2019 IL App (2d) 190306-U-B
No. 2-19-0306
Order filed September 16, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re D.H., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-425
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee v. Miranda E., Respondent-Appellant).)		Francis M. Martinez, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The Appellate Court affirmed the trial court's finding of unfitness; respondent's contention of ineffective assistance of counsel was moot where the Appellate Court earlier afforded her the relief that she sought.

¶ 2 Respondent, Miranda E., appeals the trial court's orders finding her to be an unfit parent and terminating her parental rights. In *In re D.H.*, 2019 IL App (2d) 190306-U (*D.H. I*), we retained jurisdiction of this appeal but remanded to the trial court for the limited purpose of reviewing the evidence submitted to determine whether it proved respondent's unfitness by clear and convincing evidence. On August 21, 2019, the trial court entered an order making that

finding. We subsequently allowed the State's motion to supplement the record with that order. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 D.H. was born on November 29, 2016. He was removed from respondent, Miranda E., at birth because her three older children had open cases with the Department of Children and Family Services (DCFS). D.H.'s siblings were taken into care due to respondent's involvement in an abusive relationship with Donald Washington.[1] Washington was subject to a no-contact order with respondent when D.H. was conceived. Initially, respondent denied that Washington was D.H.'s father, but a subsequent DNA analysis confirmed Washington's paternity.

¶ 5 On December 5, 2016, the State filed a neglect petition alleging that the minor's environment was injurious to his welfare in that (1) respondent failed to cure the conditions that led to the minor's removal and (2) respondent had a history of engaging in domestic violence, thereby placing D.H. at risk of harm. On May 1, 2017, the court adjudicated D.H. a neglected minor and granted DCFS guardianship and custody. DCFS placed D.H. in a traditional foster home with two of his siblings.

¶ 6 Between October 25, 2017, and September 5, 2018, the court held three permanency review hearings. At each of those hearings, DCFS's concern was that respondent was concealing her ongoing relationship with her abuser, Washington. Washington was seen leaving respondent's apartment, and caseworkers saw double place settings in the sink and men's clothing in respondent's closet. Respondent gave implausible explanations for those occurrences.

¶ 7 At the first permanency hearing on October 25, 2017, the court noted that respondent was beaten and admitted to the hospital on September 23. According to DCFS reports, respondent

[1] This court decided Washington's appeal in *In re D.H.*, 2019 IL App (2d) 190214-U.

claimed that she was jumped and robbed in an alley. Yet, respondent's caseworker did not locate any alley in the place where respondent said the incident occurred. Nor could the caseworker find that a police report of the incident had been made. DCFS's records showed that the hospital called the police but that respondent left the hospital before the police arrived to speak with her. The court expressed concern that respondent was either the victim of abuse or was putting herself in harm's way by not reporting bad things that had happened to her. The court reserved making any finding with respect to whether respondent had made reasonable efforts toward the goal of reunification.

¶ 8 The next permanency hearing was held on February 28, 2018. DCFS reported that respondent was completing services, but that she was not realizing any benefits from those services. Specifically, respondent's caseworker believed that respondent and Washington were still together, as respondent was using a phone that was registered to Washington. After DCFS confronted respondent, she began using a phone that was not registered to Washington. The court found that respondent's issues were "deep-seated" but that, under the circumstances, she was making reasonable efforts and reasonable progress. The goal remained reunification.

¶ 9 The court held the next permanency hearing on August 10, 2018. At that hearing, the State sought a goal change to substitute care pending termination of parental rights. However, because of the court's schedule, the hearing was continued to September 5, 2018. On September 5, DCFS reported that respondent interacted with D.H. when the parenting coach was observing, but she either napped or looked at her phone when the coach was not present. Cathy Costanza, the caseworker assigned to D.H., testified that respondent's apartment was clean and appropriate. According to Costanza, respondent lived there by herself. Respondent was employed at Dollar General. Costanza testified that respondent was doing well in counseling and that she was

meeting her goals. Costanza was concerned that respondent was still in a relationship with Washington. She testified that respondent's car appeared to be similar, if not identical, to the car that Washington drove, and someone had seen her shopping with Washington. Costanza testified that she saw respondent and Washington walking on the street together to a bus stop twice after court hearings. Costanza also referenced unexplained bruises for which respondent made excuses. According to Costanza, respondent needed to complete another course of domestic violence training, which respondent refused to attend. Because the court did not see reunification occurring in the near future, it changed the goal to substitute care pending termination of parental rights.

¶ 10 On September 7, 2018, the State filed a motion for termination of parental rights and power to consent to adoption. The motion alleged that respondent was unfit, as follows: (count I) she failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2018)); and (count II) she failed to protect the child from conditions within his environment injurious to the child's welfare (750 ILCS 50/1(D)(g) (West 2018)). The motion further alleged that it was in the best interest of D.H. that respondent's parental rights be terminated.

