2019 IL App (2d) 180804-U
No. 2-18-0804
Order filed February 26, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.M., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-356
	)	
	)	
(People of the State Of Illinois,	)	Honorable
Petitioner-Appellee, v. Rashontay M.,	)	Mary L. Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding of respondent's parental unfitness, on ground that she had failed to make reasonable progress toward reunification with J.M. within nine-month period, was not against the manifest weight of the evidence, and the trial court's finding that it was in the best interests of J.M. that respondent's parental rights be terminated was not against the manifest weight of the evidence.

¶ 2 On September 28, 2018, the trial court found respondent, Rashontay M., to be an unfit parent with respect to her son, J.M. The court also concluded that the termination of respondent's parental rights was in J.M.'s best interests. On appeal, respondent challenges the

trial court's findings on both issues. For the reasons set forth below, we affirm the trial court's findings.

¶ 3 I. BACKGROUND

¶ 4 On October 19, 2016, the State filed a five-count neglect petition alleging that J.M. (d/o/b 8/10/2008) was a neglected minor pursuant to Section 2-3 of the Juvenile Court Act. Count I alleged that J.M. was neglected in that respondent has a substance abuse problem preventing her from properly parenting J.M. pursuant to 705 ILCS 505/2-3(1)(b). Count II alleged that J.M. was neglected in that respondent had used a controlled substance in his presence pursuant to 705 ILCS 505/2-3(1)(b). Count III alleged that J.M. was neglected in that respondent had been intoxicated in his presence pursuant to 705 ILCS 505/2-3(1)(b). Count IV alleged J.M. was neglected in that individuals in his residence engage in violence in his presence pursuant to 705 ILCS 505/2-3(1)(b). Count V alleged that J.M. was neglected in that respondent does not administer his prescribed medication pursuant to 705 ILCS 405/2-3(1)(a).

¶ 5 The trial court held a shelter care hearing for J.M. on November 7, 2016.[1] Respondent failed to appear at the hearing after reasonable efforts by DCFS to notify her of the proceedings. The trial court found respondent to be in default and awarded temporary guardianship and custody of J.M. to DCFS with discretion to place him in a traditional foster home or with a responsible relative. Respondent was prohibited from having contact with J.M.'s school or residence.

¶ 6 An adjudication hearing on the State's neglect petition was held on January 19, 2017. Respondent again failed to appear for the hearing. J.M.'s father did appear at the hearing and

[1] The shelter care hearing also involved J.M.'s sister, S.M. This appeal only concerns the interests of J.M.

agreed to factually stipulate to Count I of the neglect petition. The trial court dismissed Counts II, III, IV, and V with the agreement that all parties would receive any services related to those counts. The trial court took judicial notice of a January 9, 2017, report produced by J.M.'s case manager, Briana Bland, at Children's Home + Aid. The report recounted the following as to the reason for Children's Home + Aid's involvement in J.M.'s case:

> "This case came from a failed intact case that was transferred internally to the foster care department at Children's Home + Aid. The intact case was open due to medical neglect. An investigation was opened due to an incident that happened at the school. [Respondent] showed up to the school and presented with violent and erratic behavior. [Respondent] threatened physical harm to [S.M.] and threatened to leave the state with [the minor children]. A hotline call was made to the child abuse and neglect hotline because of this incident. Since the intact case opened reports have been made that [respondent's] home is frequented by individuals who engage in violent behavior in the presence of the children. The children have reported that [respondent] drinks and uses cocaine in the home while they are present. Since the foster case has opened [S.M.] has reported to this worker that [respondent] has beat her and [J.M.] with a belt."

