson conceded that she was unemployed. Musson testified that she wanted her children back. Musson further stated that she was concerned that DCFS had separated T.M. and T.J. into different foster families and that DCFS had not found a permanent placement for T.J.

¶ 38 F. The Trial Court's Best-Interest Determination

¶ 39 In January 2018, the trial court terminated the parental rights of the parents, concluding that this was in T.M's and T.J.'s best interests. The court gave DCFS the authority to find permanent homes for T.M. and T.J.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 The parents appeal, arguing that the trial court's (1) fitness determination and (2) best-interest determination was against the manifest weight of the evidence. We address these issues in turn.

¶ 43 B. The Fitness Determination

¶ 44 The parents argue that the trial court's fitness determination was against the manifest weight of the evidence. We disagree.

¶ 45 1. *The Applicable Law and the Standard of Review*

¶ 46 The State must prove unfitness as defined in section 1(D) of the Adoption Act by clear and convincing evidence. 750 ILCS 50/1(D) (West 2016); *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001). Section 1(D) of the Adoption Act defines an unfit person as "any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption." 750 ILCS 50/1(D) (West 2016). The Adoption Act lists multiple grounds that will support a finding of unfitness. *Id.* "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 47 Section 1(D)(m)(ii) defines an unfit person as a parent who fails "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of [a] neglected or abused minor ***." 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 48 The Illinois Supreme Court has stated that "the benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act en-

compasses 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[.]" *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001). Likewise, this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

> " 'Reasonable progress' *** exists when the [trial] court *** can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent *** ." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 49 A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007). A reviewing court will not reverse the trial court's finding of parental unfitness unless the finding was against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417. A decision regarding parental fitness is against the manifest weight of the evidence when the opposite conclusion is clearly the proper result. *In re Nylani M.*, 2016 IL App (1st) 152262, ¶ 48, 51 N.E.3d 1067.

¶ 50 2. *Musson's Unfitness*

¶ 51 At trial, Woodard, a child welfare specialist with DCFS, stated that Musson (1) only attended 8 out of 20 supervised child visits, (2) tested positive for cocaine on multiple occasions, (3) refused a court-ordered drug test, and (4) changed her residence multiple times. Miller, also a child welfare specialist with DCFS, testified that Musson (1) failed to complete her treatment program for drug and alcohol abuse at the Gateway Center, (2) sporadically attended

mental health counseling, (3) had tested positive for cocaine, and (4) infrequently attended supervised child visits. Miller also stated that Musson often had no contact with her children for several months at a time and that DCFS often canceled visits because of Musson's drug use, lack of contact, or her failure to submit to a drug test.

¶ 52 Meeks, a counselor at New Directions, stated that Musson was successfully discharged from their drug assessment program. Anderson, the clinical supervisor at New Directions, testified that Musson attended their alcohol and drug assessment programs. However, Anderson stated that Musson had tested positive for cocaine during one drug test. Musson testified that, after being homeless, she now had her own apartment, was successfully discharged form New Directions, and received a certificate in parenting from the Family Advocacy Center. Musson admitted to testing positive for cocaine on multiple drug tests.

¶ 53 The record is clear that Musson was not fully complying with her treatment program. See *In re L.L.S.*, 218 Ill. App. 3d at 461. She frequently tested positive for cocaine, refused to do drug tests, failed to compete one drug treatment program, and sporadically attended counseling. Musson infrequently attended supervised visits and often had no contact with her children for several months at a time. Moreover, DCFS often canceled visits because of Musson's drug use, lack of contact, or her failure to submit to a drug test. Accordingly, the trial court's judgment was not against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417.

¶ 54 3. *Luster's Unfitness*

¶ 55 Luster testified that he could not provide for his child while he was in prison. Luster admitted that he knew about his child in February 2016 but did not contact DCFS until September 2016. Woodward testified that Luster refused to cooperate with DCFS. Miller noted

that Luster expressed some interest in his child but did not cooperate with DCFS. Based upon the evidence in the record, the trial court's judgment was not against the manifest weight of the evidence. *Id.*

¶ 56 4. *Jones' Unfitness*

¶ 57 Woodward testified that Jones expressed a desire to have his child back but refused to cooperate with DCFS. Likewise, Miller testified that Jones failed to cooperate with DCFS. Jones failed to present any evidence that he attempted to comply with DCFS or made any other progress toward the return of his child. Accordingly, the trial court's judgment was not against the manifest weight of the evidence. *Id.*

¶ 58 C. The Best-Interest Determination

¶ 59 The parents argue that the trial court's best-interest determination was against the manifest weight of the evidence. We disagree.

