

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> JAMIYAH S., a minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 08—JA—358
	)	
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Tiara H.,	)	Patrick L. Heaslip,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: Where the evidence was sufficient to support the trial court's finding that respondent was unfit for failing to make reasonable efforts to correct the conditions within nine months and for failing to make reasonable progress toward the return of Jamiyah to her within any nine-month period after the initial period following the adjudication of neglect, we need not consider whether the other findings of unfitness (*see In re D.L.*, 191 Ill. 2d 1, 8 (2000)) were against the manifest weight of the evidence. The evidence sufficiently supports the trial court's *sua sponte* decision to change the permanency goal; a written order specifying the reasons for the change is unnecessary where the record provides an adequate basis for review. The evidence was sufficient to support the trial court's finding that termination of parental rights was in the minor's best interest.

The circuit court of Winnebago County found respondent, Tiara H., the natural mother of the minor, Jamiyah S., unfit on four counts and that it was in the best interest of the minor to terminate

respondent's parental rights. The circuit court appointed counsel to represent respondent on appeal. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), counsel moved to withdraw. We denied the motion and ordered counsel to brief the best interest issue and any other issue he found arguably meritorious. Counsel filed a brief on appeal, as ordered, and challenges (1) the trial court's determination that respondent was unfit based on her failure to maintain a reasonable degree of interest, concern, or responsibility and on her failure to protect the minor from an environment injurious to her welfare; (2) the trial court's *sua sponte* decision to change the permanency goal from return home to substitute care pending court determination of parental rights and the failure to specify in writing the court's reasons for ruling out other permanency goals; and (3) the trial court's determination that it was in the minor's best interest to terminate respondent's parental rights. For the following reasons, we affirm.

BACKGROUND

Jamiyah was born on July 19, 2006. On September 5, 2008, the State filed a neglect petition. At the adjudicatory hearing on the neglect petition held on December 4, 2008, the State presented the testimony of four Rockford police officers who had responded to domestic dispute calls regarding respondent. None of the officers testified that they saw the minor present at the residence during their response calls. However, the State presented evidence that, in June 2007, the minor was in respondent's arms during a domestic violence call between respondent and a boyfriend. An investigator for the Department of Children and Family Services (DCFS) also testified that respondent had been indicated for risk of harm due to ongoing domestic violence disputes based on approximately 10 reports of domestic violence within the prior year. The investigator further stated

that respondent also had issues of anger management, medical neglect involving the minor, and fears that the minor's home could be shot at because of alleged drug activity.

The trial court found the minor to be neglected, in that her environment was injurious to her welfare, and the court granted custody and guardianship of the minor to DCFS, with the discretion to place the minor with a responsible relative or in traditional foster care. Respondent was then admonished that she had nine months from December 4, 2008, to make reasonable efforts and progress to cure the conditions that had caused the minor to be taken from her, including working to complete the services set forth in the service plan. Respondent was to remain alcohol- and drug-free, submit to random drug testing, and comply with all recommendations of the caseworker, including drug, alcohol, and psychological treatment, domestic violence counseling, as required by DCFS. The court cautioned respondent that her failure to make reasonable efforts and progress could result in a petition to terminate her parental rights.

Following a permanency review hearing held on June 2, 2009, in which respondent was not present, the trial court found that respondent had not made reasonable efforts and progress to cure the conditions that had caused the minor to be taken from her. The court's finding was based, in part, on respondent's lack of visits with the minor, even though Jamiyah had been placed with her maternal great-grandmother and she had an "open door" policy of visitation, the failure to complete any services required by DCFS during the past six months, and the fact that respondent's drug tests either were incomplete or came back positive.

At the next permanency review hearing, held on December 1, 2009, the State presented evidence that respondent's visits with the minor were still sporadic and inconsistent. The State also introduced evidence that respondent had not completed any services over the prior six months,

despite multiple referrals. The trial court found respondent had not made reasonable efforts and progress to cure the conditions that had caused the minor to be taken from her. The trial court then *sua sponte* ordered the permanency goal be changed to substitute care pending the court's determination of parental rights. The trial court ordered the State to prepare petitions to terminate respondent's parental rights, as well as the putative biological father of Jamiyah, Andre S. The change in goal ordered by the trial court was made despite recommendations by the State and the guardian *ad litem* for return home within 12 months.