The report recounted the following as to Children's Home + Aid's contact with respondent:

> "[Respondent] has not had contact with this worker since 12/08/16. This worker last spoke to [respondent] via phone on 12/08/16 where this worker and [respondent] scheduled a meeting at the agency for 12/14/16. This worker had previously sent [respondent] bus passes in the mail certified. [Respondent] reported to this worker that she could not get a ride to the post office to pick these bus passes up. This worker sent more bus passes to her *** in the mail so that she could have transportation to meet with

> this worker. [Respondent] was a no call no show for the scheduled meeting *** on 12/14/16. [Respondent] called this worker from a phone number that was not [respondent's] and reported *** that she no longer had a phone so this worker would not be able to call her. [Respondent] did not provide *** any phone number as an alternative for reaching her. The foster parent and *** J.M. reported to this worker on 12/28/16 that [respondent] moved out of the state."

¶ 7 J.M. was adjudicated a neglected minor pursuant to Count I of the State's neglect petition. Respondent was ordered to have no contact with J.M. until she presented herself to the court. A disposition hearing was scheduled for March 3, 2017.

¶ 8 Respondent appeared before the court on March 3, 2017. She was appointed trial counsel and the disposition hearing was continued to April 5, 2017. The trial court found that respondent was willing but unfit or unable to care for J.M. Temporary guardianship of J.M. was placed with DCFS as well as discretion to place J.M. with a responsible relative or in traditional foster care. Visitation between J.M. and respondent was to be at DCFS's discretion. Respondent was ordered to cooperate with DCFS and its contracting agencies with respect to drug, alcohol, and psychological treatment and services. Further, respondent was ordered to submit to random drug tests with less than 24 hours notice. Any missed drug tests were to be deemed positive tests for drugs.

¶ 9 A permanency review hearing was held on September 25, 2017. Respondent failed to appear at the hearing. The trial court maintained the goal of J.M.'s return home within twelve months of the original adjudication of neglect. The trial court further found that DCFS and its contracting agencies had made reasonable efforts during the review period while finding respondent had not made reasonable efforts. The trial court held another permanency review

hearing on January 17, 2018, in which respondent again failed to appear. The court found that it was in J.M.'s best interests to change the goal to substitute care pending court determination of parental rights.

¶ 10 The state filed a motion for termination of respondent's parental rights and power to consent to adoption on January 22, 2018. The motion alleged respondent was unfit to parent J.M. through the following four counts:

> "Count 1: She has failed to make reasonable efforts toward the return of the child to the parent, during the nine month period following the minor being adjudicated neglected or abused, to wit, 01/20/17 to 10/20/17, and/or 04/17/17 to 01/17/18. 750 ILCS 50/1(D)(m)(i)
>
> Count 2: She has failed to make reasonable progress toward the return of the child to the parent, during the nine month period following the minor being adjudicated neglected or abused, to wit, 01/20/17 to 10/20/17, and/or 04/17/17 to 01/17/18. 750 ILCS 50/1(D)(m)(ii)
>
> Count 3: She has failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b)
>
> Count 4: She has failed to protect the minor from conditions within her environment injurious to the minor's welfare. 750 ILCS 50/1(D)(g)."

¶ 11 On April 26, 2018, the trial court held its first hearing on the State's motion to terminate respondent's parental rights. Dakota Hughes, J.M.'s caseworker at Children's Home + Aid, was called to testify. During Hughes's testimony, People's Exhibits 1-11 were admitted into evidence. People's Exhibit 1 was the January 17, 2018, service plan. People's Exhibit 2 was the November 1, 2017 service plan. People's Exhibit 3 was the July 25, 2017, service plan.

People's Exhibit 4 was the December 14, 2016 service plan. People's Exhibits 5 and 6 were certified DCFS records. People's Exhibit 7 was J.M.'s certified medical records. People's Exhibits 8-11 were certified copies of J.M.'s father's convictions. Hughes then testified as follows.

