2020 IL App (2d) 190746-U
No. 2-19-0746
Order filed January 13, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Z.H., A Minor	)	Appeal from the Circuit Court of Winnebago County.
	)	No. 16-JA-21
(The People of the State of Illinois, Petitioner-Appellee, v. Vincent H., Respondent-Appellant).	)	Honorable Mary Linn Green, Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgments, that respondent was proved unfit by clear and convincing evidence and that it was proved by a preponderance of the evidence that it was in the child's best interests to terminate respondent's parental rights, were not against the manifest weight of the evidence.

¶ 2 On August 14, 2019, following hearings on parental unfitness and the children's best interests, the circuit court of Winnebago County entered an order terminating the parental rights of respondent, Vincent H., to his child, Z.H. On appeal, respondent argues that the trial court's judgments on unfitness and the child's best interests were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2004, Z.H. was born to Shavon M. and respondent. Before as well as following Z.H.'s birth, respondent was convicted of several offenses. In September 2000, respondent was convicted of a felony drug offense; in July 2001, he was convicted of a misdemeanor damage-to-property offense and a misdemeanor drug offense; in April 2002, he was convicted of several offenses, notably two felony drug offenses; in March 2007, he was convicted of a misdemeanor weapons offense, and in June 2010, he was convicted of attempted murder and armed habitual criminal and was sentenced to a 55-year term of imprisonment. Thus, both before and especially after the birth of Z.H., defendant was in and out of prison, culminating in his 55-year term of incarceration (which commenced in 2008 for the attempted murder charge).

¶ 5 On January 12, 2016, the charges triggering this case were filed by the State. The State alleged that Z.H. (and her siblings, who are not respondent's children and for whom respondent never had or sought responsibility) was abused or neglected because the mother exposed her to an injurious environment. The State alleged that the mother violated a no-contact order entered against her paramour as a result of an incident of domestic violence in the child's presence; the State also alleged that the mother violated an order prohibiting unsupervised visitation with the child. At the time of the neglect petition, respondent was serving his sentence and had been incarcerated for about eight years. Respondent learned of the proceeding and requested to be present at the adjudication hearing. Z.H. was adjudicated an abused or neglected minor by agreement and then, on June 16, 2016, the Department of Children and Family Services was granted the guardianship and custody of Z.H.

¶ 6 Respondent remained incarcerated throughout the proceedings. The record indicates that, from January 2016 to July 2016, he completed an integrated assessment pursuant to his service

plan, but he did not maintain adequate contact with the Department. From July 2016 to December 2016, respondent did not maintain contact with the Department. From December 2016 to June 2017, respondent did not maintain adequate contact with the Department, but he did send letters asking about Z.H.'s welfare. From June 2017 to January 2018, respondent wrote monthly letters to Z.H., but did not communicate with the Department or participate in the recommended services. From January 2018 to June 2018, respondent ceased regular communications, leading the Department to complain that respondent only provided information at the hearings, which hampered its ability to provide case management. The Department also deemed his efforts in following the Department's recommendations and obtaining services to be unreasonable.

¶ 7 On January 26, 2018, the State filed its motion to terminate respondent's parental rights, and on March 29, 2018, the State filed its amended motion to terminate respondent's parental rights. The amended motion to terminate parental rights alleged three grounds of unfitness: (1) respondent failed to make reasonable progress toward the return of Z.H. for any and all of the three nine-month periods of May 2016 to February 2017, February 2017 to November 2017, and April 2017 to January 2018 (see 750 ILCS 50/1(D)(m)(ii) (West 2018)); (2) respondent was depraved (see 750 ILCS 50/1(D)(i) (West 2018)); and (3) prior to his incarceration, respondent failed to provide for Z.H.'s welfare and necessities and his continuing incarceration would prevent respondent from discharging his parental responsibilities for more than two years (respondent's projected release date is April 30, 2055) (see 750 ILCS 50/1(D)(r) (West 2018)). As the case moved toward the unfitness hearing, in October 2018, respondent decided to proceed *pro se*. At the time he began to represent himself, respondent provided to the Department certificates to show that he had completed available services while he was incarcerated, and he provided evidence that

he was exchanging letters with Z.H. and attempting to have in-person visitation with her at his institution.

