

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).

2015 IL App (3d) 140706-U

Order filed January 12, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re Z.J.S.,</i>)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
a Minor)	Rock Island County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-14-0706
)	Circuit No. 12-JA-20
v.)	
)	
Amanda L.,)	
)	The Honorable
Respondent-Appellant).)	Peter W. Church,
)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the circuit court's orders that found the respondent unfit and terminated her parental rights.

¶ 2 The circuit court entered orders finding the respondent, Amanda L., to be an unfit parent and terminating her parental rights to the minor, Z.J.S. On appeal, the respondent argues that the circuit court erred when it found her to be an unfit parent at the hearing on the termination

petition due to the failures to make reasonable efforts toward correcting the conditions that led to the minor's removal and to make reasonable progress toward the return of the minor to her care over a certain nine-month period. We affirm.

¶ 3

FACTS

¶ 4

On March 6, 2012, the State filed a petition for adjudication of wardship, alleging that the minor (born February 27, 2012) was neglected by reason of an injurious environment. The petition alleged, *inter alia*, that: (1) the Department of Children and Family Services (DCFS) had previously issued indicated findings of neglect against the respondent and the minor's father; (2) the respondent and the minor's father had diagnosed mental health issues and neither had been compliant with treatment; and (3) the minor's father had been arrested four times in the past year for domestic battery against the respondent.¹ The minor was taken into protective custody and was placed into a licensed foster home. On June 1, 2012, the circuit court entered an order adjudicating the minor neglected. On June 26, 2012, the circuit court held a dispositional hearing at the close of which the court "adjudicated" the minor neglected, made the minor a ward of the court, and granted guardianship to DCFS. The court also assigned the respondent the following tasks: (1) visitation with the minor; (2) cooperate with DCFS and its assigns; (3) complete parenting classes; (4) obtain a psychiatric evaluation and follow any associated recommendations for treatment; and (5) participate in counseling.

¹ The petition also contained several allegations related to separate cases involving the respondent's two other sons, which were the subject of a pending petition for termination of parental rights. Included in these allegations was that the respondent had been found in those two cases to have failed to make reasonable efforts and progress toward the return of the minors to her care.

¶ 5 DCFS evaluated the respondent on her service plan tasks on September 4, 2012. DCFS gave the respondent overall unsatisfactory marks on her counseling task, stating that while the respondent had attempted to go to the mental health counseling center twice, she had not followed through with the counseling requirement. DCFS gave the respondent overall satisfactory marks on her task to complete parenting classes, noting that the respondent claimed she had completed these classes, but that she had not provided the caseworker with any proof thereof. The caseworker also stated in the report that the respondent's visits with the minor had gone well, and she therefore received satisfactory marks on her visitation task. DCFS gave the respondent unsatisfactory marks on her task to undergo a psychiatric evaluation and to follow any associated treatment recommendations, noting that the respondent had not yet had the evaluation. In addition, DCFS gave the respondent overall unsatisfactory marks on her task to obtain and maintain permanent housing. While the respondent told the caseworker she had moved into an apartment several weeks prior to the evaluation, the caseworker could not see it yet because the landlord had to perform some work on it. The caseworker also stated that the respondent was able to secure a job in Bettendorf, Iowa.

¶ 6 The circuit court held a permanency review hearing on December 14, 2012. A DCFS report covering the period between June and December 2012 stated that the respondent was living with her boyfriend in a two-bedroom apartment. She was receiving rent assistance of \$350 per month and had to pay \$175 per month on her own. The respondent claimed she had worked a landscaping job during the summer to pay her rent, but that she was unemployed at the time the report was prepared in December 2012. The respondent had attended one counseling session, but was discharged in November 2012 for missing two appointments. She had left early from the one session she attended because she got angry. She had attended all of her supervised

visits with the minor and had a good relationship with the supervisor. At the close of the hearing, the court found, *inter alia*, that the respondent had not made reasonable progress toward the return of the minor to her care.

¶ 7 DCFS also evaluated the respondent on her service plan tasks on March 1, 2013. DCFS gave the respondent overall satisfactory marks on her counseling task, but noted that she had to work on her attendance. DCFS gave the respondent overall unsatisfactory marks on her task to complete parenting classes, noting that there had been some delay in the respondent starting the classes, but that she had been attending them. She also received satisfactory marks on her visitation task. DCFS gave the respondent unsatisfactory marks on her task to undergo a psychiatric evaluation and to follow any associated treatment recommendations, noting that the respondent was "going to start back" with the mental health treatment center. In addition, DCFS gave the respondent overall satisfactory marks on her task to obtain and maintain permanent housing. While the respondent was behind on her rent, she and her boyfriend had been able to maintain the apartment.