¶ 12 Hughes testified regarding respondent's adherence to the established service plans. The first established service plan laid out the services and tasks that respondent needed to complete to reunite with J.M. That plan was established on October 1, 2016. Respondent was required to complete a substance abuse evaluation, engage in substance abuse counseling to address her history of cocaine and alcohol abuse, remain sober, complete random drug screenings, attend drug and alcohol meetings and provide documentation of her attendance, and notify her caseworker of any relapse in the process of recovery. The plan also required respondent to sign all necessary releases of information, complete a mental health evaluation, engage in family and individual counseling, keep all appointments with DCFS and its contracting agencies, provide 24 hours notice to cancel any appointments with DCFS and its contracting agencies, and inform the caseworkers of any changes in address or employment. Respondent was to have weekly visits with J.M. and cooperate with the service providers at the visits.

¶ 13 Hughes said that respondent was first referred to individual counseling in January 2017. Respondent did not begin to actually attend until November 2017. Respondent stopped attending the individual counseling shortly after starting. Hughes was unable to refer respondent for parenting classes as respondent would not sign the necessary consent forms. Similarly, respondent refused to sign the necessary consents for Hughes to issue referrals for her substance abuse and mental health assessments. In September 2017, respondent signed the necessary consent forms and was provided with a substance abuse and mental health assessment.

¶ 14 Hughes testified that respondent missed more drug tests than she took between January 2017 and October 2017. Respondent told Hughes that she failed to take an April 13, 2017, drug test because she would have tested positive for cocaine. Respondent further informed Hughes that she was using cocaine frequently during this time. After October 2017, respondent's drug tests all came back negative but she failed to provide proof of her attendance at any drug or alcohol meetings as required by her service plans.

¶ 15 Hughes further explained that respondent had failed to attend several child and family team meetings. Respondent had been unable to control her anger at one of the child and family team meetings that she did attend and was asked to leave. Respondent did not attend any of the meetings held to discuss J.M.'s medical and educational needs. She failed to attend scheduled meetings with Hughes on January 13, 2017, April 14, 2017, and April 15, 2017. Respondent failed to maintain consistent contact with Hughes throughout the proceedings to the point where Hughes did know of respondent's employment situation until October 2017. Hughes stated that, as of November 2017, respondent did not have a stable residence.

¶ 16 Regarding respondent's visitation with J.M., Hughes testified that between January 2017 and April 2018, there were no visits at all. This was due to J.M.'s refusal to visit with respondent as well as respondent's lack of participation in the requisite services. J.M. told Hughes that he feared respondent would beat him during visits if they occurred and that visits with respondent would make him angry. J.M. commented to Hughes that he would kill respondent if forced to visit with her. Hughes testified that during this period respondent did not contact her concerning J.M. in any way.

¶ 17 In March 2018, J.M. began occasionally speaking with respondent via the telephone. Hughes testified that J.M. exhibited "bursts of sadness" and "uncontrollable anger" during some

of these phone conversations. Additionally, Hughes said that J.M. would "act out" after phone calls with respondent and would have to be taken to "what is called the quiet room so he can calm down in an environment where he doesn't lash out aggressively toward others."

¶ 18 The matter was continued to July 18, 2018, wherein respondent testified that she had completed parenting classes in June 2018. She was still unable to visit with J.M. in person but spoke to him on the telephone. Respondent admitted that she had not seen J.M. since sometime in 2016 because she had not complied with her service plan. She testified that she believed she was a fit parent because she had been recently compliant with the service plans.

¶ 19 Respondent was not sure what J.M.'s mental health diagnoses were because she had not been involved with his mental health professionals since he was taken from the home. She admitted not attending any of his parent-teacher conferences or individual education plans since his leaving the home either. Following respondent's testimony, the parties gave closing arguments and the matter was continued to September 27, 2018.

