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2018 IL App (4th) 180370-U

NOS. 4-18-0370, 4-18-0371 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2018
Carla Bender
4th District Appellate
Court, IL

In re J.C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Adams County
Petitioner-Appellee,	)	No. 17JA1
v. (No. 4-18-0370)	)	
Emily C.,	)	
Respondent-Appellant).	)	
	)	
	)	
In re J.C., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0371)	)	Honorable
Jerry C.,	)	John C. Wooleyhan,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in finding respondents unfit and concluding it was in the minor's best interests that their parental rights be terminated.

¶ 2 In January 2017, the State filed a petition for adjudication of wardship with respect to J.C., the minor child of respondents, Emily C. and Jerry C. In August 2017, the trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In May 2018, the State filed an amended motion to terminate respondents' parental rights. The court found respondents unfit and

determined it was in the minor's best interests that respondents' parental rights be terminated.

¶ 3 On appeal, respondents argue the trial court erred in finding them unfit and in terminating their parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2017, the State filed a petition for adjudication of wardship with respect to J.C., born in 2014, the minor child of respondents, alleging J.C. was neglected and/or abused because his environment was injurious to his welfare (705 ILCS 405/2-3 (West 2016)). The petition alleged the sheriff's department received a call regarding a verbal disturbance between respondents on December 28, 2016. Respondents left in a vehicle, and Jerry did not immediately pull over for law enforcement. After being pulled over, Jerry again fled. Once the vehicle was stopped again, officers located a stun gun, a fake handgun, handcuffs, and six grams of cannabis. Jerry was arrested for unlawful use of a weapon. The petition alleged "[t]he family does not have stable housing, and they reside in their car." The petition also alleged Emily has had three other minors removed from her care, her parental rights to two of those minors had been terminated, and custody and guardianship of the third minor had been awarded to the minor's father. The trial court found probable cause to believe J.C. was neglected, abused, or dependent based on the facts set forth in the State's petition. Finding an immediate and urgent necessity to remove J.C. from the home, the court entered an order granting temporary custody to DCFS.

¶ 6 In July 2017, the trial court found the minor was neglected because Emily had other minors removed from her care and her parental rights to them had been terminated, both respondents fled from the police after a verbal disturbance, a search of the vehicle "revealed numerous items of concern, including: a [T]aser, a toy pistol, a baseball bat, cannabis, [and]

handcuffs," and respondents did not have stable housing and lived in their car at times. In its August 2017 dispositional order, the court found respondents unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor or are unwilling to do so. The court adjudicated the minor a ward of the court and placed custody and guardianship with DCFS.

¶ 7 In May 2018, the State filed an amended motion to terminate respondents' parental rights, alleging respondents failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to J.C.'s welfare (750 ILCS 50/1(D)(b) (West 2016)) and (2) make reasonable progress toward the return of the minor within any nine-month period after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)). The State indicated it would present evidence on the nine-month period that ran from July 3, 2017, to April 2, 2018.

¶ 8 At the hearing on the State's amended motion, respondents appeared in custody. The State asked the trial court to take judicial notice of Jerry's convictions for felony theft in August 2017 and for retail theft in October 2017, for which he received sentences of probation. In December 2017, the State filed a petition to revoke Jerry's probation, and an order was entered in April 2018 indicating he was in treatment. The State asked the court to take judicial notice of Jerry's pending charges for unlawful possession of weapons by a felon and unlawful possession of a controlled substance. In addition, the State asked the court to take judicial notice of Emily's pending charges for the offenses of felony theft (two cases) and unlawful possession of methamphetamine (two cases), all of which she incurred during the pendency of this case.

¶ 9 The State also asked the trial court to take judicial notice of all the dates one or both parents failed to appear in this case. The first date was February 21, 2017. After having been given written notice in open court on January 24, when they appeared requesting counsel,

they both failed to appear on the February date, when appointed counsel was present. On August 24, 2017, the date of the dispositional hearing for which both parents received notice, Emily failed to appear. She again failed to appear at the permanency review hearing on February 26, 2018, and the admonishment hearing on March 22, 2018, to be informed of the allegations in the State's petition seeking termination of respondents' parental rights.