¶ 8 The circuit court held another permanency review hearing on March 19, 2013. A DCFS report covering the period between December 2012 and March 2013 stated that the respondent had still been residing with her boyfriend in a two-bedroom apartment, but that she was given a five-day eviction notice on March 11, 2013, as she was allegedly \$1,096.88 behind on rent. She had been terminated from her rent assistance program for failure to comply with the program's requirements. She was also supposed to call a mental health center in early March 2013 to set up an appointment with a mental health counselor, although the caseworker was unsure of whether the respondent had in fact called. The respondent had also been inconsistent in attending parenting classes. She had been consistent in attending visitation; a report from the visitation

supervisor stated that the respondent had attended 9 of 12 visits, with two visits missed due to the minor being sick and one visit missed due to the respondent being sick. That report also stated that the respondent acted appropriately during visits. At the close of the hearing, the court found, *inter alia*, that the respondent had not made reasonable progress toward the return of the minor to her care. The court also changed the goal from return home to substitute care pending termination of parental rights.

¶ 9 On August 9, 2013, the State filed a petition to terminate parental rights. As it was formulated, the petition alleged that the respondent: (1) "Failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child"; and (2) "Failed to make reasonable progress toward the return of the child to the parent within 9 months after the adjudication of neglect under Section 2-3 of the Juvenile Court Act of 1987, said period being June 26, 2012 through March 26, 2013 (750 ILCS 50/1(D)(m))." The petition alleged that the respondent did not have appropriate housing, had failed to attend counseling, had failed to attend all visits, and failed to establish a means of supporting herself and the minor.

¶ 10 On December 16, 2013, the circuit court held a hearing on the termination petition. The respondent was not present, and her attorney's motion to continue the hearing due to the respondent's unexplained absence was denied. Several witnesses testified at the hearing, which included testimony on matters that transpired outside of the petition's stated nine-month period. Only one witness testified with regard to the respondent—the caseworker, Sherry Koerperich. Koerperich testified with regard to the December 2012 and March 2013 reports she compiled in which she evaluated the respondent's progress on service plan tasks. With regard to the December 2012 report, Koerperich testified that the respondent had not followed through with counseling and had not obtained employment. The respondent had secured appropriate housing

in living in an apartment with her boyfriend, but she was not paying rent. The respondent had also been discharged from the mental health center in July 2012—and again in early 2013—for a lack of attendance. Koerperich also stated that the respondent had left early from a "team" meeting in December 2012 because she was "very angry" about the way she was being treated.

¶ 11 With regard to the March 2013 report, Koerperich testified that the respondent had been evicted on March 1, 2013, for nonpayment of rent, and had been staying with friends. Her boyfriend had also been indicated by DCFS for sexual conduct toward a minor; the DCFS investigation into the matter was ongoing at the time of the termination hearing. Koerperich also stated that the respondent had completed a mental health assessment but did not follow through with the counseling recommendation. The respondent had also been inconsistent in attending parenting class and she did not complete a required parenting capacity assessment. Koerperich testified that the respondent did attend her visits up to March 2013 (but none past March 2013), and that the visits went well. On cross-examination, Koerperich stated that the respondent's summer employment was an unverified one-week position. Further, Koerperich stated that the respondent's eligibility for the rent assistance program was conditioned on her finding employment.

¶ 12 At the close of the hearing, the court found that the respondent had in fact failed to make reasonable efforts and reasonable progress. In so ruling, the court referenced evidence on matters that transpired outside of the petition's stated nine-month period, including the respondent's lack of attending visits. Additionally, the court referenced that June 26, 2012, "was the adjudication of neglect." After a best interest hearing held on August 11, 2014, the circuit court terminated the respondent's parental rights to the minor. The respondent appealed.

¶ 13

ANALYSIS

¶ 14 On appeal, the respondent argues that the circuit court erred when it found her to be an unfit parent at the hearing on the termination petition. The respondent alleges the circuit court erred when it found that she failed to make reasonable efforts toward correcting the conditions that led to the minor's removal and when it found that she failed to make reasonable progress toward the return of the minor to her care over the stated nine-month period between June 26, 2012, and March 26, 2013.

¶ 15 Under the version of the statute applicable at the time of this termination petition, one ground upon which a parent could be found unfit was if he or she failed "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 *** or dependent minor." 750 ILCS 50/1(D)(m) (West 2012). Our supreme court has stated that "the benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses 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." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Proof of only one statutory ground of unfitness is sufficient to establish that a parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). On review, we will not disturb a circuit court's unfitness ruling unless it is against the manifest weight of the evidence. *Id.* at 218.

