

NOTICE

Decision filed 03/08/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120481-U
CONSOLIDATED NO. 5-12-0481
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> D.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Saline County.
)	
Petitioner-Appellee,)	
)	
v.	)	No. 10-JA-1
)	
Michael L.S.,	)	Honorable
	)	Todd D. Lambert,
Respondent-Appellant).	)	Judge, presiding.

NO. 5-12-0482
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

<i>In re</i> D.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Saline County.
)	
Petitioner-Appellee,)	
)	
v.	)	No. 11-JA-27
)	
Michael L.S.,	)	Honorable
	)	Todd D. Lambert,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

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

¶ 2 In this consolidated appeal, the respondent, Michael L.S., appeals the judgment of the circuit court terminating his parental rights of D.D. and D.S.¹ He argues that the circuit court's findings that he was an unfit parent as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)) and that it was in the children's best interest to terminate his parental rights are contrary to the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On January 7, 2010, the State filed a petition for adjudication of wardship, alleging that D.D. was in an environment injurious to her welfare because her mother tested positive for illegal substances at the time of D.D.'s birth and admitted using illegal substances during her pregnancy, and that the environment was injurious to D.D.'s welfare because of the respondent's and mother's ongoing substance abuse. Temporary custody was granted to the Illinois Department of Children and Family Services (DCFS). A visitation plan was established. An adjudicatory order was entered on March 2, 2010, and a dispositional order was entered on April 13, 2010.

¶ 5 During the pendency of the case involving D.D., D.S. was born on July 6, 2011. On July 11, 2011, the State filed a petition for adjudication of wardship alleging that D.S. was in an environment injurious to her welfare due to her mother's long history of substance abuse, noncompliance with services for her other children, and continuous criminal activity.

¹A paternity test established that the respondent was the father of D.D. D.D.'s initials were changed to "D.S." as a result. However, for the sake of clarity, we will continue to refer to her as "D.D." as the other minor in this appeal also has the initials "D.S."

The petition further alleged that D.S. was in an environment injurious to her welfare due to the respondent's long history of substance abuse and his continuing use of drugs, his noncompliance with services for his other child in foster care, and his continuous criminal activity. Temporary custody was granted to DCFS.

¶ 6 On March 30, 2012, the State filed a petition to terminate the respondent's parental rights with respect to D.D. On June 21, 2012, the State filed a petition to terminate the respondent's parental rights with respect to D.S. Both petitions contained identical statutory grounds alleging that the respondent was unfit to parent D.D. and D.S. because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2010)), (2) failed to protect the child from conditions within her environment injurious to the child's welfare (750 ILCS 50/1(D)(g) (West 2010)), (3) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent (750 ILCS 50/1(D)(m)(i) (West 2010)), and (4) 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 of 1987 or dependent minor under section 2-4 of the Juvenile Court Act of 1987 (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 7 At the termination hearing regarding D.D. on June 5, 2012, a child welfare specialist with DCFS, Lori Schwartz, testified that, according to the service plan, the respondent was required to receive substance abuse treatment, participate in parenting classes, maintain adequate housing, and have the means to support D.D. Schwartz testified that the respondent was to test clean for illicit substances prior to being able to visit with the children. He was also supposed to receive treatment at a rehabilitation facility and then at a halfway house located in Granite City, Illinois. When he went to the halfway house, he left the facility prior to completing treatment and prior to finishing his required time there

without telling any staff that he was leaving. Schwartz further testified that the only time that the respondent consistently tested negative for illicit substances was when he was participating at an in-house treatment facility. As far as drug treatment, Schwartz testified that the respondent's progress was rated as "unsatisfactory."

¶ 8 With respect to the respondent's parenting, housing, and employment requirements, Schwartz testified that the respondent did not participate in any parenting class or program and was rated "unsatisfactory." Furthermore, Schwartz testified that the respondent was rated "unsatisfactory" for having adequate housing and employment. The respondent and the minors' mother were living in public housing until they were evicted. They then moved to a friend's home. The respondent did not have steady employment.

¶ 9 Additional testimony by Schwartz revealed that the respondent had not visited either child since October 2011.