¶ 10 In addition, the trial court took judicial notice of the fact that on August 24, 2017, at the dispositional hearing, visitation was suspended by the court. According to the dispositional order, of which the court also took judicial notice, visitation was suspended until further order due to the failure of the parties to engage in services or even complete the initial integrated assessment. Notice was also taken that, up to the date of the termination hearing, there had been no request by anyone seeking to reinstate visitation. As of the date of the termination hearing on May 17, 2018, neither parent had sought reinstatement of visitation since the August 2017 order.

¶ 11 Jessica Fuller, a child welfare specialist with Chaddock, testified she became involved with J.C.'s case in December 2016. To determine what goals need to be developed and what services will be provided, parents must undergo an integrated assessment. Fuller stated, although both respondents initially voiced their intention to participate, neither appeared on the scheduled date. She and the clinical screener went to the address given by respondents, knocked, and waited for 15 minutes without anyone ever coming to the door. According to Fuller, this was a common problem throughout the life of the case. In addition, the initial plan noted how both respondents refused to participate in the integrated assessment, per Jerry's letter to the agency. It was also noted in the initial plan both respondents "refused to work with Chaddock (the service provider) until specifically Court ordered to do so."

¶ 12 Since respondents had previous cases with DCFS, Fuller was able to obtain information from those cases as a means of developing an initial case service plan. The January 2017 plan called for both respondents to take part in services related to domestic violence, substance abuse, mental health, and housing. Fuller rated the plan in April 2017 for an administrative case review involving Emily's other children. She rated Jerry as unsatisfactory due to lack of engagement and lack of communication with her. He also received unsatisfactory ratings on domestic violence, substance abuse, mental health, and housing.

¶ 13 Fuller testified Emily received unsatisfactory ratings on her service plan. Fuller stated Emily failed to engage with her, did not engage in domestic-violence services, would not complete drug screens or engage in substance-abuse treatment, and did not engage in mental-health services. As with Jerry, Emily received an unsatisfactory rating as to housing because they reported multiple addresses and at "every home" Fuller visited, "they were never there."

¶ 14 The second plan, dated October 13, 2017, continued the same tasks as the initial plan. Fuller rated respondents unsatisfactory due to their "total lack of engagement." She stated she was unable to contact respondents and only saw them when they were in court or incarcerated. The final plan, dated April 3, 2018, included the same tasks as the other plans. Fuller rated respondents unsatisfactory. While Jerry would have been rated satisfactory for engaging in inpatient treatment, he left treatment before it was completed.

¶ 15 Fuller stated both respondents failed to attend any of the administrative case reviews that were held. She was also unable to contact them, and the plans were mailed to them at the addresses provided to the trial court. Fuller stated she attended the adjudicatory hearing on July 3, 2017, and respondents "reported that they would not be cooperating with Chaddock because they believed that their child was taken for no fault of their own." Fuller attempted to

discuss the January 2017 service plan with respondents, but they claimed they did not have a phone number, or the numbers changed often, and Jerry would not provide one.

¶ 16 On July 6, 2017, Fuller attempted to make an unannounced visit to respondents' residence. Fuller knocked on the door for 5 to 10 minutes, but no one came to the door. She attempted to call respondents, but "their phone number was not in service." Fuller left her business card. At the August 24, 2017, dispositional hearing, Jerry appeared in custody, while Emily was not present. Jerry told Fuller he was going to cooperate with services. The next day, Fuller attempted another home visit, but respondents did not answer the door. On September 7, 2017, Fuller made another unsuccessful attempt to visit respondents' residence.

¶ 17 Fuller attempted to contact respondents on October 17, 2017, after receiving a voicemail from Jerry that he was living with his grandfather. Fuller went to the address, but no one came to the door. Fuller made unsuccessful attempts to make contact with respondents on November 30, 2017, and December 15, 2017, at an address provided by Emily's mother. Fuller met with Jerry on January 22, 2018, at the jail.