The State filed a petition to terminate against respondent and Andre on February 12, 2010. Andre is not a respondent in this appeal. Counts I through IV, respectively, alleged respondent was unfit in that she failed (1) to maintain a reasonable degree of interest, concern, or responsibility for Jamiyah (750 ILCS 5/50(D)(b) (West 2008)); (2) to protect Jamiyah from an environment injurious to her welfare (750 ILCS 5/50(D)(g) (West 2008)); (3) to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from respondent within nine months after an adjudication of neglect (see 750 ILCS 5/50(D)(m)(i) and (ii) (West 2008)); and (4) to make reasonable progress toward the return of Jamiyah to her within any nine-month period after the initial period following the adjudication of neglect (750 ILCS 5/50(D)(m)(iii) (West 2008)). On March 23, 2010, the trial court re-appointed trial counsel for respondent. The trial court previously had granted counsel's motion to withdraw due to respondent's failure to appear in court and her lack of contact with counsel.

The trial court held the fitness hearing on May 20, 2010. The State presented three of the four police officers who previously had testified at the neglect hearing. All three police officers had responded to different domestic dispute calls involving respondent. Contrary to their earlier

testimony at the neglect hearing, two of the officers testified that the minor was at home when they responded to the calls. Defense counsel did not raise or clarify the inconsistencies in their testimony.

Officer Krebs testified that, on March 5, 2007, he responded to a domestic dispute call made by respondent. Respondent told him that Andre came to visit Jamiyah and that he had threatened to beat respondent. Krebs learned that respondent had secured an order of protection against Andre S., but he was never served. Krebs waited with Andre until he was served. However, after Andre was served, respondent allowed Andre to see Jamiyah.

Officer Eissens testified that, on February 26, 2009, he completed a traffic stop involving respondent and found ecstasy pills in her purse after conducting an impounded search of the car. The State entered, without objection, evidence of two criminal offenses, to which respondent had pled guilty.

Tonya Schnabel, the child abuse investigator for DCFS, testified that often respondent would drop off clothes for the minor. However, even though respondent had the opportunity for unlimited visits, she visited infrequently, sometimes going weeks at a time without visiting, and then only staying about 15 minutes when respondent came to collect money from her grandfather. Respondent also did not complete any of the required services. Schnabel testified that respondent was required to seek substance abuse treatment and attend parenting classes, individual counseling, and domestic violence counseling. Respondent still had not been assessed for the substance abuse treatment, had attended some parenting classes but did not finish and was unsuccessfully discharged, and had not begun domestic violence counseling.

Respondent testified that she did use narcotics two years before but had stopped using them because of her daughter and because she just wanted to stop. Respondent admitted that she pled

guilty to possession of ecstasy but was not using it. She tried getting into a drug treatment program, but the programs were always full. Respondent did obtain an order of protection against Andre, the minor's father and ended the relationship with him when Jamiyah was a year old. Respondent talks to her daughter by phone but often does not visit her because she works long hours and was "overtired." Respondent also admitted to pleading guilty to a domestic battery case involving her sister and that her daughter was present at the time of the call.

The trial court found that the State had met its burden by clear and convincing evidence on all four counts against respondent and on the counts alleged against Andre. The trial court specifically mentioned the issues of domestic violence and substance abuse, including domestic violence in the presence of Jamiyah. The trial court noted that respondent had not consistently visited the minor, concluding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to Jamiyah's welfare, failed to protect the minor from conditions within her environment that were injurious to the child's welfare, and failed to make reasonable efforts and reasonable progress within the nine months following adjudication of neglect. The trial court further found Andre unfit.

Prior to the best interest hearing, the trial court was informed that Jamiyah's great-grandmother had retracted her commitment to adopt Jamiyah and that her son, Jamiyah's maternal great uncle (foster dad), was now Jamiyah's care giver. The trial court became concerned about Jamiyah's need for permanence, stability, and continuity of relationships. The judge stated: "To get to termination hearing after the case has been opened for more than two years and have the child be shelled around like this is just inexcusable." The court learned that the great-grandmother had

retracted and gave notice apparently because her husband had some health concerns. Based on this information, the trial court continued the best interest hearing to September 8, 2010.