¶ 10 The court took judicial notice that the respondent was incarcerated pending a criminal case.

¶ 11 On cross-examination, Schwartz testified that the respondent completed his stay at one drug rehabilitation facility, Fellowship House, but that the staff at the facility recommended that the respondent receive further treatment at the halfway house in Granite City. The respondent did not complete further treatment at the halfway house. Also, the respondent's completion of the program at Fellowship House did not satisfy the requirements of the service plans because he did not participate in further treatment, as suggested. Schwartz also testified that, while the respondent was at the halfway house in Granite City, he was doing odd jobs but did not receive a paycheck and did not have any pay stubs.

¶ 12 At a continuation of the termination hearing on June 26, 2012, Courtney Field, a supervisor for child placement with DCFS, testified as follows. The respondent was rated as "unsatisfactory" on all eight of his service plans. He left the program at the halfway house

without informing staff and he was, thus, discharged from the program. He self-reported a history of drug use, including using methamphetamine, crack cocaine, cannabis, and opiates.

¶ 13 On cross-examination, Field testified that the respondent did complete the program at Fellowship House and that his prognosis upon discharge was guarded, due to his amphetamine dependence, opiate dependence, and cannabis dependence. She further testified that when D.D. was in the hospital for respiratory issues, the respondent either did not take advantage of transportation opportunities to visit her or would go to the hospital and leave for extended periods of time without spending time with D.D.

¶ 14 At another continuation of the fitness hearing on July 31, 2012, the respondent testified as follows. He was currently incarcerated at the Saline County Detention Center and had been since March 19, 2012. Prior to being incarcerated there, he was incarcerated in Tennessee. His last residence was in Shawneetown, Illinois. He lived there from October 2011 to December 2011 and October 2010 to April 2011. The respondent testified that he did not want his parental rights terminated and that he had only received a service plan one time from a DCFS caseworker. While he was living in Shawneetown, Illinois, he was never contacted by a caseworker to conduct a home inspection. He further testified that he did side jobs for people but that he was not employed such that taxes would have been taken out of his pay.

¶ 15 The respondent testified that he wanted to attend parenting classes while participating in the program at the halfway house in Granite City but that such parenting classes could not be found in the area. While in Granite City, he worked for a roofing company.

¶ 16 The respondent admitted that he had both negative and positive drug test results. He testified that he left the halfway house in Granite City because he had a relapse. He stopped visiting his children due to a relapse and knew he would not pass a drug test for visitation.

The respondent testified that he was going to be serving a prison sentence soon and that he hoped to take advantage of parenting classes and drug treatment meetings while imprisoned. He also testified that he loved his children and did not want to have his parental rights terminated.

¶ 17 On cross-examination, the respondent admitted to testing positive for methamphetamine, benzodiazepines, marijuana, and amphetamines. He also admitted telling his caseworkers that heroin was his drug of choice. He spent time in prison for theft, forgery, and burglary and was facing a prison term for theft.

¶ 18 At the end of the hearing, the court found that the respondent was an unfit parent.

¶ 19 A best-interest hearing was held on September 25, 2012, with respect to D.D. Lori Schwartz testified as follows. During visits, the caseworker did not observe any bond between the respondent and his children. D.D. had not asked about her biological parents when the caseworker would visit her at her foster home. D.D. referred to her foster parents as "mom" and "dad." D.D. and D.S. were close with their foster parents and were deeply bonded. D.D. and D.S.'s brother was in a separate foster home, so D.S. and D.D.'s foster parents scheduled frequent sibling visits so they could maintain a relationship with each other.

¶ 20 The court took judicial notice of the evidence presented at the fitness hearings. The court found that it was in the best interest of D.D. to terminate the respondent's parental rights.