¶ 18 At the courthouse on January 22, 2018, Fuller spoke with Emily, who stated she was there for a child-support hearing. Fuller stated Emily was "very erratic," "angry," and "raising her voice and cussing about what had been going on with her." When told Fuller had been unable to contact her, Emily reported she was "living with a man that was working the program" and "she did not want to disclose his name or address" to Fuller "because she wanted to get herself together before she made contact" with her. Emily also stated her desire to do what she needed to get J.C. returned to her. Fuller had no contact with Emily after the January meeting, and Emily had not sent any cards, letters, or gifts for J.C.

¶ 19 Throughout her involvement with the case, Fuller provided respondents with her

contact information. She also knew Emily talked to her mother, Regina, who lives in the home of J.C.'s foster caregiver. Fuller told Regina to have Emily call Fuller. Service plans were mailed to respondents at the addresses they provided, and none were returned in the mail.

¶ 20 Fuller returned to the jail on February 13, 2018, and said Jerry "looked ill." Jerry told her he had stomach cancer. He also reported an incident that occurred in October 2017 when he tried to get Emily out of a drug house and was physically assaulted with a baseball bat. Jerry reported he was in a coma for approximately 10 days, had a friend's mother take care of him, and suffered from short-term memory loss. Jerry also stated he had been using illegal drugs to cope with his anxiety and mental illness. Fuller again met with Jerry at the jail on March 22, 2018, and found he "did not look healthy." He had not been involved with any services since Fuller's previous visit. However, Jerry stated he was hoping to get into inpatient treatment and therapeutic services. Fuller had no further contact with Jerry. She also stated Jerry never contacted her about reestablishing visitation with J.C. and never sent cards, letters, or gifts to his son.

¶ 21 On cross-examination, Fuller stated respondents had multiple phone numbers that had a limited amount of minutes and calls would not go through. Fuller was unable to text them because she does not have an employer-provided phone.

¶ 22 Respondents did not present any evidence. Following arguments, the trial court found the evidence showed respondents never made any efforts to reestablish visits with J.C. or engage in services. Given respondents' lack of contact with Fuller, failure to appear at the administrative case reviews, and failure to become "engaged in any type of services in any meaningful way," the court found the evidence of respondents' unfitness on the ground of failing to maintain a reasonable degree of interest, concern, or responsibility was "overwhelming." The

court did not make a ruling on the reasonable progress allegation of unfitness.

¶ 23 At the best-interests hearing, Fuller testified J.C. was three years old and had been placed with his great-grandmother for approximately one year. His grandmother lives in the home along with his half-siblings. Fuller stated J.C. is a "very shy child" and "often will cling to the caregivers." J.C. shows affection to his great-grandmother and grandmother. J.C. attends preschool and is current on his immunizations. His foster caregiver has indicated a willingness to adopt him.

¶ 24 The trial court noted J.C. "is in a preadoptive relative foster placement that appears to be safe and appropriate," and it is "the only home the minor has known since the end of December of 2016." The court found no evidence as to when respondents could provide permanency in the future and no evidence as to any relationship between J.C. and respondents. The court found it in J.C.'s best interests that respondents' parental rights be terminated. Respondents appealed, and this court consolidated the cases.

¶ 25 II. ANALYSIS

¶ 26 A. Unfitness Finding

¶ 27 Respondents argue the trial court's finding of unfitness was against the manifest weight of the evidence. We disagree.

¶ 28 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177-78 (2006). " '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) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a

trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.' " *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

¶ 29 In the case *sub judice*, the trial court found respondents unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to J.C.'s welfare. Before finding a parent unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)), the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's financial limitations, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child. [Citation.]" *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185.