¶ 20 On September 27, 2018, the trial court found respondent was unfit as alleged on all counts of the State's motion to terminate parental rights. The trial court found that:

> "On September 25, 2017, *** mother *** [was] found to have made no reasonable efforts. On January 17, 2018, [mother was] found to have made no reasonable efforts and no reasonable progress.
>
> In addition, during the first claimed time frame 1/20 to 10/20/2017, there were no visits, no services, and no contact with the worker by *** mother ***. There was never any steps toward placement of the child with either parent, and quite frankly, the minor did refuse to see the mother and stated that he was afraid of her, and thus, there were no visits in the period of time from January 2017 to April 2018.

As to the environment injurious, what brought the case in, was this minor has some very significant mental health issues and was seeing a specialist who put him on anti-seizure medication, which he was taken off of without medical supervision by the mother. Thankfully he was able to get to a place where he was placed to be able to get those medications and get the mental healthcare that he needs.

He has been diagnosed with bipolar 1 with psychotic features, PTSD, ADHD, and IVD. He has an IEP for educational needs, and none of those meetings were attended. The mother was asked to sign consents when the case came in at least by January 2017, and did not sign those consents for providers until November of 2017. Although it looks like she has received services, they certainly were not timely, and there was a large delay in this case getting services. ***

The minor is in a residential facility currently and now can speak with the mother on the phone, but according to the evidence, he acts out badly after having communicated with her. He has been diagnosed also to be autistic.

Another problem that *** hopefully the mother has been getting treatment for and hopefully will be successful going into the future is for substance abuse. That was a problem for a significant period of time in this case. ***

As to the mother and the failure to maintain reasonable degree of interest, concern, or responsibility, the Court finds that what was proven is the responsibility portion, not the other two portions.

I think as to the other time periods for no reasonable efforts or reasonable progress for the mother, during the first time period she had no contact with the agency, she did not come to court, she did not have contact with the minor, but that wasn't

necessarily her fault for that entire time. She did not sign releases, she did not do drug drops, she did not engage in individual counseling at first, and she did not attend any child and family team meetings. So it wasn't just one thing that this is based on. It's the overall conduct or lack thereof."

¶ 21 The matter then proceeded to the best interests hearing. J.M.'s caseworker, Dakota Hughes, again testified. She stated that J.M. remained in a residential facility but his behaviors had begun to stabilize. J.M. had started to accept and enjoy his environment although he was still having outbursts and aggressive behaviors. Hughes said that these outbursts and aggressive behaviors were attributable to J.M.'s mental health issues. J.M. told Hughes that he wanted to live with his grandmother. Hughes testified that this was not a possible placement as J.M.'s grandmother "is in her 80s, and she had him placed with her previously for one day, and she saw his behaviors and said she could not take care of his special needs." J.M. would still be able to maintain a relationship with his grandmother while in the residential facility through visits and phone calls.

¶ 22 Hughes explained that J.M. does not currently have an adoptive placement but his name would be placed on the adoption list if his mother's parental rights were terminated. Hughes could not look for an adoptive home for children with special needs and behavioral issues like J.M.'s while respondent's parental rights remained intact. She did not believe that it was in J.M.'s best interests to return home to respondent due to his special needs, medical issues, and behavior concerns. Although J.M. reported having begun to like speaking to respondent on the phone, he had never expressed a desire to live with her.

¶ 23 On cross-examination, Hughes testified that in the last four years of her experience, all children with specialized needs were adopted in a traditional foster home when there was no relative option available.

¶ 24 The trial court found that it was in J.M.'s best interests to terminate respondent's parental rights. Respondent timely appealed.

¶ 25 II. ANALYSIS

¶ 26 Respondent contends that the trial court erred in finding her to be unfit to parent J.M. as the State failed to prove any of the four counts alleged in the motion to terminate parental rights by clear and convincing evidence. Additionally, respondent contends that the trial court erred in finding that the State proved by a preponderance of the evidence that it was in J.M.'s best interests that respondent's parental rights be terminated. We will begin our analysis with respondent's contentions as to the unfitness portion.