¶ 11 The unfitness hearing was held on November 16, 2018. Costanza testified that respondent had completed services except for the second course of domestic violence counseling. Costanza testified that her main concern was respondent's ongoing relationship with Washington. Costanza clarified her earlier testimony regarding respondent's car by saying that pictures on the Internet showed that Washington was using it and was claiming that it was his. According to Costanza, respondent had suffered injuries the previous April and May. Respondent claimed that she was injured at work, but when Costanza asked to see the accident reports, respondent could

not produce them. Costanza testified that she was not assuming that Washington caused the injuries, but she was concerned because respondent could not verify that they were work related. Costanza testified that what concerned her most was that respondent and Washington were not honest about their relationship. Costanza was also concerned that respondent would nap or watch movies instead of interacting with D.H. when the parenting coach was not present.

¶ 12 Duane Wilke was the State's second witness. He attended respondent's visits with D.H., and he noticed that she interacted with the minor when the parenting coach was present but not otherwise. According to Wilke, when D.H. was an infant, respondent would sit him in front of the television and have him watch the screen. Wilke testified that D.H. did not call respondent "Mother," and he did not go to her for anything. He observed no eye contact between respondent and D.H. Wilke testified that respondent watched television rather than talk to D.H. or play with him.

¶ 13 The court found that respondent's denial of her relationship with Washington constituted a failure to show interest and responsibility. In that vein, the court also found that respondent did not incorporate the services that she received. Specifically, the court found that there was "a great deal" of circumstantial evidence regarding the parties' ongoing relationship: "It appears more likely than not that [respondent and Washington] continued in a relationship, and the testimony concerning the shared automobile was convincing and certainly by a standard of a preponderance of the evidence." The court continued: "And then you layer onto that the unexplained injury, the purported injuries at work that were not corroborated." The court also found that D.H. was born into an environment "where the parents failed to correct the conditions that led to the removal" of respondent's three other children and, therefore, the evidence proved that the environment was injurious to D.H.'s welfare.

¶ 14 The court then addressed the evidence against Washington (not detailed in this Order) and stated: "As for [Washington], the State has met its burden by clear and convincing evidence, and I should have noted at the very beginning that the State recognized—or the court recognizes its burden or the burden as clear and convincing." The court then recited the evidence that was adduced against Washington.

¶ 15 The court next proceeded to a best interest hearing. Costanza testified that D.H., who was three years old, had been in the same foster home with two of his biological siblings, ages four and five, since his birth. According to Costanza, the foster home was "safe and appropriate." She testified that D.H. had not received any services and had no special needs. She also testified that D.H. treated his foster parents as his own parents and went to them for all of his needs. Costanza testified that D.H. was "very connected" to his siblings. She described them as "typical boys," who had a "great bedroom" and who loved playing together. Costanza also described D.H.'s relationship with his foster mother's extended family as "very good." According to Costanza, D.H.'s foster grandmother provided daycare services for him, and his foster mother's nieces were like his "sisters." Costanza testified that D.H. had contact with both of his biological parents and an older brother who had been adopted before Costanza became involved with the family. Costanza testified that the foster parents wanted to adopt D.H. On cross-examination, Costanza testified that respondent's supervised visits with D.H. "went well."

¶ 16 The court found that it was in D.H.'s best interest to terminate parental rights, given that he was "integrated" into his foster home and would be traumatized if he were to be removed from the family that he viewed as his primary care givers. The court found that permanency was the primary consideration and that it would not be achieved by removing D.H. from his foster family.

¶ 17 In *D.H. I*, respondent raised four issues: (1) the court applied the wrong standard of proof in finding her unfit, (2) the court shifted the burden of proof to respondent, (3) the court erred in finding that respondent was unfit because of an environment injurious to the minor's welfare (count II) when D.H. was removed at birth and never lived with respondent, and (4) respondent received ineffective assistance of counsel. The State confessed error with respect to count II, which this court accepted, and we reversed the court's finding as to that count. *D.H. I*, 2019 IL App (2d) 190306-U, ¶ 22. With respect to count I, we determined that the record was unclear as to whether the court used an improper standard of proof. *D.H. I*, 2019 IL App (2d) 190306-U, ¶ 27. As noted, we retained jurisdiction while remanding for the limited purpose of having the trial court determine whether the evidence submitted proved respondent's unfitness by clear and convincing evidence. The trial court made that finding, and we now proceed to the issues that we did not reach in *D.H. I*.

¶ 18 II. ANALYSIS

¶ 19 Respondent argues that (1) the court shifted the burden of proof and (2) she received ineffective assistance of counsel.