¶ 30 "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202. Moreover, "a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern[,] and responsibility must be reasonable." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004). "Completion of service plans may also be considered evidence of a parent's interest, concern, or

responsibility." *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 35, 999 N.E.2d 817 (citing *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1065, 859 N.E.2d 123, 135 (2006)).

¶ 31 Here, the evidence indicated respondents failed to attend the integrated assessment in January 2017. Fuller created the initial service plan in January 2017 that called for respondents to participate in services relating to domestic violence, substance abuse, mental health, and housing. Both respondents received unsatisfactory ratings on this plan. Fuller stated Jerry and Emily failed to engage with her and did not engage in services. The second service plan in October 2017 contained similar tasks, but respondents received unsatisfactory ratings due to their "total lack of engagement." The final plan in April 2018 included the same tasks, and respondents received unsatisfactory ratings. Fuller stated respondents failed to attend any of the administrative case reviews. At the adjudicatory hearing in July 2017, respondents "reported that they would not be cooperating with Chaddock because they believed that their child was taken for no fault of their own." Fuller had no contact with Emily after January 22, 2018. At a jail meeting on February 13, 2018, Jerry told Fuller he had been using illegal drugs to cope with his anxiety and his mental illness. Fuller had no contact with Jerry after meeting with him at the jail on March 22, 2018. Respondents never sent cards, letters, or gifts for J.C., and visits had been suspended since August 2017 due to respondents' failure to engage in services. Neither respondent sought to reestablish visitation or expressed an interest in doing so. At the unfitness hearing, the trial court found, in part, as follows:

> "The evidence has shown that at all times after the dispositional hearing the parents at several different times dropped out of contact with the caseworkers. Caseworkers had no way of locating them or talking with the parents. Parents never appeared at any of

> the administrative case reviews that occurred after the dispositional hearing, never became engaged in any type of services in any meaningful way, never met with the caseworker to complete the information that was needed for the integrat[ed] assessment."

¶ 32 Although the State's burden was to show a failure to maintain a reasonable degree of interest, concern, or responsibility, it was the trial court, having heard the testimony and reviewing the service plan, which characterized the evidence in this case as "overwhelming." Neither parent exhibited any measurable degree of interest, concern, or responsibility. Neither parent made an effort to participate in or complete any recommended service. In fact, the caseworker could not even review the service plans with them because they refused to meet with her. As a result, they were mailed to respondents at the addresses they provided and, since they were not returned, it was assumed they were received. Referrals were made and opportunities provided with no follow-through by respondents. In fact, they expressed their intention, both verbally and in writing, that they were not going to cooperate with DCFS or service providers. Throughout the case, efforts to contact them in person or by telephone proved fruitless and, ultimately, the only way for caseworkers to communicate with them was when they appeared for court or were incarcerated, the latter of which was frequent.

¶ 33 Respondents refused to submit to drug testing. They also provided multiple addresses, none of which they were ever found in, and various telephone numbers, which were never working. Although Fuller made repeated efforts to contact them by telephone, mail, and in person, she was rarely, if ever, successful, and respondents made no effort to contact her or any service provider to whom they were referred. Jerry specifically refused to provide a telephone number when requested.

¶ 34 Respondents also attended less than one-half of the visitations made available to them before all visits were discontinued in an apparent effort to encourage participation. Although both respondents professed their love for J.C. and their desire to regain custody, neither parent was willing to engage in services to do so. They refused to engage even as a means of obtaining visitation, let alone custody. As of the May 2018 termination hearing, they had not visited J.C. since sometime before August 2017. They made no effort to communicate with J.C. through cards, letters, or presents, or express interest in how he was doing on those few occasions when they did speak with Fuller.

¶ 35 Here, the evidence indicated respondents failed to engage in any services and, at times, stated their intention not to cooperate with Chaddock. In their briefs, respondents claim the lack of minutes on their phones prevented them from receiving text messages from Fuller. However, the evidence did not show respondents could not receive calls due to their poverty, and it is highly unlikely text messages from Fuller would have spurred them to engage in services when they stated they should not be required to do so in the first place. Respondents also contend they were unable to engage in services because they were both in jail "at various times throughout these proceedings." However, respondents' incarceration does not relieve them of their duties as parents and fails to show a reasonable degree of responsibility as to J.C.'s welfare. See *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 101, 967 N.E.2d 968 (finding the respondent's "lack of responsibility for her daughters is further evident in her repeated incarceration").

