2013 IL App (2d) 130559-U
No. 2-13-0559
Order filed September 23, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re JONATHAN K.,	)	Appeal from the Circuit Court
	)	of Winnebago County.
a Minor.	)	
	)	No. 10-JA-281
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Thomas K.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

ORDER

Held: Trial court's finding that respondent-father is an unfit parent is not contrary to the manifest weight of the evidence.

¶ 1 Respondent, Thomas K., argues that the trial court's order terminating his parental rights as to his son, Jonathan K., should be reversed because the court's finding that he is unfit is contrary to the manifest weight of the evidence. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Neglect Petition and Permanency Review Hearings

¶ 4 On August 9, 2010, the State filed a neglect petition, alleging that Jonathan K. (born July 29, 2009), is a neglected minor in that his environment is injurious to his welfare because respondent continued to place him in the care of a babysitter (respondent's sister) who gave Jonathan's sibling, age 16, drugs and alcohol while in the sitter's care. (Jonathan's mother was incarcerated in Wisconsin.)

¶ 5 That same day, respondent appeared in court in response to the neglect petition and for a shelter care hearing. After hearing testimony, including that respondent had not completed required drug drops as ordered in the case involving his daughter, the court determined that there was a factual basis supporting the petition and it granted the Department of Child and Family Services (DCFS) temporary custody of Jonathan. The order provided that respondent must remain drug and alcohol free, submit to drug drops, and cooperate with services. Jonathan was placed in traditional foster care.

¶ 6 On May 4, 2011, at the neglect adjudication, the State amended the original neglect petition, adding a second count alleging that Jonathan's environment is injurious to his welfare because respondent has a substance-abuse problem that impairs his ability to parent, resulting in a risk of harm to Jonathan. According to the State, respondent had admitted to his caseworker, Kim Welsh, that he had an ongoing substance abuse problem. Respondent stipulated to the second count. The court accepted the factual basis and adjudicated Jonathan as "neglected pursuant to respondent's factual stipulation to Count 2, as amended by the State to the neglect petition for August 9, 2010." Respondent was ordered to remain free of alcohol and illegal drugs and to submit to unannounced urinalysis and Breathalyzer testing.

¶ 7 A permanency review hearing was held on July 19, 2011, and respondent failed to appear. Caseworker Ashley Montanez testified that Jonathan was doing well in his foster care placement. Respondent visited with Jonathan once per week for two hours. He was consistent and appropriate at visits. Respondent's service plans required him to participate in domestic violence classes and substance abuse and individual therapy. While respondent was engaged and doing well in his domestic violence classes, he was not yet engaged in substance abuse or individual therapy, in part because, although he told the substance abuse center, Rosecrance, that he was not using drugs, respondent had three "dirty" drops reflecting cocaine use. Respondent, claiming that the tests could not be dirty, asked for a re-test. Another test was performed and it, too, came back positive for drug use. Montanez testified that, "It's kind of like a cycle. [Respondent] has a positive; he misses a drop. He has a positive; he misses a drop." Specifically, in the previous six-month period, respondent had been given approximately two tests each month: he had not passed any. Instead, he had only positive or missed test results. Montanez explained that, despite the fact that respondent had thus far done well in his domestic violence classes, if drug tests came back positive, he would have to be dropped from the domestic violence program. At the end of the hearing, the court declined to make a finding regarding respondent's progress.

¶ 8 A second permanency review hearing was held on January 17, 2012, and, again, respondent did not appear. At that time, Montanez testified that Jonathan was "absolutely doing very good" in his foster care placement. Respondent continued to have supervised visits with Jonathan once per week for two hours. An apparent bond existed between respondent and Jonathan. Nevertheless, Montanez recounted that, although respondent had a 20-year history of substance abuse, he reported no recent usage to Rosecrance and he had not completed *any* of the drops requested on July 20,

August 2, September 22, October 17, or November 7, 2011. Rosecrance would not complete a substance abuse assessment until it received consistent drops from respondent and, as there were none, no substance abuse treatment had commenced. As to domestic violence classes, Montanez reported that respondent had been dropped unsuccessfully because he had not completed the drug drops and his attendance was poor. At the conclusion of the hearing, the court found that respondent made neither reasonable efforts nor reasonable progress during the review period.