¶ 20 Before addressing respondent's arguments, we review the principles applicable to termination proceedings. The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2018)) provides a two-step process for the involuntary termination of parental rights. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). First, the State must prove that the parent is unfit by clear and convincing evidence. *Deandre D.*, 405 Ill. App. 3d at 952. Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) lists the grounds under which a parent can be found unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D)(b) of the Adoption Act provides that a parent's failure to maintain a reasonable degree of interest, concern, or

responsibility as to the child's welfare is a ground for a finding of unfitness. 750 ILCS 50/1(D)(b) (West 2018). Section 1(D)(g) of the Adoption Act provides that a parent's failure to protect the child from conditions within his environment injurious to the child's welfare is also a ground for a finding of unfitness. 750 ILCS 50/1(D)(g) (West 2018). Second, if the court makes a finding of unfitness, the court then considers whether it is in the best interest of the minor to terminate parental rights. *Deandre D.*, 405 Ill. App. 3d at 953. The State has the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *Deandre D.*, 405 Ill. App. 3d at 953. The appellate court will reverse a finding of unfitness only where it is against the manifest weight of the evidence, that is, where the opposite conclusion is clearly evident. *Deandre D.*, 405 Ill. App. 3d at 952.

¶ 21 Here, the State alleged in count I of the motion to terminate parental rights that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. In finding respondent to be unfit, the court noted that she did not corroborate that her injuries were work related. The issue that brought D.H. into care was respondent's abusive relationship with Washington. Throughout these proceedings, DCFS's concern was respondent's ongoing relationship with Washington and her attempts to conceal it. Costanza observed injuries to respondent's person, and she asked respondent to produce accident reports verifying that the incidents were work related, as respondent claimed. Respondent argues that she had no burden to do so, as the State had the burden to prove her unfitness by clear and convincing evidence.

¶ 22 One of the requirements of respondent's service plan was to "maintain open and honest communication" with her caseworker. As noted, DCFS's concern was respondent's ongoing relationship with her abuser, Washington. What the court commented on was respondent's

failure to fulfill her responsibilities under the service plan. Completion of service plan objectives can be considered evidence of a parent's concern, interest, and responsibility. *In re Gwynne P.*, 346 Ill. App. 3d 584, 591 (2004). It follows that a failure to comply with a service plan can be evidence of unfitness. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 39. Respondent terms Costanza's concerns mere "suspicions," but those suspicions were driven by respondent's evasiveness. For instance, respondent described being attacked in an alley, but when Costanza went to the location that respondent described, there was no alley. Given respondent's history with Washington and the evidence that respondent was still in a relationship with him, Costanza was not out of line in requesting documentation of work related injuries. When respondent did not produce any reports, respondent was not maintaining open and honest communication as required. Consequently, we reject respondent's contention that the court shifted the burden of proof.

¶ 23 Moreover, the record showed that respondent refused to engage in a second course of domestic violence training, which was recommended in her service plan. We may affirm the trial court's decision on any basis established by the record. *In re K.B.*, 314 Ill. App. 3d 739, 751 (2000). Accordingly, we hold that the court's finding of unfitness was not against the manifest weight of the evidence.

¶ 24 Next, respondent contends that she received ineffective assistance of counsel. Parents involved in proceedings to terminate their parental rights are entitled to the effective assistance of counsel. *In re M.F.*, 326 Ill. App. 3d 1110, 1119 (2002). A respondent must show that his or her counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-95 (1984); *M.F.*, 326 Ill.

App. 3d at 1119. A "reasonable probability" is one sufficient to undermine confidence in the outcome. *M.F.*, 326 Ill. App. 3d at 1119. Here, respondent argues that her counsel's conduct in not filing a motion to vacate the court's findings and judgment deprived her of due process. According to respondent, the court found her unfit under count I using the wrong standard of proof. Additionally, respondent argues that the evidence could not form the basis for finding her unfit under count II, which alleged failure to protect, because D.H. was removed from her custody at birth. Had counsel filed a motion to vacate, respondent argues, the motion would have been successful.

¶ 25 We do not reach this issue because it is moot. In *D.H. I*, we reversed the finding of unfitness under count II, thus giving respondent the relief that she seeks as to that count. As to count I, we afforded respondent relief by vacating the finding of unfitness and remanding for the trial court to determine whether the evidence was clear and convincing. Thus, our reversal and vacatur of the findings render this issue moot. See *In re K.L.S-P.*, 383 Ill. App. 3d 287, 293 (2008) (appellate court's reversal of a finding of neglect rendered issue moot).

¶ 26 III. CONCLUSION

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

¶ 28 Affirmed.