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2014 IL App (4th) 140233-U

NO. 4-14-0233

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

August 4, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: T.E., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12JA53
KATHLEEN EBLE,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's unfitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In November 2013, the State filed a motion to terminate the parental rights of respondent, Kathleen Eble, and T.E.'s putative father, Joseph Steerman, as to their minor child, T.E. (born July 4, 2012). Steerman—who voluntarily surrendered his parental rights during the pendency of this case—is not a party to this appeal. Following a February 2014 fitness hearing, the trial court found respondent unfit. Following a March 2014 best-interest hearing, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court erred in finding (1) her unfit and (2) that it was in T.E.'s best interest to terminate her parental rights.

¶ 4 I. BACKGROUND

¶ 5 A. Events Preceding the State's Petition for Termination of Parental Rights

¶ 6 On November 20, 2012, the State filed a petition for adjudication of neglect and shelter care, alleging T.E. was a neglected minor. Specifically, the petition alleged T.E. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)) in that his environment was injurious to his welfare when he resided with respondent because (1) respondent had a history of mental illness (count I); (2) T.E. was exposed to the risk of physical harm (count II); and (3) T.E. was exposed to improper discipline (count III). At a shelter-care hearing the following day, the trial court placed temporary custody and guardianship of T.E. with the Department of Children and Family Services (DCFS). The court noted, "Respondent mother has stipulated to an order of temporary custody. Respondent mother has mental health limitations that limit her ability to care for her child."

¶ 7 At the January 4, 2013, adjudicatory hearing on the State's petition, respondent admitted and stipulated to count II of the petition, *i.e.*, T.E.'s environment was injurious to his welfare when he resided with respondent because it exposed him to the risk of physical harm. The trial court found the minor neglected, again noting respondent "has mental health and development disability issues that limit her ability to care for [T.E.] safely."

¶ 8 On January 14, 2013, DCFS filed a service plan with the trial court with a permanency goal of return home within 12 months. The service plan listed the following tasks and goals for respondent to complete in order to regain custody of T.E.: (1) cooperate and obtain services to assist with daily cognitive functioning; (2) comply with the recommendations of a psychological evaluation; (3) engage in and successfully complete individual counseling to address the concerns which led to DCFS's involvement; (4) address the concerns which resulted

in DCFS's involvement; and (5) engage in and successfully complete individual-parenting classes to develop an understanding of appropriate parenting skills.

¶ 9 Following a February 4, 2013, dispositional hearing, the trial court found respondent unfit and unable to care for, protect, train, and discipline T.E. The court orally adjudicated T.E. neglected, made him a ward of the court, and placed custody and guardianship with DCFS. On February 7, 2013, the court entered its written dispositional order finding the same.

¶ 10 Following a May 14, 2013, permanency hearing, the trial court ordered custody and guardianship to remain with DCFS. The court set the permanency goal for T.E. as "return home," and it scheduled the next permanency hearing for November 2013.

¶ 11 At the November 13, 2013, permanency hearing, the trial court took notice of the State's motion seeking a finding of unfitness and the termination of respondent's parental rights filed the day before. The court changed the permanency goal to substitute care pending determination of termination of parental rights.

¶ 12 B. State's Motion Seeking a Finding of Unfitness  
and the Termination of Respondent's Parental Rights

¶ 13 On November 12, 2013, the State filed a motion seeking a finding of unfitness and the termination of respondent's parental rights pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). Specifically, the petition alleged respondent failed to (1) make reasonable efforts to correct the conditions that were the basis for T.E.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)) (count I); (2) make reasonable progress toward reunification within the initial nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count II); and (3) maintain a reasonable degree of interest, concern, or responsibility toward T.E. (750 ILCS 50/1(D)(b) (West 2012)) (count III).

¶ 14

1. *Fitness Hearing*

¶ 15 At the February 11, 2014, fitness hearing, Susan E. Minyard, a licensed clinical psychologist who evaluated respondent in June 2013, testified as an expert witness in the field of clinical psychology. Minyard testified that respondent did not exhibit an understanding of the information that had been provided to her in the individual-counseling and parenting-instruction sessions she attended. Minyard also testified respondent did not appear to understand the reasons DCFS was involved in the case or how things would have to change in order for T.E. to be returned to her care.