¶ 16 Initially, we must address several problems that occurred with the manner in which this case progressed. First, there was a misunderstanding of the statutory process that began with the adjudication of neglect. The minor in this case was in fact adjudicated neglected on June 1,

2012, but there was an apparent belief (including as reflected in the pre-printed form² used by the court for the dispositional order) that the minor was adjudicated neglected on June 26, 2012, with the dispositional order. As is reflected in the applicable statutory provisions and case law interpreting these provisions, the adjudication itself occurs *prior to* the dispositional hearing, not *at* the dispositional hearing. See 705 ILCS 405/2-21(1) (West 2012) (setting forth guidelines for the adjudicatory hearing and stating that if the court determines that the minor is abused, neglected, or dependent, then the court must hold a dispositional hearing within 30 days of the adjudication); 705 ILCS 405/2-22(1) (West 2012) (stating, in part, that at the dispositional hearing, the court must determine whether it is in the best interest of the minor to be made a ward of the court); *In re D.F.*, 208 Ill. 2d 223, 240-42 (2003) (discussing the differences between the adjudicatory and dispositional hearings and emphasizing that the adjudicatory hearing is the time at which the court determines whether the minor is neglected, abused, or dependent).

¶ 17 Second, the incorrect assumption that the minor in this case was adjudicated neglected on June 26, 2012, also caused a problem with the termination petition. The termination petition alleged that the relevant nine-month period was June 26, 2012, to March 26, 2013. However, under the applicable statute in effect at the time, this period was incorrect. At the time of this petition, section 1(D)(m) of the Adoption Act provided that a parent could be found unfit due to the:

"Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or (ii) to make reasonable progress toward the return of the child to the parent within 9 months

² We strongly recommend that the circuit court review and revise its pre-printed "Dispositional Order" form.

after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act, [citation] 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 of 1987 or dependent minor under Section 2-4 of that Act." 750 ILCS 50/1(D)(m) (West 2012).³

The termination petition intended to cover the initial nine-month period after the adjudication of neglect. However, as previously stated, the date of adjudication was June 1, 2012, not June 26, 2012. See *D.F.*, 208 Ill. 2d at 241. Thus, the actual nine-month period in this case was June 1, 2012, *through* February 28, 2013. See *id.* at 242 (holding that the relevant nine-month period was from June 16, 1995, through March 15, 1996).

¶ 18 Third, a further problem existed with regard to the termination petition and the consideration of the reasonable efforts and reasonable progress time periods. The termination petition included a nine-month period only with regard to the reasonable progress allegation. However, as our supreme court has made clear, the reasonable efforts standard is not a timeless standard—the nine-month-period requirement in section 1(D)(m) applied to both the reasonable efforts and reasonable progress standards. *D.F.*, 208 Ill. 2d at 229-38 (discussing the legislative history behind section 1(D)(m)). At the termination hearing in this case, evidence was presented on matters that transpired outside of the applicable nine-month period, and that evidence was specifically mentioned by the circuit court as impacting its decision. However, evidence

³ We note that the legislature has amended this section, which implemented several changes to the reasonable efforts and reasonable progress standards. See Pub. Act 98-532 (eff. Jan. 1, 2014).

regarding matters transpiring outside of the nine-month period is not properly considered at the termination hearing. See *D.F.*, 208 Ill. 2d at 241; *In re J.L.*, 236 Ill. 2d 329, 341 (2010); *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35.

¶ 19 Despite these issues, our review of the record in this case reveals that the evidence was sufficient to show that the respondent failed to make reasonable progress toward the return of the minor to her care during the nine-month period from June 1, 2012, through February 27, 2013. The minor had been removed from the respondent's care due to previous parenting issues, unaddressed mental health issues, and domestic violence issues between the respondent and the minor's father. To correct these issues, the respondent was ordered to visit with the minor, cooperate with DCFS and its assigns, complete parenting classes, obtain a psychiatric evaluation and follow any associated recommendations for treatment, participate in counseling, and obtain and maintain permanent housing. During the nine-month period from June 1, 2012, through February 27, 2013, the respondent was able to participate in visitation and displayed appropriate behavior during visits, but she was unable to complete her parenting class requirement. She also was able to secure appropriate housing; however, she was not making her rent payments. She also failed to obtain employment. She was unable to consistently attend counseling and, while she did eventually complete a psychiatric evaluation, she did not follow through with its associated counseling recommendation. Given the aforementioned issues that caused the minor to be removed from the respondent's care, under the circumstances of this case, we hold that the court's unfitness ruling was not against the manifest weight of the evidence.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Rock Island County is affirmed.

¶ 22 Affirmed.