¶ 27 A parent's right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of such right is a drastic measure. *In re B'Yata I.*, 2013 IL App 2d 130588 ¶ 28. Accordingly, the Juvenile Court Act of 1987 provides a two-stage process for involuntary termination of parental rights. 705 ILCS 405/2–29(2) (West 2018). Initially, the State must prove that the parent is unfit. 705 ILCS 405/2–29(2), (4) (West 2018); 750 ILCS 50/1(D) (West 2016); *In re B'Yata I.*, ¶ 28. If the court finds the parent unfit, the State must then show that termination of parental rights would serve the child's best interests. 705 ILCS 405/2–29(2) (West 2016); *In re B'Yata I.*, ¶ 28.

¶ 28 With respect to the first stage of the termination process, section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) lists various grounds under which a parent may be found unfit. *In re Antwan L.*, 368 Ill. App. 3d at 1123. The State has the burden of proving a parent's

unfitness by clear and convincing evidence. 705 ILCS 405/2–29(2), (4) (West 2018); *In re Antwan L.*, 368 Ill. App. 3d at 1123. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889–90 (2004). The decision of a trial court with respect to a determination of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 29 Before delving into our analysis of the contentions raised concerning respondent's parental unfitness, we find it necessary to take issue with the appellant's brief submitted to this court by respondent. Supreme Court Rule 341(h)(7) reads as follows concerning what the appellant's brief must contain:

> "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal where evidence may be found. Citation of numerous authorities in support of the same point is not favored. *Points not argued are forfeited* and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." (Emphasis added.) IL S.Ct. R. 341(h)(7) (West 2018).

Respondent argues both failure to make reasonable efforts and failure to make reasonable progress towards J.M.'s return for the two nine-month periods in the following, identical fashion:

> (As to reasonable efforts) "It is arguable that [respondent] did not make reasonable efforts during one of the time periods alleged, however she did not have proper notice of the proceedings until March of 2017, when she first appeared in court so the first period alleged is not a proper period for which to base non compliance on this allegation. In the second period alleged, she did make some efforts ***.
>
> (As to reasonable progress) It is arguable that [respondent] did not make reasonable progress during one of the time periods alleged, however she did not have proper notice of the proceedings until March of 2017, when she first appeared in court so the first period alleged is not a proper period for which to base non compliance on this allegation. In the second period alleged, she did make some efforts ***. Based on her progress that she made the State did not prove the above allegation of unfitness by clear and convincing evidence."

¶ 30 To reiterate, our standard of review on parental unfitness is manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22. For respondent's counsel to say "[i]t is arguable that respondent did not make reasonable progress" or that "[i]t is arguable that respondent did not make reasonable efforts" during the alleged nine-month periods is to admit that the opposite conclusion of that reached by the trial court is not clearly apparent. It certainly admits that the trial court's findings were based on the evidence presented. These are not arguments within the meaning of Rule 341(h)(7). Further, any argument that respondent did not receive proper notice of the proceedings before her appearance in March 2017 is belied by respondent's own citation to the

record. The issue of notice was never raised by respondent at any point during her first appearance or any appearance thereafter. Therefore, as respondent's contentions regarding her reasonable progress and efforts during the two articulated nine-month periods are not in harmony with Supreme Court Rule 341(h)(7), they are hereby forfeited. See IL S.Ct R. 341(h)(7) (West 2018).

¶ 31 Keeping the language of Rule 341(h)(7) in mind, respondent has also forfeited her argument concerning the trial court's finding on respondent's unfitness for failure to protect J.M. from conditions within her environment injurious to his welfare. The following is a recitation of respondent's entire argument on this issue:

> "This allegation could not have been proven as the child was taken from [respondent's] care prior to the opening of the case. See *In re Massey*, 35 Ill. App. 3d 518 (1976)
>
> Based on the above, the State did not prove this allegation of unfitness."

Without belaboring the point, this is not an argument within the meaning of Rule 341(h)(7) and is hereby forfeited.

