

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 140330-U
NO. 4-14-0330
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
August 13, 2014
Carla Bender
4th District Appellate
Court, IL

In re: C.B., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v.)
CORY BLACKWELL,)
Respondent-Appellant.)
Appeal from)
Circuit Court of)
Adams County)
No. 11JA32)
Honorable)
John C. Wooleyhan,)
Judge Presiding.)

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's fitness and best-interest determinations.
- ¶ 2 In August 2013, the State filed a motion to terminate the parental rights of respondent, Cory Blackwell, an inmate in the Department of Corrections (DOC), as to his daughter, C.B. (born May 10, 2007). In April 2014, following separate hearings, the trial court entered an order (1) finding respondent unfit and (2) terminating his parental rights.
- ¶ 3 Respondent appeals, arguing only that the trial court's fitness determination was against the manifest weight of the evidence. We affirm.
- ¶ 4 I. BACKGROUND
- ¶ 5 The following facts were gleaned from the pleadings, the evidence presented at the fitness and best-interest hearings, and the service plans prepared by the Department of Chil-

dren and Family Services (DCFS).

¶ 6 A. Events Preceding the State's Motion To Terminate Parental Rights

¶ 7 DOC's website indicates that in August 2009, respondent began serving a three-year-and-four-month prison sentence for possession of methamphetamine (less than five grams) (720 ILCS 646/60(b)(1) (West 2008)). See *People v. Peterson*, 372 Ill. App. 3d 1010, 1019, 868 N.E.2d 329, 336 (2007) ("[T]his court may take judicial notice of DOC's records because they are public documents.").

¶ 8 In June 2011, while respondent was still in DOC's custody for his 2009 sentence, the State filed a petition for adjudication of wardship, alleging that C.B. was neglected within the meaning of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1 to 18 (West 2010)) because her environment was injurious to her welfare. Although the State's petition did not state the specific statutory basis for its neglect allegation, the petition alleged that C.B.'s mother, Kayla Jones, tested positive for amphetamines and cannabis on three separate occasions in the months prior to the filing of the petition. The petition further alleged that Kayla gave birth to her fourth child days prior to the filing of the petition.

¶ 9 Sometime following the State's filing of its petition, but prior to the hearing on the petition, respondent was discharged from DOC custody.

¶ 10 At a January 2012 adjudicatory hearing, Kayla admitted the allegations in the State's petition for adjudication of neglect were true. Thereafter, the trial court adjudicated C.B. a neglected minor based upon Kayla's continued drug use while C.B. and her siblings were in Kayla's care.

¶ 11 In March 2012, following a dispositional hearing, the trial court entered an order (1) making C.B. a ward of the court, (2) continuing C.B.'s custody with DCFS, and (3) ordering

respondent to comply with the terms of his DCFS service plan.

¶ 12 B. The State's Motion To Terminate Parental Rights

¶ 13 In August 2013, the State filed a motion to terminate respondent's parental rights, alleging that respondent was unfit within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) because he failed to make reasonable progress toward the return of C.B. within (1) nine months after the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2012)) or (2) any nine-month period after the end of the initial nine-month period following the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 14 1. *The April 2014 Fitness Hearing*

¶ 15 At the beginning of the April 2014 fitness hearing, the trial court took judicial notice of (1) its previous adjudicatory and dispositional orders in C.B.'s case; (2) respondent's failure to appear at 11 earlier court dates; and (3) the court file in Adams County case No. 12-CF-128, a criminal case in which respondent pleaded guilty to manufacturing methamphetamine (720 ILCS 646/15(a)(2)(A) (West 2012)) and was sentenced to 10 years in DOC on July 17, 2012.

¶ 16 a. The State's Evidence

¶ 17 Jenna Jenkins, a child-welfare specialist at Chaddock Foster Adoption Services (a DCFS contractor), testified that she became the caseworker in respondent's case in June 2011, when DCFS took protective custody of C.B. and Kayla's three other children. Respondent's initial service plan, implemented in January 2012, required him to complete certain goals targeted at (1) substance abuse, (2) mental health, (3) domestic violence, (4) parenting, (5) housing, and (6) general cooperation with DCFS.

¶ 18 As part of respondent's January 2012 service plan, Jenkins requested that re-

spondent undergo substance-abuse and mental-health assessments. Respondent refused to comply with that request, which included providing Jenkins with a urinalysis, asserting that Jenkins had no authority to make such a request.

¶ 19 In early March 2012, respondent failed to appear at a second scheduled court date. That same day, the trial court suspended all visitation between respondent and C.B. In April 2012, respondent was arrested and held in custody at the Adams County jail. In May 2012, Jenkins rated respondent's progress as unsatisfactory regarding each of his service-plan goals.

¶ 20 In December 2012, after the trial court in case No. 12-CF-128 sentenced respondent to a 10-year prison term in DOC, Jenkins updated respondent's service plan, requiring him only to (1) maintain a positive relationship with Jenkins and C.B., and (2) participate in DOC services. Although respondent maintained contact with Jenkins and C.B. through letters, he failed to provide Jenkins with any documentation showing that he participated in DOC services. Accordingly, Jenkins rated respondent's participation in the DOC-services component of his December 2012 service plan as unsatisfactory.

¶ 21 Respondent's June 2013 service plan had the same goals as his December 2012 service plan. Although respondent did not provide documentation from DOC showing that he participated in services, Jenkins rated respondent's progress as satisfactory as to both of his service-plan goals because he stated in letters to Jenkins that he was participating in DOC services.