¶ 8 On July 17, 2019, the unfitness hearing finally commenced. Amy Kukuczka, a caseworker for the child, testified that, at the outset of the case, respondent did not have contact with Z.H., but as it progressed, respondent began writing letters to Z.H., and they began to exchange correspondence. Kukuczka testified that respondent's anticipated release would not occur until 2055, when Z.H. would be around 40 years of age. She testified that respondent could not have much contact with Z.H. because of his incarceration; likewise, he could not provide much support for Z.H. because of his incarceration. Z.H. also required extra attention and care due to some cognitive issues.

¶ 9 The mother testified that, before his incarceration (beginning in 2008), respondent was both financially supportive of Z.H. and visited and provided physical care for Z.H. at those times. Respondent's sister, Erica H., testified that, before his incarceration, respondent was very involved in Z.H.'s life. Erica H. testified that, once respondent was incarcerated, he attempted to maintain contact with Z.H. through his family. Erica H. testified that her family kept in contact with Z.H. and spent time with her. Erica H. was aware that, before his incarceration, respondent provided financial support for Z.H., and, after respondent's incarceration, their mother (Z.H.'s grandmother) helped with financial support for Z.H.

¶ 10 Rosanna C., respondent's mother and Z.H.'s grandmother, testified that, before his incarceration, respondent helped in the care of Z.H. Once he had been incarcerated, however, he always asked after Z.H. when Rosanna C. would visit. We note that there is evidence in the record that the service providers for Z.H. were concerned about Rosanna C.'s interactions with Z.H.

because Rosanna C. apparently informed Z.H. that she would not allow Z.H. to be placed with her if it meant that she would also have to take Z.H.'s siblings, and Z.H., understandably, reacted very poorly to that exchange.

¶ 11 Respondent testified on his own behalf. Respondent testified that he finished his high school equivalency degree while he had been incarcerated and mentioned the services he had received. Respondent recalled that Z.H. had been born prematurely and underwent intensive care before she was released from the hospital. Respondent testified that he had bonded strongly with Z.H., and he tried to maintain his connection through the exchange of letters and cards with Z.H. while he remained in prison. Respondent testified that he had tried to have in-person visits with Z.H., but that the Department and its contracting agencies had not allowed it. Respondent testified that it was not until 2018 that he finally was permitted in-person visitation with Z.H. He testified that he had been allowed four in-person visits with Z.H., and he was asking for more.

¶ 12 Following argument, the trial court held that respondent was unfit on each of the grounds alleged in the State's amended petition to terminate respondent's parental rights. The trial court reviewed the evidence:

> "As to the father, [respondent], again as stated earlier, he was incarcerated the entire time. He has had no conferences or meetings. He's [not] able to attend other than by phone. He has no employment, and there has never been a move toward unsupervised visits or placements. [Kukuczka] testified that [respondent] will not be released until [Z.H.] is over 35 years of age.
>
> ***

> As for [Z.H.], Ms. Kukuczka testified that she is currently 15 years old and has cognitive delays. She needs more direction than most 15 year olds do. She is not an independent young lady at this time.
>
> She has individualized education program needs and, obviously, has the needs of food, clothing, and shelter on a daily basis.
>
> She testified that the mother has not met the minor's needs long-term, and the father's incarcerated status interferes with providing for the minor's needs."

¶ 13 The trial court continued with a review of respondent's performance under the various service plans:

> "From May 16—May, 2016 to February, 2017, there has been more consistent contact from the father to the agency, and again I'm talking about [respondent]. Within the last year, he's been more consistent with his contact with the agency, and the agency has sent letters to him of which he made an exhibit."

