

NOTICE

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2014 IL App (4th) 140514-U

NO. 4-14-0514

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 3, 2014

Carla Bender

4th District Appellate

Court, IL

In re: Z.P., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 12JA14
ASHLEY THORNTON,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the trial court did not err in (1) finding respondent unfit and (2) terminating her parental rights.

¶ 2 In April 2012, the State filed a petition for adjudication of abuse/neglect with respect to Z.P., the minor child of respondent, Ashley Thornton. In August 2012, the trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In August 2013, the State filed a motion to terminate respondent's parental rights. In April 2014, the court found respondent unfit. In June 2014, the court found it in the minor's best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding her unfit and (2) terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2012, the State filed a petition for adjudication of abuse/neglect with respect to Z.P., born in September 2010, the minor child of respondent and Travis Perez. The petition alleged Z.P. was an abused minor pursuant to section 2-3(2)(ii) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(ii) (West 2012)) in that respondent created a substantial risk of physical injury by other than accidental means, which would likely cause death, disfigurement, impairment of the physical or emotional health and/or loss or impairment of any bodily functions of the minor. The petition also alleged Z.P. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) in that his environment was injurious to his welfare when he resided with respondent and/or Perez because the environment exposed the minor to inadequate supervision and the risk of physical harm. In June 2012, the State filed a supplemental petition alleging Z.P. was a neglected minor in that his environment was injurious to his welfare when he resided with respondent because the environment exposed him to inadequate supervision.

¶ 6 The record indicates Z.P. was attacked by a dog and suffered a serious injury to the head in January 2012. Several days later, he suffered a seizure and was hospitalized. Z.P. had been in respondent's custody at the time of the dog attack, and respondent was aware the dog had been aggressive toward people as well as other dogs.

¶ 7 Based on respondent's stipulation to the single count in the supplemental petition, the trial court found Z.P. to be a neglected minor. In its August 2012 dispositional order, the court found respondent unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minor and the health, safety, and best interest of the minor would be jeopardized if he remained in her custody. The court made the minor a ward of the court and placed custody and guardianship with DCFS.

¶ 8 In November 2012, the trial court entered a permanency order and found respondent had made reasonable efforts toward the return of the minor to the home but had not made reasonable and substantial progress. The order noted respondent was pregnant and had tested positive for hepatitis B. In a February 2013 permanency order, the court found respondent had made reasonable and substantial progress and reasonable efforts toward returning the minor to the home. The order indicated respondent was engaged in individual counseling and services. In a May 2013 permanency order, the court found respondent had made reasonable and substantial progress and reasonable efforts. The order indicated counseling and services were ongoing. In an August 2013 permanency order, the court found respondent had made reasonable efforts but not reasonable and substantial progress. The order indicated respondent had been arrested for driving under the influence (DUI) and reckless driving. She also had a diluted drug drop and acknowledged smoking cannabis.

¶ 9 In August 2013, the State filed a motion to terminate respondent's parental rights. The motion alleged respondent was unfit because she failed to (1) make reasonable efforts to correct the conditions that were the basis for the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of the minor to the parent within nine months after the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)).

¶ 10 In February 2014, the trial court held a hearing on the motion to terminate parental rights. Illinois State Trooper Kimberly Hart testified she responded to a report of a vehicle accident on Interstate 74 on July 17, 2013. It was reported respondent had been driving on the shoulder at approximately 80 to 90 miles per hour when she lost control of her vehicle, hit

another vehicle, and then overturned. Hart stated respondent "smelled strongly of an alcoholic beverage" and admitted "she had drank approximately four to five Limearitas [*sic*]."

¶ 11 Illinois State Trooper Anthony Micele testified respondent told him she had three to five Lime-A-Ritas. Micele administered a preliminary breath test on respondent and it registered 0.129. She was then placed under arrest. Micele also noted a check of respondent's purse revealed several prescriptions, some of which warned against taking with alcohol.

