2019 IL App (2d) 180893-U
No. 2-18-0893
Order filed March 25, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.P. and E.P., Minors.	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
	)	Nos. 17-JA-105
	)	17-JA-106
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Diana T. and	)	Christopher Morozin,
Marlon P., Respondents-Appellants.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness and best interest findings were not contrary to the manifest weight of the evidence. Affirmed.

¶ 2 On October 25, 2018, the trial court found that the State had established by clear and convincing evidence that respondents, Diana T. and Marlon P., are unfit to parent their daughters, E.P. (born November 30, 2012) and J.P. (born November 30, 2013). Further, the court found that it is in the children's best interests that respondents' parental rights be terminated. Respondents appeal. For the following reasons, we affirm.

¶ 3 A trial court's unfitness and best interest findings will not be disturbed on review unless contrary to the manifest weight of the evidence (*i.e.*, unless the opposite conclusion is clearly evident or the finding is not based on the evidence). See *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005); *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). Here, the State's petition to terminate parental rights alleged that respondents were unfit under the Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2016)), for: (1) failing to make reasonable efforts to correct the conditions which were the bases for the removal of the children (750 ILCS 50/1(d)(m)(i) (West 2016)); and (2) failing to make reasonable progress toward the return of the children to their home during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (specifically, from October 20, 2015, to July 30, 2016, and November 15, 2016, to August 1, 2017) (750 ILCS 50/1(d)(m)(iii) (West 2016)). As to Diana, the State also alleged that she was unfit for failing to protect the children from conditions within her environment injurious to their welfare (750 ILCS 50/1(d)(g) (West 2016)).

¶ 4 The trial court found that the State did *not* meet its burden with respect to Diana's alleged failure to protect the children. However, it found that the State met its burden as to all other alleged bases of respondents' unfitness. For purposes of evaluating respondents' arguments on appeal, we must bear in mind that, even if we were to find persuasive some of respondents' potential arguments attacking the unfitness finding, *any one ground*, properly proved, is sufficient to affirm. *In re Janine M.A.*, 342 Ill. App. 3d at 1049. The question of reasonable progress is an objective one, which requires the court to consider whether the parent's actions reflect that the court will be able to return the child home in the near future. See *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7. In order for there to be reasonable progress, there must be some "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181,

211 (2001). Here, the court's findings that respondents failed to make reasonable progress toward the return of the children to their home were not contrary to the manifest weight of the evidence.

¶ 5 On November 12, 2013, E.P. was adjudicated a neglected minor after the court found that Marlon had struck Diana, who was pregnant with J.P., while in E.P.'s presence, creating an injurious environment. (Marlon pleaded guilty to aggravated battery in relation to that incident, and he completed domestic violence treatment and random drug testing as part of his probation). After finding the parents unfit, E.P. was made a ward of the court, DCFS was appointed as her guardian, and both parents were ordered to cooperate and comply with service plans and counseling, including domestic violence treatment. After her birth, J.P. was also adjudicated a neglected minor and made a ward of the court. The court noted that both parents, on numerous occasions, were present in court and admonished that they must cooperate with DCFS and comply with service plans or risk termination of parental rights.

¶ 6 In April 2015, after the court found respondents restored to fitness, the children were returned to respondents' care for a brief period, although the case remained open for further enforcement and review. In September 2015, respondents contacted DCFS, explaining that they were having housing issues and asking if the children could be placed with foster parents until they arranged stable housing. DCFS agreed that the children could stay with the foster parents for one week to allow respondents to save some money. The parties entered into an agreed order of protective supervision. Respondents later asked for additional time for the children to remain in care and to secure housing. On October 17, 2015, however, after the State alleged that respondents violated the protective-supervision order, the court vacated the fitness finding and

returned custody and guardianship to DCFS. Thereafter, the following events relate to progress during the relevant time periods.

¶ 7 First, during the period October 20, 2015, to July 30, 2016, respondents received unsatisfactory ratings for housing, income, and visitation. Diana did not provide proof of income until mid-July 2016. Marlon told his caseworker that he was employed during the period, but did not provide weekly verification. Respondents did not provide proof of stable housing, declined housing assistance, and stated that they wished to move to Colorado. When the caseworker met with them in April 2016 to explain an interstate compact process for relocating, Marlon became angry and left the meeting. "He raised his voice, got up and left and slammed the door." Diana stayed a few minutes and then followed Marlon; the meeting had not concluded. The parents missed numerous scheduled visits with the children; they canceled visits, failed to confirm visits, and requested changes to set visitation plans, sometimes becoming argumentative when their requests were not met. In July 2016, visits became supervised, due to concerns for the children and missed visits. The caseworker testified that Marlon initially refused to attend supervised visits and that the parties missed one month of visitation in the summer of 2016. When present for visitation, Marlon "constantly" spoke to the caseworker instead of engaging with his children. "The children a lot of the time did not want to go to these visits." On February 23, 2016, the court found that neither party had made substantial progress toward the return of the minors.