¶ 60 1. *The Applicable Law and the Standard of Review*

¶ 61 At the best-interest stage of a termination proceeding, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). In reaching a best-interest determination, the trial court must consider, within the context of the child's age and developmental needs, the following factors:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for perma-

nence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006); see also 705 ILCS 405/1-3(4.05) (West 2016).

¶ 62 A reviewing court affords great deference to a trial court's best-interest finding because the trial court is in the superior position to view the witnesses and judge their credibility. *In re K.B.*, 314 Ill. App. 3d 739, 748, 732 N.E.2d 1198, 1206 (2000). An appellate court "will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the trial court should have reached the opposite result. *Id.*

¶ 63 2. *Musson*

¶ 64 a. T.M.

¶ 65 Miller testified that (1) T.M. had been in foster care since a few days after her birth, (2) T.M. bonded with her foster family, (3) her foster family wished to adopt her, and (4) T.M. did not have a relationship with her mother. Miller noted that T.M.'s parents showed very little interest in her and that she needed permanency through adoption. Nonetheless, Musson testified that she was concerned about T.M. because DCFS had separated T.M. and T.J. into separate foster families. However, Miller testified that DCFS strongly encouraged sibling visits between the foster families.

¶ 66 Notwithstanding the separation of T.M. and T.J., the trial court's finding was not against the manifest weight of the evidence. Even if Musson could theoretically keep T.M. and

T.J. under the same roof, her frequent drug use is deeply troubling to this court. See 705 ILCS 405/1-3(4.05)(a) (West 2016). Likewise, although DCFS placed T.M. and T.J. into separate foster families, DCFS still encouraged sibling visits. See *id.* § 1-3(4.05)(g). Moreover, T.M. had a strong bond with her foster family and only had infrequent visits with Musson. See *id.* § 1-3(4.05)(d), (g). Thus, the trial court's finding was not against the manifest weight of the evidence.

¶ 67 b. T.J.

¶ 68 Miller testified that T.J. was placed in foster care and that DCFS was searching for a permanent home for him. She stated that T.J. did not want to live with Musson. Musson testified that she was concerned because DCFS separated T.J. and T.M. and had failed to find T.J. a permanent placement.

¶ 69 Musson fails to demonstrate that the trial court's finding was contrary to the manifest weight of the evidence. Rather, the record is clear that Musson failed to provide permanence for T.J. and failed to provide for T.J.'s physical safety and welfare. See *id.* § 1-3(4.05)(a), (g). Moreover, although DCFS separated T.M. and T.J. into different foster families, DCFS strongly encouraged sibling visits. See *id.* § 1-3(4.05)(g). Accordingly, the trial court's decision was not against the manifest weight of the evidence.

¶ 70 3. *Luster*

¶ 71 Miller stated that T.M. had never met her father and had only received a few letters from him. Likewise, Miller testified that T.M.'s parents showed very little interest in her and that she needed permanency through adoption. Considering T.M.'s attachment to her current foster family and her lack of attachment to Luster, the trial court's decision was not against the manifest weight of the evidence. See *id.* § 1-3(4.05)(a), (d).

¶ 72 4. *Jones*

¶ 73 Miller testified that T.J. was placed in foster care and that DCFS was searching for a permanent home for him. She stated that T.J. only had a few visits from Jones and that they did not have a real relationship. Jones failed to present any evidence during the best-interest hearing and left the courtroom prior to the start of the proceeding. Accordingly, the trial court's judgment was not against the manifest weight of the evidence.

¶ 74 III. CONCLUSION

¶ 75 For the reasons stated, we affirm the trial court's judgment. As a final matter, we thank the trial court for its well-reasoned written orders.

¶ 76 Affirmed.