2014 IL App (2d) 140085
No. 2-14-0085
Order filed May 16, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re AIDDEN S., a minor,	)	Appeal from the Circuit Court
	)	of Jo Daviess County
	)	
	)	No. 10-JA-7
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Emily L., Respondent-Appellant.)	)	William A. Kelly, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent was adequately admonished regarding possibility that proceedings would lead to termination of her parental rights; the trial court's findings that respondent was unfit and that it was in the minor's best interests to terminate her parental rights were not contrary to the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 The minor, Aidden S., was adjudicated abused after displaying symptoms of a head injury. The minor also had bruises all over his body. The father admitted to shaking the minor on one occasion. The trial court determined the minor was abused, and this ultimately led to the termination of respondent's (Emily L.) parental rights. Respondent now appeals. She argues

that she was not admonished in a manner consistent with the dictates of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2012). She further contends that the trial court's finding that she failed to make reasonable progress toward return of the minor to her home is contrary to the manifest weight of the evidence. Finally, she asserts that the trial court erred in finding that it was in the minor's best interests to terminate her parental rights. For the reasons that follow, we affirm. We will address respondent's arguments *seriatim*, discussing facts as they are relevant to the issues presented.

¶ 4 A. Admonishments

¶ 5 Respondent first contends that she was not properly admonished regarding the possibility that her parental rights could be terminated. She identifies four sections of the Act that require such admonishments. See 705 ILCS 405/1-5(3), 2-10(2), 2-21(1), 2-22(6)(a) (West 2012). For example, section 1-5(3) provides:

> "When the court declares a child to be a ward of the court and awards guardianship to the Department of Children and Family Services under Section 2-22, the court shall admonish the parents, guardian, custodian, or responsible relative that the parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights." 705 ILCS 405/1-5(3) (West 2012).

Respondent also relies on federal procedural due process principles. See *In re Andrea F.*, 208 Ill. 2d 148, 165 (2003), citing *Mathews v. Eldridge*, 424 U.S. 319 (1976).[1] These issues present question of law, subject to *de novo* review. *In re Kenneth F.*, 332 Ill. App. 3d 674, 677 (2002).

[1] We advise respondent's counsel that it is best to use pinpoint citations to identify legal principles in case law.

¶ 6 The State counters that respondent was adequately admonished. Specifically, it points to the shelter-care hearing, where the trial court advised respondent as follows:

> "There's an immediate and urgent necessity for removal, temporary custody to the Department of Children and Family Services and the statute requires me to inform the parent that pursuant to the Illinois Statutes, you're to cooperate with the Department of Children and Family Services, comply with the terms of any service plans and correct the conditions that require the child to be in care and if at a later time that the Court declares the child to be a ward of the Court, you might risk termination of your parental rights."

Thus, respondent was expressly admonished that the failure to comply with the directives of DCFS and the terms of services plans could lead to the termination of her parental rights. Furthermore, respondent received a series of letters from DCFS, which stated, in pertinent part,

> "There have been four recent meetings scheduled for your DCFS case that you did not attend. The first was a Family Meeting on March 21, 2011, then there was an ACR at the Freeport DCFS on May 26, 2011, there was a Family Meeting on June 15, 2011, and finally there was a meeting scheduled on June 20, 2011. You were notified in writing of all of these scheduled meetings at least two weeks prior to the date. As I have stated in the past, I do understand that you reside far from my agency office, that you work, and that you have many other court hearings that require your time. However, it is detrimental to your DCFS case *and the Return Home Goal of your son*, that you [fail to] meet with my supervisor and myself quarterly to discuss services." (Emphasis added.)

Admittedly, the final sentence is misworded; however, read in context, the meaning is clear. Thus, in addition to the clear admonishment of the trial court set forth above, respondent was repeatedly reminded that the possibility that her son would be returned to her care was in

jeopardy. Thus, we find respondent's claim that she was not admonished that her parental rights could be terminated to be unsubstantiated by the record.

¶ 7 Moreover, to the extent any technical violation occurred, we note that the admonishments respondent received combined with the series of letters sent to her gave respondent actual knowledge of the possibility that her parental rights would be terminated. We have previously held that an error regarding admonishments is subject to a harmless-error analysis. *Kenneth F.*, 332 Ill. App. 3d 674 at 679-80 ("In light of these cases, we conclude that a trial court's failure to admonish a respondent is subject to a harmless-error analysis. In proceedings of the present kind, where a primary purpose is to protect the best interests of the children, a harmless-error analysis is particularly appropriate. [Citation.] An error that prejudices no one should not prevent children, who are the objects of these proceedings, from attaining some level of stability in their lives."). Given respondent's actual knowledge that her parental rights were in jeopardy, we find it inconceivable that further admonishments would have resulted in a change in respondent's behavior such that her parental rights would not have been terminated. In other words, any purported error is harmless.