¶ 16 Minyard testified respondent's full-scale intelligence quotient (IQ) score of 63 (as of June 2013) was in the "extremely low range" of intellectual functioning. Based on a "Wide Range Achievement Test," which measures a person's reading and arithmetic abilities, respondent read and did arithmetic at a first-grade level, placing her in the .02 percentile, which is "extremely low." Minyard also conducted an "Adaptive Behavior Assessment System," which measures a person's ability to do day-to-day tasks. In the two areas of this test Minyard had sufficient information to score, respondent scored significantly below average. Additionally, Minyard conducted a "Rotter Incomplete Sentence Blank Test," which gives the person taking the test the opportunity to express her feelings. Respondent was not able to answer 10 of the 40 questions asked. Of those she was able to answer, Minyard stated, "Her responses were very primitive. They were very simple, concrete. Not all of them expressed feeling. They were very childlike."

¶ 17 Based on the results of these tests, Minyard made an Axis I diagnosis of "neglect of the child because of the reasons for opening the case" and an Axis II diagnosis of mild mental retardation. Minyard opined that respondent's understanding of the events happening around her

"would be very much like that of a child, that she would not be able to parent a child like an adult." Further, Minyard "didn't feel like [respondent] would be capable of really knowing what to do, certainly in an emergency but also in a lot of other situations that a parent has to deal with." Minyard did not believe that respondent "would ever be able to independently parent her child," regardless of any type of intervention.

¶ 18 On cross-examination, Minyard testified respondent exhibited poor social judgment and poor reasoning ability, and she "did not seem to have a good sense of her own capabilities or lack thereof," which could affect her ability or willingness to ask for help. Respondent's low cognitive functioning and poor social judgment make her vulnerable to predatory individuals and could potentially place T.E. in danger. Minyard testified her concerns would persist regardless of any services provided to respondent because respondent did not seem to learn anything from the services that had already been provided to her. While one-on-one instruction might help respondent interact more appropriately with T.E., Minyard did not believe "it would allow her to parent him independently."

¶ 19 Renee Eifert, a licensed clinical social worker and therapist at the Center for Youth and Family Services (Center), testified she met with respondent approximately 25 times for individual-counseling and parenting instruction. Respondent consistently attended scheduled sessions, missing only if she did not have a ride or because of dental surgery. Eifert's initial goals were to help respondent "learn and demonstrate positive parenting practices, nurturing parenting practices," and stabilize her life by helping her find stable housing, improve her familial relationships, and find employment. Eifert conducted an initial assessment—which was repeated numerous times throughout the duration of the sessions—in which she showed respondent a series of pictures. Respondent was then asked to explain "what [she believed was]

going on in the picture. Then why that's happening. And then what [her] response as a parent would be." Although respondent could identify what was going on in the pictures, Eifert testified, "if it was about a behavior issue \*\*\* or something that the child was doing well, most of [respondent's] answers would be that the child was doing something correctly because they didn't want to get in trouble or because they had gotten in trouble." Respondent also "struggled with being able to respond to how a parent would respond in that condition." According to Eifert, respondent's ability to identify an appropriate response to the various child behaviors depicted in the pictures did not improve in any significant way throughout the duration of the sessions.

¶ 20 In addition to the individual sessions with respondent, Eifert attended approximately 8 therapeutic visits between respondent and T.E. Eifert testified respondent was always happy to see T.E. during visits, and T.E. would greet and hug her, but he "eventually started to do some playing on his own or wasn't—wasn't as interested in being in her presence." According to Eifert, respondent struggled to take cues from T.E. as to how to speak or interact with him. During the visits, Eifert gave respondent "gentle guidance" to assist her in interacting appropriately with T.E. Eifert stopped attending the visits because she felt her presence was impeding the quality of the interactions between respondent and T.E. Eifert testified the only goals respondent had met at the time of the February 2014 fitness hearing were securing housing and employment, as she had recently begun working in the kitchen at Lincoln's Challenge Academy.

¶ 21 Atiyya Thompson, a case manager for the Center, testified she had been assigned to respondent's case since the shelter-care hearing. Thompson conducted an initial assessment with respondent at her one-bedroom apartment. According to Thompson, "The home had no

furniture. It was freezing. I kept my coat on the entire time and I sat on the floor." Thompson stated that the historical information given to her by respondent, including her education, why she qualified for social security benefits, and why DCFS was involved, was inaccurate, possibly because respondent did not comprehend the questions asked. Thompson testified respondent was unable to identify any issues she struggled with as a parent and could not identify the reasons DCFS removed T.E. from her care.

¶ 22 Thompson supervised more than 50 visits between respondent and T.E. Thompson stated, T.E. "was always very excited to see [respondent] in the beginning of the visits, but the majority of the visits he would spend playing by himself. [Respondent] would call him names, inappropriate names at times; most times actually. And she would just antagonize him throughout visits to get his attention." According to Thompson, respondent eventually got better at using T.E.'s name, "[b]ut even still, to this day, she sometimes struggles." Thompson stated respondent's interaction with T.E. did not improve throughout the duration of their visits.

