

NOTICE
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2014 IL App (5th) 130562-U

NO. 5-13-0562

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> R.E. and V.E., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Saline County.
)	
Petitioner-Appellee,)	Nos. 12-JA-18 &
)	12-JA-19
v.)	
)	
Mike M.,)	Honorable
)	Todd D. Lambert,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Welch and Justice Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determination that the respondent was unfit and that it was in the children's best interests to terminate his parental rights was not against the manifest weight of the evidence.

¶ 2 The respondent, Mike M., appeals from the judgment of the circuit court of Saline County terminating his parental rights to R.E. and V.E. On appeal, the respondent argues that the circuit court's determination that he was an unfit parent and that it was in the children's best interests to terminate his parental rights was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 4 On May 22, 2012, the State filed petitions pursuant to section 2-3 of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3 (West 2012)) alleging that R.E. and V.E. were abused or neglected. Specifically, the State alleged that both children were in an environment injurious to their welfare in that their mother, Rachel E., had ongoing mental health issues and was not able to provide adequate supervision for the children. The court held a shelter care hearing on May 22, 2012. At that hearing, it was revealed that the respondent was the primary caregiver for the children, and he had recently been asked to leave the home by the mother and her family. The mother's ability to keep her children in the home was contingent upon the respondent always being present in the mother's home with the children.¹ Temporary custody of the children was given to the Department of Children and Family Services (DCFS).

¶ 5 On July 31, 2012, the court held an adjudicatory hearing. The respondent failed to attend this hearing. The court found that the children were abused or neglected pursuant to section 2-3 of the Act (705 ILCS 405/2-3 (West 2012)) in that they were in an environment injurious to their welfare. The court ordered that Christian Social Services

¹Though the mother is not party to this appeal, some background information is relevant to the respondent's case. The mother functioned at the level of a six-year-old and was unable to adequately care for her children. The Department of Children and Family Services had been involved in the mother's case previously and determined that as long as the respondent was present, the mother could keep the children in her home.

(CSS) prepare a service plan for the respondent. The permanency goal for the children was to return them home within 12 months.

¶ 6 The court held a dispositional hearing on August 21, 2012. The respondent failed to appear at that hearing. In a dispositional order filed August 21, 2012, the court adjudged both children wards of the court and granted custody to DCFS.

¶ 7 On February 26, 2013, the court held a permanency hearing. The respondent attended that hearing. The court found that the respondent had not made reasonable and substantial progress toward returning the children home. The goal for the respondent remained to return the children home within 12 months.

¶ 8 The court held a permanency hearing on May 28, 2013. After finding that the respondent had not made reasonable and substantial progress toward returning the minor home, the court changed the permanency goal to substitute care pending termination of the respondent's parental rights.

¶ 9 On July 20, 2013, the State filed petitions for termination of parental rights as to R.E. and V.E. In those petitions, the State alleged that the respondent (a) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2012)), and (b) failed to make reasonable progress toward the return of the child to the parent within nine months after an adjudication of neglected or abused minor under section 2-3 of the Juvenile Court Act (705 ILCS 405/2-3 (West 2010); 750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 10 On September 24, 2013, the court held a parental fitness hearing on the petitions for termination of the respondent's and the mother's parental rights. Prior to testimony,

the State asked that the court take judicial notice of the temporary custody order, the order of adjudication, the dispositional order, the February 26, 2013, permanency order, the May 28, 2013, permanency order, all of the service plans, and all of the permanency reports. Counsel for the respondent objected to the court taking judicial notice of the service plans and the permanency reports. The court sustained the objection.

¶ 11 The respondent testified on his own behalf as follows. He had not been able to complete the service plans because every time he tried to contact someone at Egyptian Mental Health Services, the counselor was either out of town or conducting classes elsewhere. He also tried to contact Project 12-Ways but was unsuccessful in securing services. He had also not received notice of his appointments and services because he was having trouble receiving mail. He did not believe that he had been given a fair opportunity to complete the services required in his service plans.