The trial court also noted that, in 2008, when Z.H. was four years old, respondent was incarcerated and had not contributed to Z.H.'s support.

¶ 14 The court moved to a consideration of the evidence specifically provided by respondent and his witnesses during the hearing.

> "As to the father's case, [respondent] had his sister, Erica [H.], testify. She testified as to his relationship with his daughter, and after his incarceration she testified they kept including his daughter in family occasions and family affairs.

Before his incarceration [respondent] did give financial support to [Z.H.], things such as shoes and clothing. After his incarceration he did what he could for the minor, but, obviously, was unable to contribute to support.

Obviously, the minor has needed a lot of things her whole life, and father has not been able to provide that as well as attend appointments, medical appointments or obtain medications or supplies for her. The child continues to have daily physical needs which need to be met.

Also, testifying for [respondent] was his mother, Rosanna [C.] as to she said that prior to his incarceration, that he was financially and emotionally supportive of his daughter. After his incarceration his sister and mother helped with his daughter, and—but he has tried to keep in contact with his daughter.

As to [Rosanna C.'s] further testimony, she testified that it is apparent to her there is a bond between [Z.H.] and her father and that the father has always appeared interested in his daughter's welfare.

The minor was 15 years old this past June and again was four years old when dad was incarcerated. The father did know he had a daughter before he was incarcerated. He and the mother lived together for the first four years of her life. Before he was incarcerated the father worked and had some jobs.

Sorry. I don't want to rehash those things that I've already brought up.

[Respondent] himself testified that he writes his daughter letters one time a month and sends those through the agency.

He admitted into evidence various certifications of classes that he has taken while in Illinois Department of Corrections on his behalf and is to be congratulated. He did receive his high school degree, took parenting class, and tries to get into those services that are offered.

Currently, at least at the time he was testifying, his parent institution is Lawrenceville.

***

Okay. Other things that he completed were a dad's class and anger management class.

He did agree when questioned by the State that he was convicted of attempted murder and sentenced to 55 years incarceration, and his appeal of that has been denied. He testified that to his knowledge his out date will be April 31 [*sic*], 2055.

As to visitation while he has been incarcerated, visitation with his daughter, the evidence shows that from 2010 to present at the time he testified, he had had four in-person visits with his daughter totally.

Again, he testified that in 2017, [2018], and [2019,] he wrote letters. Although he did agree that before his daughter came into care he was not sure of her doctor, her teacher, her first pediatrician, he did recall that she was hospitalized for three to four months right after she was born. He agreed that after being born in 2004 she had [a] continued need for clothing, food, and shelter.

The evidence shows that in 2006 when the minor was two years old, he was arrested for a misdemeanor, in 2008 when she was four, arrested again for attempted murder and armed habitual criminal."

¶ 15 The trial court then assessed the evidence in light of the allegations of unfitness:

"As to [respondent], Count 1, no reasonable progress, that was found on the permanency reviews of July 11, 2017, and January 22, 2018.

As to Count 2, the depravity count, the following convictions, criminal convictions were included in People's Group Exhibit No. 5, 2008-CF-2970, Count 1, attempted murder, dated June 29, 2010; 2008-CF-2970, Count 2, armed habitual criminal, dated June 29, 2010; 2000-CF-1761, violation of the Illinois Controlled Substance Act, dated September 29, 2000; 2000-CM-1-123, criminal damage to property, dated July 16, 2001; 2001-CF-2706; Count 1, possession with intent to deliver a controlled substance dated April 8, 2002; 2001-CF-2706, Count 2, possession with intent to deliver controlled substance, dated again April 8, 2002; 2001-CF-2706, Count 3, battery, dated April 8, 2002; 2001-CF-2706, Count 4, criminal trespass, same date of April 8, 2002; 2001-CM-4489, violation of the Cannabis Control Act, dated July 16, 2001; and 2006-CM-4984, unlawful use of weapons, dated March 6, 2007—paragraph or—try it again—Peoples Exhibit No. 6, which was admitted was the document of certified conviction for the attempt murder charge in which [respondent] was sentenced to the 55 years [of] incarceration.