¶ 21 On October 23, 2012, the court took judicial notice of the evidence presented at the fitness proceedings regarding D.D. for purposes of terminating the respondent's parental rights to D.S. because the evidence was identical. The court found the respondent to be an unfit parent to D.S. The court also took judicial notice of the evidence presented at D.D.'s best-interest hearing and found that it was in the best interest of D.S. to terminate the

respondent's parental rights. This appeal followed.²

¶ 22

ANALYSIS

¶ 23 The Juvenile Court Act of 1987 establishes a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2010). First, the State must prove by clear and convincing evidence that the parent is an unfit parent as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). *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). Here, the State alleged four grounds of unfitness. We address each in turn.

¶ 24 When considering an allegation that the respondent did not maintain a reasonable degree of interest, concern, or responsibility toward the minors' 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). Here, the respondent attended the halfway house program but left early without informing staff. The respondent had eight different service plans with which

²The circuit court also terminated the mother's parental rights as to both D.D. and D.S. at the same September 25 and October 23, 2012 hearings; however, the mother did not appeal.

he needed to comply in order to eventually regain custody of his children. He did not complete any of the service plans. The plans included completing drug treatment and rehabilitation, completing parenting classes, having suitable housing, and having steady employment. At times where there were scheduled visitations, the respondent was sometimes unable to attend because he tested positive for controlled substances. Transportation was provided to the respondent for visitations. The respondent would not show up for scheduled appointments. The respondent had several opportunities to receive treatment for his drug problems and yet did not take advantage of those opportunities. He missed visitations and had not seen his children since October 2011. Thus, the circuit court did not err when it found that the respondent failed to demonstrate a reasonable level of concern or responsibility for his children's welfare.

¶ 25 When considering whether a parent has made reasonable efforts to correct the conditions that were the basis of the removal of the children, the court uses a subjective test based on the amount of effort that is reasonable to a particular person. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). By contrast, when a court considers the reasonable progress a parent has made towards reunification with the children, it uses an objective test. *Id.* at 1067. 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.* When determining whether the parent has made reasonable progress, the court must limit its consideration of the evidence to the nine months from the adjudication. *In re D.F.*, 208 Ill. 2d 223, 243 (2003).

¶ 26 Here, the respondent did not make reasonable effort towards correcting the conditions

that led to the removal of his children nor reasonable progress towards reunification. The nine-month time frame for D.D. was from March 2, 2010, to December 2010, and for D.S., August 16, 2011, to May 2012. With both children, he missed visits because he failed drug tests. Out of his eight service plans, the respondent did not complete any of them. He completed one stint at a drug treatment facility but did not continue with treatment as recommended. When D.D. was in the hospital, he either did not take advantage of transportation to visit her or would go to the hospital and disappear for hours at a time. Thus, the court's determinations regarding the respondent's reasonable efforts and progress were not against the manifest weight of the evidence.

¶ 27 The final ground that the State alleged, that the respondent has failed to protect the minor from injurious conditions within the environment, cannot be considered in this situation because both children had been removed from the home and were in foster care. See *In re C.W.*, 199 Ill. 2d 198, 212 (2002). The circuit court found three other different grounds to deem the respondent unfit, and its determination was not in error.

¶ 28 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 parental rights be terminated. 705 ILCS 405/2-29(2) (West 2010). At this stage, the focus of the court's scrutiny 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). The State must prove, by a preponderance of the evidence, that termination of the parent's rights is in the best interest of the minors. *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004). The court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2010)) when determining the best interest of the minors. A trial court's determination that termination of parental rights is in the child's best interest 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).

¶ 29 Testimony by Lori Schwartz at the best-interest hearing indicated that D.D. and D.S. were well-adjusted to their foster home. Both children had bonded with their foster parents. The foster parents also facilitated a relationship among D.D., D.S., and their brother, who was in a different foster home.³ The children did not ask about their biological parents. The foster parents wished to adopt both D.D. and D.S. Further, the foster parents were attentive to D.D.'s medical needs. In contrast, the respondent is currently incarcerated within the Illinois Department of Corrections. He admitted to frequent drug use and criminal activity and had not visited his children since October 2011. Therefore, the circuit court's determination that it was in the children's best interest to terminate the respondent's rights was not against the manifest weight of the evidence.

¶ 30 CONCLUSION

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

¶ 32 Affirmed.

³The brother is not the respondent's biological child and is not a part of this proceeding.