¶ 8 Second, for the period November 15, 2016, to August 1, 2017, the court noted that both parties had participated in psychological evaluations by Valerie Bouchard, a licensed clinical psychologist. They had been referred for the evaluations, in part, due to the lack of progress in their service plans (when told that the department was recommending a psychological

evaluation, Marlon became angry and walked out). The court noted that Bouchard had many years of experience, it found her credible, and it gave "great weight" to her testimony, written report, and recommendations. Based upon her evaluations, Bouchard had recommended additional tasks and services for both parents. Bouchard diagnosed Marlon with antisocial personality disorder, adjustment disorder, and borderline intellectual functioning. According to Bouchard, Marlon had reported that he occasionally used marijuana, and, so, she recommended random drug testing. Further, based upon his admitted history, which included partner violence, Bouchard recommended that Marlon receive a domestic violence assessment and engage in individual counseling. Bouchard also recommended that Marlon provide the requested housing and financial information and continue with supervised visitation. Diana, too, was required to consistently participate in visitation.

¶ 9 However, in the relevant period, Diana missed approximately 10 of the weekly visits, often not attending because Marlon could not attend. She refused to visit the children without Marlon. Marlon did not provide adequate and consistent proof of income. He was rated unsatisfactory for random drug testing in that, although he took three tests and they were negative, he refused to take eight other tests. When the caseworker communicated with him concerning the drug drops, Marlon became angry. For example, a copy of a text message that was admitted into evidence reflects that, on June 1, 2017, the caseworker texted Marlon, "Drug screen today 06/01/17 Thanks." His reply reads:

> "U can[']t call me anymore or I will call the cops
>
> Do not text my phone or call me or I will call the cops ur have been reported stay away from me u raciset [*sic*] bitch

Do not text my phone or call me or I will call the cops ur have been reported stay away from me u raciset [*sic*] bitch" (Repeat paragraph in original).

¶ 10 The court found that Marlon missed approximately 10 weekly visits and was late for at least three visits. When present at visitation, he continued to talk about the case with the caseworker. The caseworker testified that, in May 2017, she terminated visitation early and returned the children to the foster parents because Marlon appeared to be recording the caseworker on his phone. When she asked him to turn off his phone, he refused and, when she asked to see the video he had recorded, he refused. He yelled and threatened her in front of the children and the CASA worker. The caseworker stated that she did not have a conversation with Diana regarding her relationship with Marlon because he would walk out of meetings and she would follow him, even if they tried to have her stay to talk. The team suggested that the parents might benefit from separate visits, as Marlon would often miss, but respondents wanted to visit together.

¶ 11 Nine months after Bouchard had recommended that Marlon receive a domestic violence assessment, on May 11, 2017, Marlon was assessed by Rosella Barnes, a licensed clinical psychologist, for domestic abuse and violence. The court found Barnes credible and gave "great weight" to her testimony, written report, and recommendations, which included recommendations that Marlon attend a 26-week partner abuse intervention program and a minimum 26-week program on individual cognitive behavioral counseling. The court found, "[Marlon's] actions and words towards caseworkers and other staff made it clear that he was not going to comply with these recommendations and he did not." On June 15, 2017, the court found that neither parent had made substantial progress towards the goal of return home.

¶ 12 As to respondents' relationship:

"The [c]ourt considered the testimony of [Diana]. Her testimony established that she and [Marlon] are in [a] long-term[ ] relationship[,] having been together for over seven years with intention to remain in the relationship supportive of one another to a fault. This is shown through her minimizing the aggravated battery he committed to her while she was pregnant, her refusal to visit the minors on numerous occasions because [Marlon] would not or could not attend, by leaving team meetings when [Marlon] left in anger. [Marlon] and [Diana] are a united team and as a united team if one prevents progress towards the goal of return home then they both will be rated as such. The [c]ourt finds that to be highly appropriate in this case.

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[Diana] is living with [Marlon] and the evidence [h]as established that they are a united front and intend[] on staying together. The [c]ourt gives great weight to the experts' reports and testimony concerning [Marlon] and the need for domestic violence treatment and counseling for he has a long history of - - he has a history of domestic violence and his refusal to comply with treatment and [Diana's] intention to stand by her man."