And finally the Count 3 as to [respondent], which alleges the child is in temporary custody or guardianship of the [Department], he is incarcerated as a result of criminal convictions, and prior to his incarceration he had little or no contact with the child or

provided little or no supports for the child, and the incarceration will prevent him from discharging his parental responsibilities for the child in a period in excess of two years after filing of the petition. The court has found that the evidence shows that that has been proven by clear and convincing evidence

¶ 16 A few other comments as to the reasonable progress, which is the only allegation, which is the only allegation against [respondent], did he make reasonable efforts during the pendency of the case, but the service plans show that he could not complete all his services and that we were never at a point where the minor could have been placed with him in the reasonable foreseeable future.

As to the depravity count, in the court's opinion the State has proven a longstanding deficient sense of moral rectitude, and under [*In re Shanna W.*, 343 Ill. App. 3d 1155 (2003)], the court finds that since he has been incarcerated, the father has not lived in society to prove he can meet societal norms."

¶ 17 The case then turned to the best-interests hearing. Krista Bergstrom, the case manager for Z.H., testified that Z.H. had received counseling services, and the counselor recommended that she not have visitation with Rosanna C. because it was too emotionally and behaviorally taxing to Z.H. Bergstrom testified that Z.H. was placed in a traditional foster home with her sister. Z.H. was comfortable with her foster parents, and she was involved in activities as well as family events with her foster family. Bergstrom testified that Z.H. was willing to visit respondent and would continue to correspond with respondent.

¶ 18 Z.H.'s foster father testified that she receives educational support services pursuant to a formal plan. He and his wife both advocated on Z.H.'s behalf at school. Z.H. had some issues

acting appropriately in school as well as a period of adjustment to medication, but, by the end of the previous school year, had drastically improved in her behavior and academic success. The foster father noted that Z.H. was comfortable in discussing issues with him and his wife and recounted an incident in which, after a visitation with Rosanna C., she had an emotional meltdown. During the incident, Z.H. and her foster parents discussed Z.H.'s emotions and how to handle her feelings for about two hours. After the incident, visitations between Z.H. and Rosanna C. were suspended until a counselor were to approve their resumption. The foster father testified that he was willing to facilitate visitation between Z.H. and respondent even if respondent's parental rights were terminated. He testified that he and his wife were willing to adopt both Z.H. and her sister, and, in his opinion, they should not be separated.

¶ 19 Following argument, the trial court held that the State had proved by a preponderance of the evidence that it was in Z.H.'s best interests to terminate respondent's parental rights. Unlike the unfitness judgment, the trial court did not give a detailed rationale for its best-interests determination beyond the following: "in the court's opinion, the State has met its burden and proven by at least a preponderance of evidence that it would be in these three children's best interests that the parental rights of their biological parents be terminated."

¶ 20 Respondent timely appeals.

¶ 21 II. ANALYSIS

¶ 22 On appeal, respondent contends that the trial court's unfitness determinations on each of the three grounds alleged were against the manifest weight of the evidence. Respondent also contends that the State failed to prove by a preponderance of evidence that it was in Z.H.'s best interests to terminate his parental rights.

¶ 23 As a preliminary matter, we note that respondent requested oral argument. The issues presented, however, are straightforward and governed by well-settled precedent. In addition, the scheduling of oral argument would, in light of our preceding comment, unnecessarily delay the resolution of this case. Accordingly, pursuant to Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), we shall decide this appeal on the briefs alone. With that said, we turn to respondent's contentions on appeal.