¶ 12 On cross-examination, the respondent admitted that he had been in contact with his caseworker and that he had a phone number for the CSS office. However, when he tried to contact the caseworkers, they were unavailable. He admitted that someone had set up a psychological appointment for him in November 2012, but he did not get the notice about it "for awhile." He further admitted that the caseworkers had offered him transportation to his psychological examinations and other appointments. In total, he had met with one of his caseworkers 10 times. He missed a psychological appointment because he was in the hospital from November 4 to November 7, 2012. The respondent further testified that the overall goals he was supposed to complete were to take parenting and life skills classes as well as complete a psychological evaluation.

¶ 13 Jessica Bone, a former case manager with CSS, testified as follows. She was the case manager for V.E. and R.E. from September 2012 through the end of June 2013. The tasks that the respondent was required to perform were to provide adequate housing, have a source of legal income, obtain a psychological evaluation, participate in parenting programs, and attend mental health counseling. The respondent, per the service plan evaluation, was given an unsatisfactory rating with respect to all of those tasks. The staff at CSS would offer to make referrals for the respondent or tell him where he could self-refer, and would offer the respondent transportation to those places. She had contact with the respondent on a regular basis. She left voice messages for him and would mail documents if she had his current address. Often, Bone's communication with the respondent was difficult because the respondent had multiple address and phone number changes. Bone disputed the respondent's testimony that he was in contact with her approximately 10 times total. Bone testified that she and the respondent communicated very regularly, sometimes even 10 times per week. The respondent consistently attended visitations when he was living with the mother, but did not attend visitations when he was not living with the mother. After the State moved to terminate the mother's parental rights, the respondent was told that he would not have the children returned to him if he lived with the mother. He made no effort to move from the mother's home, and made no effort to have the children returned to him. Bone's ultimate testimony was that the respondent had not corrected the conditions that led to the removal of the children.

¶ 14 On cross-examination by the State, Bone testified that she discovered that the respondent missed an appointment for a psychological evaluation because he was in the

hospital at the time of the appointment. However, the respondent did not reschedule the appointment and did not indicate a desire to reschedule the appointment.

¶ 15 On cross-examination by the respondent's counsel, Bone testified that the respondent may have sent her documentation about his hospital stay that caused him to miss his psychological evaluation.

¶ 16 At the close of the testimony, the court found that the State had proved by clear and convincing evidence that the respondent was unfit.

¶ 17 On October 22, 2013, the court held a best-interests hearing. Kelly Pruim, the foster care case manager with CSS, testified as follows. She had been assigned to V.E. and R.E.'s case since July 2013. As of the date of the hearing, R.E. was 18 months old and V.E. was about to turn 3. They were placed in the home of Jennifer and Bill F. They were placed in the home shortly after R.E. was born and had been there ever since. The home was an adoptive placement, meaning Jennifer and Bill wished to adopt V.E. and R.E. The children seemed bonded to their foster parents and called them "mom" and "dad." On a recent visitation with the respondent, the children were happy and excited to see the respondent. The children seemed somewhat bonded to the respondent, but were more bonded with their foster parents. Pruim believed it was in the children's best interests to terminate the respondent's parental rights.

¶ 18 On cross-examination, Pruim testified that V.E., the older child, was excited to see the respondent at the last visit. The respondent informed Pruim on the day of the best-interest hearing that he had just gotten a car.

¶ 19 Jennifer F., the children's foster mother, testified as follows. She was the current foster mother of both V.E. and R.E. Other than those two children, she and her husband also had a 13-year-old daughter and 9-year-old son. The children had been with Jennifer and Bill for almost a year and a half. When R.E. came into Jennifer's home at six weeks old, she was not alert. One side of R.E.'s face was flat from lying on the same side of her face too much. She was lethargic and did not interact much. She was born with a hole in her heart, but Jennifer and Bill got her treatment, and her condition improved. Now, R.E. is above standards as far as development. She runs, jumps, and is generally a very happy child. She is attached to Jennifer and Bill and seeks them out when she needs something. When V.E. was first placed with Jennifer and Bill, she was behind developmentally. She was 18 months old when she was placed with Jennifer and Bill, and she could not run or jump at first. She was fearful and would not interact with people who came into the house. She would not engage in play. Now, she is ahead developmentally. She interacts with everyone and plays like any normal three-year-old. V.E. does ask about her biological parents. She asks when she will see "Mama R." and "Daddy Mike." She also talks about the visits when she comes home. She seemed excited about the visits. However, after some visits with the respondent, V.E. sometimes had behavioral issues, such as screaming, crying, and being violent. She was often inconsolable. Finally, Jennifer testified that she and Bill planned on adopting V.E. and R.E. if the respondent's parental rights were terminated.