¶ 23 Respondent moved into a bigger house with her brother in October, but respondent was unable to recall the exact date she moved. When assessing the new house, Thompson noted the house was "very cold" and although respondent stated the heat was on, she did not understand why the heat was not working. Respondent also informed Thompson that Steerman was living in the basement of the home and had been living at her apartment with her for the previous six months.

¶ 24 After considering the evidence, the trial court found the State had proved by clear and convincing evidence that respondent was unfit because she failed to make reasonable progress toward the return of T.E. within the initial nine months following the adjudication of neglect (count II). A best-interest hearing was scheduled for March 2014.

¶ 25

## 2. Best-Interest Hearing

¶ 26 At the March 20, 2014, best-interest hearing, the trial court considered the February 20, 2014, court-appointed special advocates (CASA) report and the March 13, 2014, "Best Interest Report" filed by the Center. The CASA report indicated CASA's concern that respondent's "limited cognitive and emotional capacity would put [T.E.] at serious risk of neglect and even harm" if he was returned to respondent. Respondent's "lack of progress in improving her parenting skills pose[s] a significant risk to [T.E.'s] emotional and behavioral development." Further, T.E. did not have a strong attachment to respondent. The CASA opined, "[i]n the more than one year that I have been assigned to [T.E.'s] case I have seen no evidence that [respondent] will ever be able to provide a safe and loving environment for [T.E.]"

¶ 27 The best-interest report indicated that T.E. had been residing with his foster family since April 2, 2013, and was "extremely well bonded to the family," which included his foster parents and their two children, an 11-year-old girl and a 9-year-old boy. T.E. was well provided for and "loved dearly to the maximum capacity" by his foster family. T.E.'s foster family had started a college savings account for him. The report further noted, "T.E. is an integral part of [his foster] family and widely accepted by the extended family as well as their immediate family." Further, T.E.'s guardian *ad litem* testified that T.E.'s foster family was willing to provide permanency for him.

¶ 28 Based on the evidence presented, the trial court found it was in T.E.'s best interest that respondent's parental rights be terminated. The court stated as follows:

"The evidence is clear and convincing, and despite the love between the parent and child, really all the aspects of the best interest statute favor termination of parental rights. It's clear that

the factors really that led to removal are still present and would continue to remain present into any type of foreseeable future if the direction was to restore custody to [respondent], and it's clear from the evidence that that is extremely unlikely to be done at any time in a way that he could grow up safely and securely in her care and custody.

So it is, considering the best interest factors, considering the record, again, that is how [T.E.] can have security and safety and permanence.

And also \*\*\* by \*\*\* freeing [T.E.] for adoption, he has a good opportunity to have that security if parental rights are terminated."

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On appeal, respondent asserts the trial court erred in finding (1) her unfit and (2) that it was in T.E.'s best interest her parental rights be terminated.

¶ 32 A. Finding of Unfitness

¶ 33 Respondent asserts the trial court's finding of unfitness due to her failure to make reasonable progress toward the return of T.E. within the initial nine months following the adjudication of neglect was error because, based on the evidence presented, it was impossible to determine whether respondent progressed during the relevant period. Specifically, respondent asserts the evidence presented was merely a "snapshot" in time that shows nothing of her progress, or lack thereof, during the relevant nine-month review period.

¶ 34 "The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship." *In re C.N.*, 196 Ill. 2d 181, 208, 752 N.E.2d 1030, 1045 (2001). "Accordingly, proof of parental unfitness must be clear and convincing." *Id.* " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court will disturb a trial court's finding of parental unfitness only if such finding is against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208, 752 N.E.2d at 1045. "A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *Id.*

¶ 35 "Reasonable progress toward return of the child under section 1(D)(m)(ii) of the Adoption Act may be measured by looking at the parent's compliance with the service plans and the court's directives in light of the conditions that gave rise to the removal of the child and in light of other conditions that later became known and would prevent the court from returning custody of the child to the parent." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003) (citing *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050). "The standard for determining whether reasonable progress has been made is an objective one. It may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future. [Citation.] Minimally reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *Id.*

¶ 36 In this case, T.E. was adjudicated neglected on January 4, 2013. Thus, the relevant time period in which to measure respondent's progress toward reunification is January 4, 2013,

through October 4, 2013. The evidence elicited at the February 2014 fitness hearing was as follows.