At the time of the best interest hearing, Jamiyah was four years' old. Evidence presented at the hearing revealed that Jamiyah had been in relative foster care since she had been two years' old. Originally, she had been placed with her great-grandmother. Jamiyah was then placed with her maternal second cousin, Amanda Seago, in January 2010. Seago lived with her father, Bobby Bowersock, who was also Jamiyah's great-uncle, and his wife, in a home adjacent to the great-grandmother's home. Seago gave notice and Bowersock was asked to become the primary care giver for Jamiyah. At the time of the hearing, Bowersock and his wife had been Jamiyah's foster parents for two months and they were willing to adopt Jamiyah. During the time Seago was foster parenting and residing in the home with Bowersock and his wife, they assisted Seago in providing care for Jamiyah. Jamiyah is attached to Bowersock and his wife. She is well accepted into the family, and she is developmentally on track.

The caseworker, James Alfredson, testified that Bowersock is diagnosed as bi-polar, but he has been attending medical services since 1999. A letter written by Bowersock's therapist, which was admitted without objection, attested to his ability to provide permanency for Jamiyah. Alfredson also noted that Bowersock's son previously had an order of protection filed against him by a girlfriend, but it had expired, had occurred prior to the minor living in the house, did not involve the foster parents, and the son was moving out of the house.

Alfredson stated that Jamiyah enjoys her visits with respondent and that the visits were appropriate. However, respondent still visited sporadically and often, when she did visit, it would only be 10 to 15 minutes. Respondent would stop by, pick up money from her grandfather, say "hi",

and leave. Respondent did not complete substance abuse treatment, domestic violence counseling, or any other services requested of her. The first time respondent sought an assessment for substance abuse treatment was two days before the hearing. Alfredson noted that respondent had not made reasonable efforts on any of the permanency reviews. In Alfredson's opinion, it could take another year or two for respondent to complete services, assuming respondent began immediately and actively engaged in the services. Alfredson believed that Jamiyah needed permanency and that it was in her best interest that she be freed for adoption.

Jamiyah's great-grandmother had concerns about her son as guardian for Jamiyah. She worried about her son's behavior. She testified that her son is fine when he takes his medication but, when he does not take medication, he becomes violent. On cross-examination, the great-grandmother admitted that she had no education, training, or background in mental health and that her son's therapist was in a better position to discuss mental health issues.

After carefully considering the evidence presented at the unfitness and best interest hearings, the trial court observed that Jamiyah was four years' old, in good health, developmentally on target, living with a maternal relative and his wife, with whom she had bonded, and they were willing to provide permanency for Jamiyah through adoption. The court added that respondent had yet to complete services, and even if she committed herself that day, it could take up to two years to complete them, and to expect Jamiyah to wait another two years for permanency was unreasonable and not in her best interest. Accordingly, the court found that it was in Jamiyah's best interest to terminate respondent's parental rights. The court also terminated Andre's parental rights. The court then granted DCFS the power to consent to Jamiyah's adoption. Respondent timely appeals.

Respondent's motion to strike the "Issues Presented For Review" in the State's brief, which we have taken with the case, is denied.

ANALYSIS

1. Unfitness

In regards to the finding of unfitness, respondent only contests whether the trial court's findings on counts I and II, the failure to maintain a reasonable degree of interest, concern, or responsibility, and the failure to protect the minor from an environment injurious to her welfare, were against the manifest weight of the evidence. She does not challenge counts III and IV, in which the trial court found respondent unfit in that she failed to make reasonable efforts to correct the conditions that were the basis for removal within nine months after the adjudication of neglect and failed to make reasonable progress toward the return of the minor during any nine-month period after the adjudication of neglect.

We find the trial court's determination of unfitness as to counts III and IV was not against the manifest weight of the evidence, based on respondent's sporadic visits with her daughter and her failure to complete any services in the service plan within the relevant nine-month period. See *In re D.D.*, 196 Ill. 2d 405, 417 (2001) (the trial court's decision will only be reversed if it is against the manifest weight of the evidence). When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, the reviewing court need not consider additional grounds for unfitness cited by the trial court. *In re D.D.*, 196 Ill. 2d at 422. Because we can affirm on any one finding of unfitness, we need not consider whether the trial court's findings of unfitness on counts I and II were against the manifest weight of the evidence.

2. Change of Permanency Goal

Respondent next contends the trial court's *sua sponte* decision to change the permanency goal of return home within 12 months to substitute care pending determination of parental rights was against the manifest weight of the evidence, and otherwise an abuse of discretion and the failure to specify in writing the court's reasons for ruling out other permanency goals, as required by section 2—28(2) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2—28(2) (West 2008)), mandates a remand.