¶ 20 The respondent testified as follows. He recently received a small settlement from the Veterans Administration (VA) where he would receive a 10% disability payment for

damage to his ears. He recently purchased a car so that he could travel to appointments and classes easier. Part of the problem with the respondent's failure to attend appointments was lack of reliable transportation. At visitations, the respondent felt like the children knew him. V.E. called him "dada." The respondent did not believe that it was in the children's best interests to terminate his parental rights.

¶ 21 On cross-examination, the respondent testified that he was currently living with the children's mother. He currently received \$129 in disability payment per month and anticipated receiving more money from social security in the future.

¶ 22 On November 12, 2013, the court entered orders terminating the respondent's parental rights and appointing a guardian with the power to consent to adoption as to both children. The court found that the respondent had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2012)), and failed to make reasonable progress toward the return of the children to him within nine months after an adjudication of neglected or abused minor under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2012)). From that order, the respondent appeals.

¶ 23 ANALYSIS

¶ 24 On appeal, the respondent argues that the circuit court's findings that the respondent was unfit and that it was in the children's best interests to terminate his parental rights are contrary to the manifest weight of the evidence.

¶ 25 The Act establishes a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2012). First, the State must prove by clear and

convincing evidence that the parent is unfit as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1114 (2002). A finding is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, and not based on the evidence. *In re Tiffany M.*, 353 Ill. App. 3d at 890. The State need only prove one statutory ground to show that a parent is unfit. *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003).

¶ 26 The court found that the respondent was unfit because, *inter alia*, the respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. When considering an allegation that the respondent did not maintain a reasonable degree of interest, concern, or responsibility toward the children's welfare, a court must focus on the reasonable efforts and not his success, and must consider events and circumstances that may have made it difficult for him to show interest in the child. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004). Because the language of the statute is in the disjunctive, any one of the three individual elements—interest, or concern, or responsibility—may be considered by itself as a basis for unfitness. 750 ILCS 50/1(D)(b) (West 2012); *In re Richard H.*, 376 Ill. App. 3d 162, 166 (2007). When determining whether a parent has shown a reasonable degree of interest, concern, or responsibility for

a minor's welfare, a court considers the parent's efforts to visit and maintain contact with the child as well as other factors, such as inquiries into the child's welfare. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). Whether a parent has completed service plans may also be considered evidence of a parent's interest, concern, or responsibility. *Id.* at 1065. In this regard, the court examines the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred. *In re Adoption of Syck*, 138 Ill. 2d 255, 278 (1990). Accordingly, circumstances such as difficulty in obtaining transportation, poverty, actions and statements of others that hinder visitation and the need to resolve other life issues are relevant. *Id.* at 278-79. However, a parent is not fit merely because he or she has demonstrated some interest or affection toward the child. *In re Jaron Z.*, 348 Ill. App. 3d at 259. Rather, the interest, concern, or responsibility must be objectively reasonable. *In re Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 27 Here, testimony from the caseworkers at the fitness hearing revealed that the respondent was inconsistent with visitation, so much so that he eventually had to call the caseworker before each visit to confirm whether he would be attending. He did not complete any of his service plans and received "unsatisfactory" on all of the goals. Further, there was a three-month gap period when the goal for the mother alone was changed from "return home" to "substitute care pending termination," and the respondent's goal remained "return home" where the respondent could have continued to try to regain custody of the children by complying with the service plans and moving out of the mother's home. The caseworkers warned the respondent that as long as he was

living with the mother, the children would not be placed with him. However, the respondent chose to remain in the home of the mother.