¶ 36 As a final argument, respondents contend the State failed to satisfy its burden because the "lone testimony of a single caseworker is not sufficient to establish by clear and convincing evidence" that they lacked care or concern for J.C. Respondents offer no citation to

support their claim, and we find it without merit. Fuller testified in great detail regarding the requirements of the service plan and respondents' unsatisfactory ratings due to their lack of engagement. Fuller's testimony alone was sufficient to establish the tasks assigned to respondents and their overall failure to perform those tasks.

¶ 37 When considering an allegation of unfitness under section 1(D)(b), a "court is to examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185; see also *B'Yata I.*, 2013 IL App (2d) 130558, ¶ 35, 999 N.E.2d 817 (stating a "court should focus on the parent's efforts, not his or her success"). Here, the evidence indicates respondents made no efforts, and the trial court found the evidence of respondents' failure to maintain a reasonable degree of interest, concern, or responsibility as to J.C.'s welfare to be "overwhelming." Considering respondents' utter failure to complete the tasks in their service plan, their total lack of engagement with the caseworker, and their continued criminal activity throughout the life of the case, respondents have shown no interest, concern, or responsibility as to J.C.'s welfare. Thus, we find the trial court's finding of unfitness under section 1(D)(b) was not against the manifest weight of the evidence. See *In re Janira T.*, 368 Ill. App. 3d 883, 893, 859 N.E.2d 1046, 1055 (2006) (noting "noncompliance with an imposed service plan and infrequent or irregular visitation is sufficient evidence warranting a finding of unfitness under subsection (b) of the Adoption Act"). We frequently see cases where we must agonize over weighing the degree of participation or cooperation to determine whether, in light of all the evidence in the case, a trial court abused its discretion in finding parents unfit. This is not one of those cases.

¶ 38 B. Best-Interests Finding

¶ 39 Respondents argue the trial court's finding it was in the minor's best interests for

their parental rights to be terminated was against the manifest weight of the evidence. We disagree.

¶ 40 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations, including the parent's rights, yield to the best interests of the child." *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80, 966 N.E.2d 1107. When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These include the following:

> "(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 permanence, 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." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a)-(j) (West 2016).

¶ 41 A trial court's finding that termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 42 In this case, the evidence indicated J.C. was three years old and had been placed with his great-grandmother for approximately one year. Fuller testified there is "definitely a bond there." His grandmother and his half-siblings also reside in the home, and they all take trips to visit other family members. Fuller stated J.C. shows affection to his great-grandmother and grandmother, attends preschool, and is current on his immunizations. J.C.'s caregiver also indicated her willingness to provide permanency for him through adoption. In contrast to the bond between J.C. and his caregiver, the evidence failed to indicate any type of bond between him and respondents. Visits had been suspended in August 2017, and respondents did nothing to show any interest in J.C.

¶ 43 The trial court found J.C. was placed in a preadoptive placement that appeared to be safe and appropriate. Further, it was the only home he had known since December 2016. The court noted the lack of any evidence showing a relationship between J.C. and respondents and concluded J.C.'s best opportunity to achieve permanency was to remain in his current foster placement.

¶ 44 The evidence indicated J.C. is in a good home, his needs are being met, and his caregiver is willing to provide the permanency he needs and deserves in life. The evidence also indicated respondents were unwilling to do anything to become responsible parents, and J.C.

need not be forced to wait for respondents to engage in services or turn from their lives of crime. Considering the evidence and the best interests of the minor, we find the trial court's order terminating respondents' parental rights was not against the manifest weight of the evidence.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the trial court's judgment.

¶ 47 Affirmed.