¶ 8 We find respondent's argument based on federal constitutional principles no more compelling. Whether state action offends procedural due process requires us to consider the following factors:

> "(1) the private interest implicated by the official action; (2) the risk of an erroneous deprivation of that interest through the proceedings used, and the probable value, if any, of additional or substitute safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute safeguards would entail." *Andrea F.*, 208 Ill. 2d at 165.

Undeniably, the private interest at issue here is a significant one. See *In re M.H.*, 196 Ill. 2d 356, 362-63 (2001). The State also has an interest in the well-being of children. *In re A.W., Jr.*, 397 Ill. App. 3d 868, 873 (2010); *In re Bernice B.*, 352 Ill. App. 3d 167, 178 (2004); *In re O.R.*, 328 Ill. App. 3d 955, 962 (2002) ("As previously stated, the compelling state interest is the protection of the child from harm, and the legislature protects that interest by declaring unfit those mothers who pose a risk to the safety and well-being of their children."). Finally, while the burden on a trial court of reciting admonishments a few more times would be minimal, the "probable value" of such "additional or substitute safeguards" would be minimal. As explained above, requiring such a recitation would not have changed the outcome of these proceedings. Given the lack of value that such an additional safeguard would have, we cannot find a due process violation based on its absence. See *Andrea F.*, 208 Ill. 2d at 166 ("We find that the risk that T.F. was erroneously deprived of that interest as a result of the failure to give the admonishment in question is minimal because the record amply demonstrates that T.F. was aware of the need to cooperate with DCFS and that his parental rights could be terminated."). We note that respondent raises other purported procedural defects, such as the allegedly summary nature of the permanency review hearings held in this case. However, she does not develop these arguments, and we will not consider them. See *Murphy v. Colson*, 2013 IL App (2d) 130291, ¶ 13.

¶ 9 To conclude, we reject respondent's first argument.

¶ 10 B. Unfitness

¶ 11 Respondent next contends that the trial court's determination that she was an unfit parent is contrary to the manifest weight of the evidence. The trial court determined that respondent had failed to make reasonable progress toward return of the minor to her during any nine-month

period following the adjudication of abuse. 750 ILCS 50/1(D)(m)(ii) (West 2012). "Reasonable progress" means "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001).

¶ 12 In ruling on this issue, the court noted that two nine-month periods were at issue: September 3, 2010, to June 2, 2011, and June 3, 2011, to March 2, 2012. The court stated that respondent loved the minor, which was shown by her attending visits with him as well as his medical appointments. However, the court also found that respondent had failed to cooperate with DCFS, noting that, despite having received numerous letters, respondent did not participate in family meetings. The court also noted the "lack of counseling." The court observed that while parenting classes may not have been available, counseling was. Moreover, respondent failed to even respond to correspondence from DCFS. The court then found that respondent was an unfit parent. We will not disturb such a finding unless it is against the manifest weight of the evidence, that is, if an opposite conclusion is clearly apparent. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004).

¶ 13 Respondent contends that the requirements set forth in her service plan were "unneeded and unrelated to the goal of returning the child home, considering the changes in circumstances that occurred following adjudication." It is noteworthy, however, that the supreme court has explained that "[t]he parent-child relationship, the environment in the home, and the precise conditions which triggered State intervention do not remain static over time." *C.N.*, 196 Ill. 2d at 213. Thus, a service plan is not limited to addressing issues that existed at the time custody of the minor was taken. *Id.* at 213-14. A service plan must reasonably relate "to remedying a condition or conditions that gave rise *or could give rise* to any finding of abuse or neglect." (Emphasis added.) *C.N.*, 196 Ill. 2d at 215 (quoting 325 ILCS 5/8.2 (West 1998)).