¶ 37 As of June 2013, approximately 5 1/2 months into the relevant nine-month review period, respondent (1) was unable to understand or retain the information she had been provided during her individual counseling sessions; (2) did not understand the reason for DCFS's involvement; and (3) did not comprehend what would need to change in order for T.E. to be returned to her. Minyard opined that respondent's inability to develop an understanding of these points was likely due to her low IQ and diagnosis of mild mental retardation. Although Minyard believed individual instruction might help respondent learn how to interact more appropriately with T.E., she "would [n]ever be able to independently parent her child," regardless of the services offered, because she simply could not retain the information.

¶ 38 As of the date of the fitness hearing, respondent had attended approximately 25 individual-counseling and parenting-instruction sessions with Eifert. Approximately 19 of these sessions occurred during the relevant nine-month review period. Throughout the duration of the individual sessions with Eifert, respondent failed to retain or demonstrate an understanding of the materials Eifert presented to her, which were designed to develop her parenting skills. Despite the same pictorial assessments being conducted numerous times throughout the course of these sessions, respondent's ability to appropriately respond to the various depictions of child behavior did not improve in any significant way. Additionally, of the eight visits between respondent and T.E. observed by Eifert, respondent continued to experience difficulty speaking and interacting with T.E. in an appropriate manner.

¶ 39 Further, throughout the approximately 50 visits between respondent and T.E. supervised by Thompson, respondent struggled to call T.E. by his name and antagonized him to

get his attention. Although respondent did improve upon calling T.E. by his name, she still struggled to do so at times. While respondent obtained "safer" housing on October 3, 2013—one day prior to the expiration of the relevant nine-month review period—Thompson noted the existence of some safety concerns with the new house, including issues with the heat, which had been one of the safety issues with respondent's one-bedroom apartment. We note, although the evidence shows respondent did obtain employment by the time of the fitness hearing, she did not do so until November 2013, which is outside of the relevant review period.

¶ 40 Based on the record before us, it is evident that respondent made efforts to comply with the DCFS service plan by attending the required individual-counseling and parenting-instruction sessions. However, the evidence shows that despite her efforts, she did not make any demonstrable progress in addressing and correcting the conditions which led to T.E.'s removal in the first place. Specifically, respondent's mental limitations prevented her from successfully completing (1) individual counseling to address the concerns which resulted in DCFS's involvement or (2) parenting classes to develop an understanding of appropriate parenting skills. Based on this evidence—which, contrary to respondent's assertions, spanned the duration of the nine-month review period—the trial court's finding that respondent was unfit due to her failure to make reasonable progress toward the return of T.E. during the initial nine-month period following the adjudication of neglect was not against the manifest weight of the evidence.

¶ 41 B. Best-Interest Finding and Termination of Parental Rights

¶ 42 Next, respondent asserts that the evidence presented at the best-interest hearing was insufficient to support the termination of her parental rights.

¶ 43 "Following a finding of unfitness \*\*\* the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's

needs, parental rights *should* be terminated. Accordingly, at a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." (Emphases in original.) *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At this stage in the proceedings, the State must prove by a preponderance of the evidence that termination of parental rights is in the child's best interest based on the factors listed in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2012)). *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. We will not reverse the trial court's best-interest determination unless it is against the manifest weight of the evidence. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009).

¶ 44 In this case, the evidence presented at the best-interest hearing showed that T.E. was thriving in his foster-family environment, where he had bonded with and was accepted as an integral part of the family. Further, T.E.'s foster family was willing and able to provide permanency for him. On the other hand, the evidence demonstrated respondent's lack of progress in developing her parenting skills—and apparent inability to ever demonstrate progress due to her mental limitations—would place T.E. at risk of harm if he was returned to her custody. Although respondent argues this "evidence all but ignores the statutory factors relevant to a best interest determination" and should "be deemed insufficient to support the termination of [her] parental rights," our review of the record confirms the trial court considered the relevant statutory factors before terminating respondent's parental rights.

¶ 45 Here, after considering the CASA report, the best-interest report, and the arguments and recommendations of the parties, the trial court specifically stated, "all aspects of the best interest statute favor termination of parental rights." See *In re Joshua K.*, 947 N.E.2d 280, 293 (2010) ("The trial court is not required to explicitly mention each factor listed in section

1-3(4.05) while rendering its decision."). In finding it was in T.E.'s best interest to terminate respondent's parental rights, the court further noted the factors that led to T.E.'s removal in the first place were still present and would likely remain present for the foreseeable future. Based on this evidence, the trial court's finding that it was in T.E.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 46

### III. CONCLUSION

¶ 47

For the reasons stated, we affirm the trial court's judgment.

¶ 48

Affirmed.