¶ 32 This leaves us with respondent's only remaining contention regarding parental unfitness that has some semblance of adherence to our Supreme Court Rules. Respondent contends that the state failed to prove by clear and convincing evidence that she was unfit in that she failed to maintain a reasonable degree of interest, concern, or responsibility toward the welfare of J.M. Respondent argues that her substance abuse assessment, mental health assessment, and recent negative drug tests provide evidence to refute this allegation of unfitness. We disagree with respondent.

¶ 33 Count 3 of the State's motion for termination of respondent's parental rights alleged that she was unfit in that she "failed to maintain a reasonable degree of interest, concern, or

responsibility as to the child's welfare" pursuant to 750 ILCS 50/1(D)(b). Because the language used in this ground for unfitness is in the disjunctive, "any one of the three individual elements, *i.e.*, interest *or* concern *or* responsibility, may be considered by itself as a basis for unfitness. *In re B'Yata I.*, ¶ 31 (emphasis in orginal). When determining whether a parent has shown a reasonable degree of interest, concern, or responsibility for a minor's welfare, it considers "the parent's efforts to visit and maintain contact with the child as well as other indicia, such as inquiries into the child's welfare. *Id.* Courts may also consider whether a parent completed necessary service plans in making such a determination. *Id.* The interest, concern, or responsibility "must be objectively reasonable," and courts must focus on the parent's efforts, not on her success. *Id.*

¶ 34 The trial court was presented with voluminous evidence of respondent's failure to maintain a reasonable degree of interest, concern, or responsibility for J.M.'s welfare. Respondent did not participate in a single visit with J.M. between January 2017 and April 2018. Respondent failed to comply with the service plans which would have otherwise potentially allowed for her to visit with her son. She repeatedly missed drug tests or admitted that she would have failed them. She never contacted J.M.'s caseworkers expressing concern for her son's litany of medical issues. She failed to attend meetings to discuss J.M.'s special medical and educational needs. Respondent's own testimony admitted that she was unaware of the extent of J.M.'s issues. The evidence presented that respondent has not demonstrated a reasonable degree of interest, concern, or responsibility for her son is not only clear and convincing, it is overwhelming. The trial court's finding of unfitness on this allegation was not against the manifest weight of the evidence.

¶ 35 We now move on to respondent's final contention. She contends that the State failed to prove by a preponderance of the evidence that it was in J.M.'s best interests that her parental rights be terminated. Respondent supports this contention by arguing that she and J.M. had been speaking via telephone and there was no adoptive home for J.M. at the time of the hearing.

¶ 36 Once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interests. *In re B'Yata I.*, ¶ 41. Section 1–3(4.05) of the Adoption Act (705 ILCS 405/1–3(4.05) (West 2018)) sets forth various factors for the trial court to consider in assessing a child's best interests. *In re B'Yata I.*, ¶ 41. The State bears the burden of proving by a preponderance of the evidence that termination is in the best interests of the minor. *Id.* A trial court's best-interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.*

¶ 37 We conclude that respondent has not established that the trial court's findings on J.M.'s best interest were against the manifest weight of the evidence. At the time of the best interests hearing, J.M. was 10 years old. Aside from some recent amicable conversations with respondent on the telephone, J.M. has expressed no interest in returning to his mother's home. Dakota Hughes testified that J.M. was strongly attached to his grandmother and sister and will be able to continue fostering those relationships in the residential facility. Additionally, the evidence showed that J.M. had begun to build a community at the residential facility where he was participating in sports, attending church, making friends, and showing improvement in his education. Although respondent correctly points out that there was no adoptive home available at the time of the best interests hearing, Dakota Hughes testified that she has had total success in

placing children with needs similar to those of J.M. with adoptive homes. Further, Hughes testified that J.M. will likely find such a home with respondent's parental rights terminated.

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

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the circuit court of Winnebago County.

¶ 41 Affirmed.