The State maintains that respondent forfeited this issue by failing to appeal from the order that changed the permanency goal. The State also points out that respondent did not include this order in her notice of appeal. We disagree with the State for two reasons.

First, permanency orders are not final, although a party who wishes to petition the appellate court for leave to appeal a permanency order may do so pursuant to Supreme Court Rule 306(a)(5) (Ill. S. Ct. R. 306(a)(5) (eff. Feb. 26, 2011)). See *In re Curtis B.*, 203 Ill. 2d 53, 59, 63 (2002). Second, even though respondent did not file a Rule 306(a)(5) petition to this court for leave to appeal the permanency order and respondent did not specify the permanency order in her notice of appeal (see *In re J.P.*, 331 Ill. App. 3d 220, 234 (2002) (where the court held that it lacked jurisdiction based on the failure to specify appeal was taken from the trial court's adjudication order)), we do have jurisdiction if the unspecified judgment is a step in the procedural progression leading to the judgment specified in the notice of appeal. See *In re D.R.*, 354 Ill. App. 3d 468, 472 (2004), citing *In re F.S.*, 347 Ill. App. 3d 55, 69 (2004). Here, the order changing to substitute care pending determination of parental rights was a step in the progression ultimately leading to the final and appealable order terminating respondent's parental rights and granting DCFS the power to authorize adoption. Accordingly, we have jurisdiction to address the issue.

A. Sufficiency of the Evidence

Respondent argues that the trial court's *sua sponte* order changing the permanency goal to substitute care pending the court's decision on termination of parental rights was against the manifest weight of the evidence, “especially since none of the parties requested it.” We disagree.

A trial court has discretion to select a permanency goal and its decision will not be disturbed unless it is against the manifest weight of the evidence. *In re Alicia Z.*, 336 Ill. App. 3d 476, 494-95 (2002). At a permanency review hearing, the court has the power to make a change if the previous disposition is not working. *In re A.A.*, 315 Ill. App. 3d 950, 953 (2000). Section 2—28(2) of the Act requires in relevant part that the court set a permanency goal that is in the child's best interest, and the court's determination must include the following factors: (1) the age of the child; (2) the options available for permanence; (3) the current placement of the child and the intent of the family regarding adoption; (4) the emotional, physical, and mental status or condition of the child; (5) the types of services previously offered and whether the services were successful and, if not successful, the reasons the services failed; and (6) the availability of services currently needed. 705 ILCS 405/2—28(2) (West 2008). The court also must consider (1) the permanency goal contained in the service plan; (2) the appropriateness of the services contained in the plan and whether those services have been provided; (3) whether reasonable efforts have been made by all the parties to the service plan to achieve the goal; and (4) whether the plan and goal have been achieved. 705 ILCS 405/2—28(2) (West 2008).

Respondent does not set forth any argument as to why the evidence was insufficient to support the trial court's decision to change the permanency goal. Regardless, we find the trial court's order to change the goal is supported by the manifest weight of the evidence based on

respondent's total failure to make reasonable efforts to comply with her service plan nearly a year after she had been admonished that she had nine months to make reasonable efforts. Among other requirements, respondent had not entered treatment for domestic violence or drug and alcohol abuse, failed her drug tests, visited her daughter sporadically, and was unsuccessfully discharged from parenting classes. Moreover, at the time of the order, Jamiyah's great-grandmother was willing to provide Jamiyah with a permanent home.

B. Written Findings

Respondent argues that the trial court erred by failing to indicate in writing its reasons for changing the permanency goal as is required by section 2—28(2) of the Act. 705 ILCS 405/2—28(2) (West 2008). Section 2—28(2), in pertinent part, provides: "In selecting any permanency goal, the court shall indicate in writing the reasons the goal was selected and why the preceding goals were ruled out." 705 ILCS 405/2—28(2) (West 2008). Citing *In re K.H.*, 313 Ill. App. 3d 675, 683 (2000), in which the Fourth District Appellate Court affirmed a trial court's order changing the permanency goal but remanded the cause and directed the trial court to enter written findings pursuant to section 2—28(2) of the Act, respondent urges us to remand her cause for compliance with section 2—28(2) of the Act. We decline to do so.

However, the same appellate court later found, in the case of *In re S.E.*, 319 Ill. App. 3d 937 (2001), that a remand was unnecessary. Given that the evidence of record was more than sufficient to support the trial court's decision and that the basis for that decision was ascertainable from the record, the court held that it need not remand the case for entry of more specific written findings. *In re S.E.*, 319 Ill. App. 3d at 944-45. The court further held that, so long as something exists in the

record stating the basis for the court's determination, the writing requirement should be deemed satisfied. *In re S.E.*, 319 Ill. App. 3d at 945.