¶ 28 The respondent argues that he attempted to contact three different agencies to set up appointments, but that he could never get in contact with any of the counselors or caseworkers, and he did not receive notices of when he had appointments. The circuit court is in the best position to assess the credibility of witnesses at termination hearings, and we give the circuit court's credibility determinations great deference. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. Here, the circuit court did not believe the respondent's testimony in this regard. The court stated that it seemed unlikely that three different agencies could not be reached, especially considering that the phone numbers for those agencies never changed. Bone testified that staying in contact with the respondent was crucial, and that if he ever left a voice message for her, she promptly returned the phone call. Based on the foregoing, the court's determination that the respondent failed to maintain a reasonable degree of interest, concern, or responsibility for the children was not against the manifest weight of the evidence.

¶ 29 The court also found the respondent to be unfit because he failed to make reasonable progress toward the return of the children to him within nine months of an adjudication of neglect. When considering an allegation that a parent failed to make reasonable progress within nine months following an adjudication of neglect, the court must limit its consideration of the evidence to that nine-month time frame. *In re Alexander R.*, 377 Ill. App. 3d 553, 556 (2007). When a court considers the reasonable progress a parent has made towards reunification with the children, it uses an objective

test. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). The court, in that scenario, considers the parent's compliance with service plans and court directives in light of the conditions that gave rise to the children being removed in the first place, as well as other conditions that became known to the court later and would prevent it from allowing the children to be reunited with the parents. *Id.* Reasonable progress exists when the court can conclude that it will be able to order the reunification of the parent and child in the near future. *Id.*

¶ 30 In this case, the children were adjudicated neglected on July 31, 2012. Thus, the nine-month period that the court looked at was from July 31, 2012, to April 30, 2013. The respondent did not attend the adjudicatory hearing, despite having been in contact with the caseworker and indicating that he would attend the hearing. At the fitness hearing, the respondent admitted that he had not completed services in the service plans at any time. Bone testified that, per the service plans, the respondent was supposed to provide adequate housing, have a legal source of income, undergo a psychological evaluation, complete parenting classes, and participate in mental health counseling. The respondent was rated as "unsatisfactory" with respect to all of these goals. We cannot say that the court's determination that the respondent failed to make reasonable progress is contrary to the manifest weight of the evidence when the respondent did not achieve any of the goals in his service plans for the nine-month period after the adjudication of neglect.

¶ 31 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the children's best interests that the parental rights be terminated. 705

ILCS 405/2-29(2) (West 2010). At this stage, the court's focus shifts from the rights of the parent to the best interests of the children. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the children's best interests. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The court must consider the factors set forth in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2010)) when determining the best interests of the minor. A circuit court's determination that termination of parental rights is in the children's best interests will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 32 Here, the CSS foster care case manager, Pruiam, testified that the children were well-bonded with their foster parents, Jennifer and Bill. The children referred to Jennifer and Bill as "mom" and "dad." V.E. and R.E. were behind developmentally when they were brought into care, but since being placed with Jennifer and Bill, they were actually ahead developmentally. Though the children were excited to see the respondent at visitations, there were sometimes behavioral issues following visitations where V.E. would be inconsolable and sometimes violent. Jennifer and Bill wished to adopt the children should the respondent's rights be terminated.

¶ 33 The respondent testified that he would be receiving a settlement of \$129 per month from the VA and had recently procured a vehicle. However, the respondent was still residing with the mother of the children at the time of the best-interest hearing, despite warnings that the children could not be placed with him if he continued to live with the mother.

¶ 34 The court found that the children were thriving and well-bonded with Jennifer and Bill. The court found that while the respondent's financial situation may improve, it did not negate the other difficulties he had in parenting the children. The children need consistency, and we cannot agree with the respondent that the circuit court's determination that it was in the children's best interests to terminate his parental rights is contrary to the manifest weight of the evidence.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of Saline County is affirmed.

¶ 37 Affirmed.