¶ 14 Respondent's chief complaint is that the service plan did not change after the minor was diagnosed with "Mild Spastic Diplegia," the symptoms of which correlated with shaken baby syndrome. She asserts that when it became known that the minor's condition resulted from a medical condition rather than abuse, the service plan should have been adjusted. She claims this would have allowed her to have "substantially fulfilled the terms of the service agreement." However, she does not identify what portions of the service plan were inappropriate or how she would have complied with an amended plan. This is significant, as respondent was not attending family meetings. It is difficult to see how a change in the content of her plan would have allowed respondent to successfully complete it when she was not fully participating in services. Indeed, the trial court's ruling was based largely on respondent's failure to participate in family meetings. Respondent gives us no reason to conclude that this finding is contrary to the manifest weight of the evidence.

¶ 15 Respondent cites *In re F.S.*, 322 Ill. App. 3d 486, 492-93 (2001), where the respondent-parent missed several counseling sessions, yet was found to have made reasonable progress toward the return of her child. While the parent deviated from her service plan, she also entered a drug-rehabilitation program that had not been recommended by DCFS, which she successfully completed. *Id*. The court observed, "Although [the parent] missed scheduled appointments with licensed psychologists for the evaluation required by the service plan, that requirement related remotely at best to the conditions that led to removal of the child." *Id*. at 493. While this observation provides some support for respondent's argument, we note that *F.S.* is ultimately distinguishable. In that case, the parent did not simply deviate from her service plan, she actively pursued and completed an alternate plan. Respondent points to no similar facts here.

¶ 16 In short, respondent has not persuaded us that the trial court's finding regarding her unfitness is against the manifest weight of the evidence.

¶ 17 C. Best Interests

¶ 18 Finally, respondent contests the trial court's determination that it was in the minor's best interests to terminate her parental rights. Before the trial court, the burden was on the State to establish by a preponderance of the evidence that termination is proper (on appeal, respondent, as the appellant, bears the burden of showing error (*Behrstock v. Ace Rubber Hose Co.*, 147 Ill. App. 3d 76, 86 (1986))). *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). The best interest of the minor is the sole consideration at this stage of the proceedings, and even the interest of the parent in maintaining a relationship with the child must yield to the minor's best interests. *In re O.S.*, 364 Ill. App. 3d 628, 633 (2006).

¶ 19 The legislature has set forth the following list of factors to guide this inquiry:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> > (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
> >
> > (ii) the child's sense of security;
> >
> > (iii) the child's sense of familiarity;
> >
> > (iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child. " 705 ILCS 405/1-3(4.05) (West 2012).

We review this issue using the manifest-weight standard. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). Hence, we will reverse only if an opposite conclusion to that of the trial court is clearly apparent. *In re Faith B.*, 359 Ill. App. 3d 571, 573 (2005).

¶ 20 The trial court first noted that the minor had been removed from respondent's care when he was very young, and his foster family was the only family he had ever known. The court emphasized that the minor had bonded with his foster family. It noted that the birth parents and the foster parents had not taken adversarial positions and all were concerned with the minor's best interests. The court also found that the minor's medical needs would be better served by his remaining with the foster family.

¶ 21 Respondent now argues that the trial court gave no significance to the fact that she "did not engage in any activity to harm the child." Without citation to authority, she asserts that the safety of the child should be the paramount consideration. Accepting respondent's factual premise on its face, we note that there is nothing in the record that suggests that the foster parents would somehow be inferior with respect to keeping the minor safe. As such, even if we were to

limit our consideration to this single factor, we could not say that the trial court's conclusion is against the manifest weight of the evidence.

¶ 22 Respondent then contends that the trial court placed undue weight on the minor's emotional attachment to the foster parents, "rather than addressing the admitted fact that the termination was manifestly unjust." Respondent continues, "Ultimately, for this Court, the question of best interests is whether or not a child should be taken from the home of a parent who did nothing to harm the child and had no warning or indication that physical abuse of the child was going on until the moment the child was removed from her care." Such considerations implicate respondent's fitness to be a parent; therefore, at the best-interests phase of the proceedings, these are not material considerations. See *O.S.*, 364 Ill. App. 3d at 633 (holding that at the best-interests phase of the proceedings, "all considerations must yield to the best interest of the child"). In the proceeding section, we addressed the propriety of the finding that respondent was an unfit parent. It would not be proper to revisit that finding here.

¶ 23 In sum, respondent has not established that the trial court's ruling is contrary to the manifest weight of the evidence.

¶ 24 II. CONCLUSION

¶ 25 In light of the foregoing, the judgment of the circuit court of Jo Daviess County is affirmed.

¶ 26 Affirmed.