¶ 13 As noted, in August 2017, the State moved to terminate respondents' parental rights. The court relied on the aforementioned evidence and found respondents unfit. Respondents' arguments attacking those findings include their position that, had the parents *not* completed all of their services and corrected the conditions that led removal, the children would never have been returned to them in April 2015 and, therefore, the court should not have considered the initial domestic incident (which was not repeated) as a factor contributing to their alleged failure to make reasonable efforts to correct the conditions which were the basis for the children's

removal. Instead, they contend, housing stability was the issue requiring the children to return to care and respondents cured that issue. Next, respondents argue that the court erred in finding that Diana failed to make reasonable progress toward the return of the children home on the basis that, despite compliance with her service plans, Diana had not terminated her relationship with Marlon. Respondents argue that DCFS never discussed with Diana that the children would not be returned to her unless she left Marlon, nor was that apparent requirement ever made part of a service plan. As to Marlon, they argue that the court erred in finding that he had not made reasonable progress where all services had been completed and the children *were* returned to their care, but then the parents voluntarily agreed that housing issues required that DCFS place the children with foster parents temporarily. Only later did DCFS require a psychological evaluation, in which Bouchard recommended the domestic violence evaluation. Respondents contend that Bouchard made that recommendation in reliance on erroneous information and improperly, as there was no evidence that she was aware that he had already successfully completed domestic violence counseling and where there was no allegation of any subsequent domestic incidents. "There was no longer any evidence that domestic violence issues were a shortcoming for [Marlon], and to terminate [Marlon's] parental rights for failing to follow a service plan that was simply throwing tasks at him as roadblocks is unjust." Similarly, respondents argue, there was never evidence that drug use was a problem for Marlon, yet the failure to complete all random drops was cited as a basis for unfitness, despite the fact that the samples he did provide tested negative for drugs.

¶ 14 We reject respondents' arguments. Diana fails to acknowledge that, despite no formal warning that parting with Marlon would be required for the children to be returned, it was nevertheless her relationship with Marlon that caused her to fail to complete other tasks that *were*

specifically required of her. For example, Diana would not cooperate with DCFS by remaining to speak with the caseworkers if Marlon chose to leave their meetings. She would not visit with her children if Marlon did not participate. During the first time period, Diana did not provide housing or income verification as required, refused housing assistance, and left a meeting to discuss processes for moving interstate after Marlon became angry with DCFS. Further, visits with the children moved from unsupervised to supervised. We must similarly reject arguments specific to Marlon's fitness. Even setting aside the recommendations for domestic violence counseling and drug testing, it is clear that Marlon refused to cooperate, as *court ordered*, with DCFS and did not complete required tasks, such as income and housing verification and consistent participation in visitation. Again, the visits moved from unsupervised to supervised. Further, Marlon fails to acknowledge the evidence that *supports* the court's findings, including his anger and lack of cooperation with DCFS (we note, again, his text message to the caseworker), and his angry departure from meetings. The court's findings that it would not be able to return the children home in the near future (*In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7) and that there had not been "demonstrable movement toward the goal of reunification" (*In re C.N.*, 196 Ill. 2d 181, 211 (2001)), were not contrary to the manifest weight of the evidence.

¶ 15 As to the court's best interests finding, that, too, is considered under the manifest-weight standard of review. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). The trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)), including the child's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Id.* In sum, respondents argue that the court erred because they share a bond with their children; Diana, in particular, was appropriate

and interested in the girls; and witnesses testified that the parents were nurturing, loving, attentive, and appropriate during visits. In addition, respondents contend that the court lacked any evidence as to whether termination of the relationship would have any long-term effects on the children. They note that the evidence reflected that they now live in a two-bedroom residence that is safe and appropriate for the children and, in fact, one bedroom is kept ready for the children. Respondents argue that they "are ready, willing and able to provide a safe, loving home for their children."

¶ 16 Under the manifest-weight standard of review, respondents' arguments must be rejected. Here, the court considered all statutory factors and explained that, even if E.P. and J.P. (at the time of the hearing, approximately ages six and five, respectively) had a bond with respondents, they had a strong bond with their foster parents. Indeed, they had been living with the foster parents for the majority of their lives, with J.P. having been placed with them at birth. Although they returned to respondents' care for a brief period (approximately six months) in 2015, the children have primarily resided with their foster parents and have, accordingly, developed attachments to them. A best-interest report prepared for the hearing reflected that the foster family's home was safe, spacious, and appropriate and that the foster parents were meeting all of the children's needs. The court found that the foster family provides the children with religious and other community ties through church and other activities. "This foster family is real stability that [the children] have had, the sense of family they have had, and certainly they feel love, value and security with this foster family and certainly this would be the least disruptive placement and their foster family has indicated a desire and willingness to provide permanency." The court noted that the children have a younger brother (apparently placed with another family) and that the foster family had encouraged a bond and relationship between the girls and their brother.

Further, the court found that, while Diana presents as "well-meaning" and has a relationship with her daughters, it could not ignore that she remained in a relationship with Marlon, who had refused to participate in domestic violence and other services, chose not to exercise visitation, and presents a safety risk to the children's welfare. "Mom, you can identify with him, you know, to a fault and the fault is that you are choosing not to leave him and choosing him over the children has lead [you to] this point now[.]" The court properly balanced the evidence to consider the children's need for permanency, stability, and their sense of attachment to the foster family, in order to find it in their best interests to remain in the only home they have ever really known. In sum, the court's findings find support in the record and are not contrary to the manifest weight of the evidence. Accordingly, we affirm the judgment of the circuit court of Lake County.

¶ 17 Affirmed.