¶ 12 Dawn McCoy, a caseworker at Youth Advocate Program, testified she provided supervised visits with Z.P. and helped respondent with transportation to his medical appointments. During the unannounced visits, McCoy stated respondent interacted very well with Z.P. and was "very attentive to his needs." She provided him snacks, and they went for meals at Dairy Queen. During McCoy's involvement, respondent became pregnant and was also required to take medication for mental-health issues. Respondent stopped taking the medication during her pregnancy but said she would continue doing so once the baby was born. McCoy stated respondent was employed and had her own apartment in Rantoul. McCoy stated the children were removed from respondent's care following the DUI accident.

¶ 13 Linda Morgan, a DCFS caseworker, testified she began working on Z.P.'s case in April 2012. At the start, respondent and Z.P. lived with respondent's foster parents in Rantoul. Respondent had been prescribed medication for depression. In regard to services, Morgan stated respondent was to continue meeting with her psychiatrist, take the prescribed medication, participate in individual counseling, and continue with her parenting program. Respondent informed Morgan that she was pregnant and had stopped taking her prescribed medication because she was concerned about the effect on the baby. Respondent worked part time at Dunkin' Donuts and then found full-time employment at Con-Air in Rantoul. Morgan found

respondent to be cooperative and respondent indicated a willingness to participate in the services. During visits, respondent responded to Z.P.'s needs and he seemed happy to see her.

¶ 14 On cross-examination, Morgan testified respondent suffered from depression and had been diagnosed with anxiety, obsessive-compulsive disorder, and post-traumatic stress disorder. Respondent attended a weekly parenting program at a Champaign church. Morgan did not have any concerns about drug or alcohol use by respondent during the time she worked with her.

¶ 15 Anina Blankenship, a DCFS child-protection investigative specialist, testified she was a caseworker on Z.P.'s case in February 2013. At that time, respondent lived in Rantoul with Z.P. and was employed at McDonald's. Respondent moved to Philo in June or July 2013 and claimed to be living with Z.P. and her daughter, M.B. Blankenship stated she talked with the landlord and discovered the actual lease had the name of Dustinn Brown, M.B.'s father, on it. The lease respondent gave to Blankenship did not have Brown's name on it. Blankenship stated respondent admitted lying to her about the lease. Respondent lived in Philo for "maybe four months" and then moved to Fisher with her sister. Blankenship stated respondent and her sister had a "turbulent relationship" in the past. Blankenship stated respondent was "fairly consistent" in attending counseling and appeared to be making progress. After respondent was arrested, Z.P. was removed from her care and placed with his godparents. Blankenship stated respondent had a diluted drug drop in July 2013. Respondent denied using drugs, but she later admitted smoking marijuana because she was having trouble sleeping.

¶ 16 On cross-examination, Blankenship testified respondent explained the reasoning of putting Brown's name on the lease by stating his family knew the landlord and she felt putting his name on the lease would give her more credibility in renting the apartment.

¶ 17 Following closing arguments, the trial court found respondent unfit on all three grounds. In June 2014, the court conducted the best-interest hearing. The best-interest report indicated Z.P. was living with his godparents in foster care and they have voiced their willingness to provide permanency through adoption. Z.P. looks to them for reassurance and comfort and calls them "mom" and "dad."

¶ 18 Sandra Burdette testified respondent had been placed in her care when she was two years old and lived with her for five years as a foster child. Since her DUI, respondent has improved in her decision-making and promptly returns calls to Burdette. Respondent is working and making good choices regarding money. Burdette felt Z.P. had "a strong bond" with respondent.

¶ 19 Bettina Gardner-Earl, respondent's mental-health therapist, testified she provided her with individual counseling since 2012. Respondent's attendance had been consistent and she had been making progress in her goals. Gardner-Earl found her to be less impulsive and more thoughtful when making decisions. Gardner-Earl also stated respondent's biggest area of progress has been taking responsibility for the poor choices she made in the past. If her parental rights were not terminated, Gardner-Earl stated respondent would need to "continue practicing boundaries with people" and continue working on her parenting skills.

¶ 20 Respondent testified the services she has participated in have caused her to "stop and think" before making decisions. From her DUI experience, respondent stated she learned she could have hurt herself or killed someone. She stated it affected her financially and emotionally. Respondent stated she was employed full-time at Meijer.