While it is a better practice to enter written findings, the record in this case provides an adequate basis to review the trial court's ruling. The judge himself questioned the caseworker, and cited an overall lack of progress and initiative on respondent's part. Here, the evidence was more than sufficient to support the court's decision and the basis for that decision is ascertainable from the record, and we need not remand for entry of more specific findings.

3. Termination of Parental Rights

We last address respondent's argument that the State failed to prove by a preponderance of the evidence that termination of her parental rights was in Jamiyah's best interest. If the trial court finds a parent unfit by clear and convincing evidence on one or more statutory grounds under the Act (750 ILCS 50/1(D) (West 2008)), the trial court then conducts a second, bifurcated proceeding that focuses on whether termination of parental rights and allowance of an adoption petition would be in the child's best interest. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). The State must prove by a preponderance of the evidence that termination is in the child's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The trial court's determination will not be reversed unless it is against the manifest weight of the evidence. *D.T.*, 212 Ill. 2d at 366. A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008). Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *Z.L.*, 379 Ill. App. 3d at 376.

When determining whether termination of parental rights is in a child's best interest, a court must consider the following factors of section 1—3 (4.05) of the Act in the context of the child's age and developmental needs: (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 persons available to care for the child. 705 ILCS 405/1—3 (4.05) (West Supp. 2009).

Respondent questions whether the trial court's reliance on the foster family for providing a safe, permanent home for Jamiyah was appropriate in light of the short duration of the placement, Bowersock's mental health issues, and his son's order of protection. While we understand respondent's concerns, the evidence sufficiently supports the trial court's determination that termination of respondent's parental rights was in Jamiyah's best interest.

A letter from Bowersock's therapist indicates that Bowersock has been an established patient there since November 1999, that his emotional status is stable, that he was employed and able to work without any problems, and that he has not experienced any "hypomanic behaviors," depression, or psychotic symptoms. The therapist opined that Bowersock was a responsible parent, has a strong sense of family connection, and strong values and morals regarding the integrity of the family.

Bowersock's son had been involved in a heated but non-violent domestic dispute with his girlfriend, well before Jamiyah lived at the house, and he has been in counseling. The Bowersocks

were not involved in that domestic dispute. The order of protection had expired, the issue was resolved with no arrests, and the son was moving out of the house.

Although the duration of Jamiyah's placement was short, approximately nine months, the evidence showed that, even though the foster parent had changed, Jamiyah had been living with the Bowersocks since January 2010, due to concerns for the great-grandfather's health. This created stability and continuity for Jamiyah as her residence had not changed, she had been placed with another relative, who had been caring for her since January 2010, and her great-grandmother lived close by. The evidence also showed that Bowersock is very caring, helps Jamiyah with her homework, and consoles her when she is upset. Jamiyah and both foster parents have bonded with each other, she was integrated into the family, and the Bowersocks are committed to providing permanency for her.

Moreover, the caseworker believed that, in light of respondent's history, respondent would not complete services in the near future and the evidence supports this conclusion. In almost a year since the finding of neglect, the only time respondent made some effort to comply with the drug assessment requirement was just two days before the best interest hearing and she had been unsuccessfully discharged from parenting classes, the one service that she attempted to complete. Respondent rarely visited her daughter and when she did, it lasted 10 to 15 minutes when she stopped by to pick up money. Respondent did not see her daughter often because she said she was busy working a lot and was just too tired. Even if respondent was to actively engage and succeed in the required services, it could take up to two years before respondent could provide a home for Jamiyah.

The caseworker opined that a child of Jamiyah's age needs stability to be able to excel and that the lack of stability can create problems of anxiety, separation, and difficulty building healthy relationships. Further delay and lack of permanency certainly would not be in Jamiyah's best interest. See *In re K.H.*, 346 Ill. App. 3d 443, 463 (2004) (permanency and stability is important for a child's welfare). An adoptive home is available to satisfy Jamiyah's needs for permanency and stability. Under these circumstances, we cannot say that the trial court's decision to terminate respondent's parental rights was against the manifest weight of the evidence.

CONCLUSION

For the foregoing reasons, the decision of the circuit court of Winnebago County is affirmed.

Affirmed.