¶ 24 A. Governing Principles

¶ 25 Generally, the termination of parental rights proceeds in two steps: first, the court must find the parent to be unfit. *In re N.B.*, 2019 IL App (2d) 180797, ¶ 25. If the court finds the parent to be unfit, it proceeds to consider whether it is in the child's best interests to terminate the parent's parental rights. *Id.* In the unfitness portion of the proceedings, the parent must be proved unfit by clear and convincing evidence; in the best-interests portion of the proceedings, it must be proved by a preponderance of the evidence that it is in the child's best interests to terminate the parent's parental rights. *Id.* ¶ 26. In reviewing both the judgment of unfitness and the best-interests judgment, we will not disturb the trial court's judgment unless it is against the manifest weight of the evidence. *Id.* ¶¶ 30, 43.

¶ 26 B. Finding of Unfitness

¶ 27 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) provides numerous grounds under which a parent may be found to be unfit. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. In this case, the State alleged three of the section 1(D) grounds as bases to find respondent unfit: failure to make reasonable progress toward the child's return (750 ILCS 50/1(D)(m)(ii) (West 2018)), depravity (750 ILCS 50/1(D)(i) (West 2018)), and failure to provide

for the child (750 ILCS 50/1(D)(r) (West 2018)). Any single ground, if proven, is sufficient to support the trial court's unfitness judgment. *Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. While respondent properly challenges each of the three grounds, the State focuses on the grounds of failure to make reasonable progress and depravity. We begin by considering respondent's argument regarding reasonable progress.

¶ 28 Section 1(D)(m)(ii) provides, relevantly:

> "Failure by a parent *** to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 [(705 ILCS 405/2-3 (West 2018))] ***. If a service plan has been established *** to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 *** of the Juvenile Court Act of 1987." 750 ILCS 50/1(D)(m)(ii) (West 2018).

¶ 29 "Reasonable progress" is an objective standard, and the fulfillment of the standard is measured without regard to the parent's individual efforts and abilities. *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 21. A parent's incarceration may impede progress toward the goal of reunification; nevertheless, the time incarcerated in any defined nine-month period is included in the assessment of reasonable progress. *Id.* In determining reasonable progress, the trial court considers the parent's compliance with any service plans in light of the conditions that gave rise

to the removal of the child from the parent's care, and in light of any other conditions that prevented the trial court from returning the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001).

¶ 30 After carefully considering the record, we cannot say that the trial court's judgment of unfitness based on the failure to make reasonable progress was against the manifest weight of the evidence. The record shows that, for the three identified nine-month periods (May 2016 to February 2017, February 2017 to November 2017, and April 2017 to January 2018), the Department determined that respondent failed to engage in services and to maintain adequate contact with the Department. Additionally, while respondent showed that he completed some available services and received his high school equivalency, we can discern no measurable and objective progress toward the goal of reunification in the record, especially since respondent will remain incarcerated until 2055, necessarily precluding any physical reunification. Accordingly, cannot say that the trial court's judgment was against the manifest weight of the evidence.

¶ 31 Respondent argues only that he made "progress with regards to his relationship" with Z.H. Respondent does not cite to any authority to support that "progress with regards to his relationship" with the child equates to compliance with service plans, correction of the conditions that led to the child's removal, or otherwise provides an objective yardstick by which to measure a parent's progress toward reunification. As such, and despite our independent determination that the evidence in the record supports the trial court's judgment, respondent's argument is insufficient standing on its own. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). That is not to say that respondent has not attempted to forge a bond with his daughter and done everything within his power to nurture and sustain that bond. For these efforts, we commend respondent. The trial court also

noted that respondent was doing what he could to be a presence in Z.H.'s life. Thus, we say only that, in legal terms and not on a human level, respondent's argument is insufficient, and, in any event, the judgment of unfitness is not against the manifest weight of the evidence.

¶ 32 Because any single ground, if proved, can sustain the trial court's judgment, we need not address respondent's arguments regarding depravity and failure-to-provide-for-the-child. Nevertheless, we briefly address whether the trial court's judgment on those grounds was against the manifest weight of the evidence.