¶ 21 After the close of evidence and following closing arguments, the trial court found it in the minor's best interest that respondent's parental rights be terminated. This appeal

followed.

¶ 22

II. ANALYSIS

¶ 23

A. Unfitness Findings

¶ 24

Respondent argues the trial court's findings of unfitness were against the manifest weight of the evidence. The court found her unfit on grounds of reasonable progress, reasonable efforts, and the failure to maintain a reasonable degree of interest, concern, or responsibility. The State concedes the court's findings based on reasonable progress and reasonable efforts cannot be sustained. However, the State argues respondent was unfit based on her failure to maintain a reasonable degree of responsibility as to the minor's welfare. We agree.

¶ 25

In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). "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 accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001).

¶ 26

Before finding a parent unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)), the court must "examine 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, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185. "Noncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under subsection (b)." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004). "Completion of service plan objectives can also be considered evidence of a parent's concern, interest, and responsibility." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1065, 859 N.E.2d 123, 135 (2006).

¶ 27 "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202. Moreover, "a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern and responsibility must be reasonable." *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125.

¶ 28 Here, the evidence indicated respondent was arrested for DUI after driving 80 to 90 miles per hour on the interstate, hitting another vehicle, crossing the median, and crashing her car in the lane of oncoming traffic. She admitted drinking four to five Lime-A-Ritas, and her blood-alcohol content was 0.129. Respondent's service plan required her to continue seeing her psychiatrist and taking her prescribed medications. She had been diagnosed with depression, anxiety, obsessive-compulsive disorder, and post-traumatic stress disorder. Respondent told her

caseworker in September 2013 she had quit taking her medications and claimed she informed her doctor in October 2013. However, progress notes indicated respondent did not tell her doctor until December 2013. The best-interest report noted a continued concern that respondent struggled with acknowledging and accepting her mental-health issues.

¶ 29 Respondent had a diluted drug drop in July 2013 but denied any drug use. She eventually admitted smoking marijuana, claiming she had trouble sleeping. Respondent also lied to her caseworker about not having the father of her other child on her apartment lease.

¶ 30 In this case, respondent failed to demonstrate a reasonable degree of responsibility as to the minor's welfare. Her DUI arrest showed poor judgment and reckless and irresponsible behavior. Further, her illegal drug use and her lies to her caseworker fail to show a reasonable degree of responsibility for the minor. The totality of the evidence supports the trial court's finding of unfitness under section 1(D)(b). Thus, the court's decision was not against the manifest weight of the evidence.

¶ 31 B. Best-Interest Finding

¶ 32 Respondent argues the trial court's decision to terminate her parental rights was against the manifest weight of the evidence. We disagree.

¶ 33 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS

405/1-3(4.05) (West 2012). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-] disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child."

Daphnie E., 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 34 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 35 The best-interest report indicated Z.P. has been in the same foster home since July 2013. Z.P. was bonded and attached to his caregivers, looked to them for reassurance and comfort, and called them "mom" and "dad." His foster parents have expressed their willingness to provide permanency through adoption.

¶ 36 The report indicated respondent had been actively engaged in her services and making progress. While DCFS found her progress commendable, it expressed concern as to how long she would be able to maintain that progress. Prior progress resulted in her having her child back home, but she "once again began to exhibit ongoing struggles with decision[-]making and stability." The report contended the "lack of stability was across all settings; relationships, housing, and mental health." Further, the report noted the concern that respondent "continues to struggle with fully acknowledging and accepting her mental health issues," which "will contribute to her ongoing instability and struggles with decision[-]making."

¶ 37 Here, the evidence indicated respondent loved her child, engaged in services, and showed some progress. However, the trial court noted the "inordinate amount of time" it had taken her to comply with the service plan and demonstrate the ability to be a custodial parent. While respondent had made some progress, it still was not enough to show she would be able to have Z.P. returned to her custody in the near future. The court found respondent could not provide permanency, something Z.P.'s foster parents were willing and able to provide. Considering the evidence and the best interest of Z.P., most importantly the need for permanence and stability in his life, we find the court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.