¶ 22 Respondent's December 2013 service plan had the same goals as his previous two service plans. After learning from respondent's DOC counselor that respondent had not participated in any DOC services during his incarceration, Jenkins rated respondent's progress regarding the DOC-services goal as unsatisfactory.

¶ 23

b. Respondent's Evidence

¶ 24

Respondent testified that "sometime last year," while he was in DOC, he attended Alcoholics Anonymous (AA). Respondent stopped attending AA because he had a drug problem, not an alcohol problem. Respondent stated that he was currently attending Narcotics Anonymous (NA), anger-management classes, and a sociology class. Respondent explained that Jenkins was unable to verify his participation in DOC services because (1) she spoke with someone other than respondent's actual counselor, and (2) the records of respondent's participation in anger-management classes could only be found on the mental-health department's computer system, not on the "institutional computers." Respondent claimed that he requested a certificate from his anger-management teacher to prove that he had attended the classes, but the teacher never provided him with any such certificate, and respondent "[did not] know what happened about it."

¶ 25

On cross-examination by the State, respondent testified that after he quit attending AA, he went approximately eight or nine months without any type of substance-abuse treatment. (The record does not reflect the date respondent stopped attending AA.) Respondent asserted that his DOC facility began offering NA at the end of 2013, and he began attending NA meetings shortly thereafter. Respondent asserted that Jenkins was incorrect when she asserted in an October 2013 letter that respondent was not taking anger-management classes. In response to Jenkins's letter, respondent sent a letter informing Jenkins that the anger-management class had been discontinued. However, respondent maintained at the hearing that he had been taking anger-management classes for the previous year and a half. Respondent explained that the anger-management classes were not actually discontinued, but only suspended for two or three months, during the time Jenkins wrote her letter. Respondent testified that his projected parole date is

April 2017.

¶ 26 c. The Trial Court's Ruling

¶ 27 Following arguments, the trial court found respondent unfit under both counts of the State's motion to terminate parental rights. The court noted that even if respondent's testimony regarding his participation in DOC services was true, his efforts did not rise to the level of reasonable progress.

¶ 28 2. *The April 2014 Best-Interest Hearing*

¶ 29 At a best-interest hearing held immediately following the fitness hearing, Jenkins testified that C.B. and her nine-year-old half-brother, G.J., were both placed in a licensed, relative foster home in Decatur, Illinois. C.B. and G.J. had been in that placement from early 2012 until December 2012, and then again from April 2013 until the time of the hearing. The foster parents, Robert and Sheila Bell, are the grandparents of C.B. and G.J.'s first cousin.

¶ 30 Jenkins testified that she has visited C.B. in her foster placement twice per month throughout the case, and C.B. is very bonded with the Bells. C.B. has been diagnosed with adjustment disorder, and the Bells ensure that C.B. regularly attends her psychiatric appointments. The Bells also provide proper discipline and instruction to C.B. and ensure that she attends school regularly. The Bells have signed a permanency-commitment form, with the intent to become the legal guardians of C.B. and G.J.

¶ 31 Respondent did not present evidence.

¶ 32 Following arguments, the trial court found that it was in C.B.'s best interest to terminate respondent's parental rights.

¶ 33 This appeal followed.

¶ 34

II. ANALYSIS

¶ 35 Respondent argues only that the trial court's fitness determination was against the manifest weight of the evidence. We disagree.

¶ 36 A. The Applicable Statute, Reasonable Progress, and the Standard of Review

¶ 37 At the time the State filed its motion to terminate parental rights in this case, section 1(D) of the Adoption Act provided, in pertinent part, as follows:

"D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

* * *

(m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the [Juvenile Court Act] *** or (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor under section 2-3 of the

[Juvenile Court Act ***.]" 750 ILCS
50/1(D)(m)(ii), (iii) (West 2012).

¶ 38 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

"[T]he benchmark for measuring a parent's 'progress toward the re-
turn of the child' under section 1(D)(m) of the Adoption Act en-
compasses the parent's compliance with the service plans and the
court's directives, in light of the condition which gave rise to the
removal of the child, and in light of other conditions which later
become known and which would prevent the court from returning
custody of the child to the parent."

¶ 39 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

" 'Reasonable progress' *** exists when the [trial] court *** can
conclude that *** the court, in the *near future*, will be able to order
the child returned to parental custody. The court will be able to
order the child returned to parental custody in the near future be-
cause, at that point, the parent *will have fully complied* with the di-
rectives previously given to the parent ***." (Emphases in origi-
nal.)

¶ 40 The supreme court's discussion in *C.N.* regarding the benchmark for measuring a

parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004); *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 41 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id.*

¶ 42 B. The Trial Court's Fitness Determination

¶ 43 In this case, the trial court adjudicated C.B. neglected in January 2012. Respondent's service plan was implemented that same month. Respondent refused to participate in the substance-abuse or mental-health assessments that were part of the service plan, and he challenged Jenkins's authority to direct him to comply with the terms of his service plan. Between January and March 2012, respondent missed two court dates in this case. In April 2012, respondent was arrested for manufacturing methamphetamine—a crime to which he pleaded guilty and received a prison sentence of 10 years. Respondent's conduct that led to his arrest and conviction came during the initial nine-month period under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 44 The aforementioned facts amply support the trial court's finding that respondent failed to make reasonable progress toward the return of C.B. to his custody within the nine