¶ 33 "Depravity" has been defined by our supreme court to be an inherent deficiency of moral sense and rectitude. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). A parent's depravity my be shown by his or her course of conduct that demonstrates a moral deficiency and an inability to conform to accepted morality. *Id.* Here, respondent incurred felony convictions in 2000, 2001, and 2002 for various drug-related and other offenses. Respondent was aware of his child's birth and testified that he took care of her and provided financial and emotional support in her infancy. Nevertheless, in 2008, he was arrested for attempted murder, and this led to his conviction and 55-year term of imprisonment. As noted in *Shanna W.*, respondent, by virtue of his incarceration, cannot show that he has been rehabilitated, because rehabilitation can only be demonstrated by a parent who, upon release from prison, demonstrates a lifestyle in conformity with accepted morality and suitable for safely parenting children. *Id.* at 1167. Respondent's choices led to his incarceration, and respondent's incarceration impedes and precludes his ability to adequately care for Z.H. Accordingly, we cannot say that the trial court's judgment on the ground of depravity was against the manifest weight of the evidence.

¶ 34 Likewise, with regard to the two-year window to return the child to the parent, the record shows that respondent will remain incarcerated during that timeframe and for many years to come. It is undisputed that respondent's projected release date is in 2055. Respondent cannot remedy this condition and there is no possible way that the minor could be returned to his care within two years. 750 ILCS 50/1(D)(r) (West 2018) ("the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights"). The trial court's judgment on this ground, too, is not against the manifest weight of the evidence.

¶ 35 Accordingly, we hold that the trial court's judgment of unfitness was not against the manifest weight of the evidence. We will therefore turn to the trial court's best-interests judgment.

¶ 36 C. The Child's Best Interests

¶ 37 Respondent argues that the trial court's best-interests judgment was against the manifest weight of the evidence. We reproduce his argument in full:

> "In the current case, the contracting agency of DCFS did provide a report with regards to its opinion as to whether or not is was in Z.H.'s best interests that [respondent's] parental rights be terminated. (C 143) What all parties acknowledge is that Z.H. had a good relationship with her father and was excited to see him and enjoyed writing him letters and keeping in contact with him. (C 149) Z.H. was fifteen at the time of the hearing and she seemed unsure of how she felt about being adopted. (Ex. GAL 1) If Z.H. is adopted there is no certainty that [respondent] would be allowed to be a part of her life and cutting [respondent] out of her life is certainly not in Z.H.'s best interest. Based on the above, the State did not meet it's [*sic*] burden with regards to best interests."

¶ 38 Section 1-3(4.05) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-3(4.05) (West 2018)) provides a list of factors the court is to consider when weighing the child's best interests. They include the child's physical safety and welfare, the development of the child's identity, the child's background and ties (family, culture, religion), the child's attachments, the child's wishes and goals, the child's community (church, school, friends), the child's need for permanence, the uniqueness of every family and child, risks posed by substitute care, and preferences of those available to care for the child. *Id.* Respondent's argument did not address the factors specifically. Even allowing that two of the sentences in the argument apply to two of the enumerated factors, the argument is insufficient to pass muster. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 39 In any event, Bergstrom testified about the factors and how she believed they applied. The evidence also showed that Z.H. was in multiple placements before her current one. At the current placement, she had established stability and was a member of the family, along with her half-sister, J.B. The foster parents provided for her needs, physically, emotionally, and educationally. The foster parents also encouraged Z.H. to maintain a relationship with respondent, encouraging letter-writing and taking her for in-person visits with respondent. Z.H.'s foster father also testified about how his and his wife's willingness to adopt Z.H. and her sister. Thus, termination of respondent's parental rights will provide physical and emotional security and stability, and the evidence shows that Z.H. has bonded strongly with her foster family. As well, the family will include her sister, with whom she is close and strongly bonded. Moreover, the evidence shows that Z.H. has thrived under the care of her foster family and is included within their community. Based on our consideration of the record, we cannot say that the trial court's best-interests judgment was against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 42 Affirmed.