¶ 9 A third permanency review hearing was held on July 17, 2012. Again, respondent was not present. Caseworker Shelly Angelos testified that respondent had been incarcerated during the review period and, moreover, he had not participated in any services: "He's not shown that he's able to establish and maintain sobriety." Respondent had not complied with random drug drops. "As a result, we couldn't refer him to any services." As to respondent's efforts to maintain an interest in Jonathan, Angelos testified that he did not contact the agency when he was placed in jail. When DCFS learned of his incarceration, a caseworker visited respondent and respondent stated that he wanted visitation with Jonathan. The caseworker said the agency would try to arrange a visit for the end of July, 2012. "However, he's not incarcerated anymore, so until he contacts me I can't, you know, engage him in that, but he has always attended visitation for the most part. He was sporadic at times, as well, though." The court found that respondent failed to demonstrate reasonable efforts or progress toward the goal of return home.

¶ 10 On October 26, 2012, a final permanency review hearing was conducted. Again, respondent did not appear. Respondent was aware of the hearing, but told the caseworker, Kayla Evink, that he was working. According to Evink, respondent engaged in visitation with Jonathan in September and October, but missed three out of eight visits. His contact with her over the past six months had been

"sporadic," with respondent primarily contacting Evink when he wished to see Jonathan. "Lately he wants to see him more often than others," and he had regular visitation with Jonathan in the past month. Evink testified that respondent needs to be referred to parenting classes, "but he has not maintained sobriety at this point." The foster parents signed forms reflecting that, if parental rights were to be terminated, they were willing to provide permanency for Jonathan. The court found that respondent had not made reasonable progress or efforts during the review period, noting respondent's absence from the hearing despite knowledge of it. The court changed the goal from return home to substitute care pending court determination of termination of parental rights.

¶ 11 B. Termination Proceedings

¶ 12 On January 4, 2013, the State petitioned to terminate respondent's parental rights, alleging that he is an unfit parent pursuant to several subsections of section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2010)), including: (1) subsection 1(D)(b) (failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare); (2) subsection 1(D)(g) (failure to protect the minor from conditions within his or her environment); (3) subsection 1(D)(m)(i) (failure to make reasonable efforts within nine months of the adjudication of neglect to correct the conditions which led to the minor's removal); (4) subsection 1(D)(m)(ii) (failure to make reasonable progress toward the return of the minor to the parent within nine months after adjudication); and (5) subsection 1(D)(m)(iii) (failure to make reasonable progress toward the minor's return home in a nine-month period following the initial nine months). The State identified the following nine-month periods as relevant to the neglect allegations: (1) February 4, to November 4, 2012; (2) March 4, to December 4, 2012; and (3) April 4, 2012 to January 4, 2013.

¶ 13 On January 4, 2013, the court held an arraignment and pretrial conference on the termination petition. Respondent was not present; his attorney stated that he sent respondent a letter, but did not have a working telephone number or know why respondent was not present.

¶ 14 On February 1, 2013, the court commenced the fitness portion of termination proceedings. Respondent was present. There, the court heard evidence from Evink that respondent's contact with her and his visitation with Jonathan were sporadic; there were times contact was consistent, but other times when it was not. On more than one occasion, Evink discussed respondent's inconsistent visitation with him. During one conversation, respondent became angry, swore at Evink, and hung up the phone. When respondent had visitation with Jonathan, he brought snacks, was attendant to Jonathan's safety, and played on the floor with him. Respondent and Jonathan would hug, and respondent would tell Jonathan that he loved him: the child appeared bonded to respondent.

¶ 15 However, Evink testified that respondent was, at one point, arrested for driving on a suspended license and having no insurance. Further, he was incarcerated in August 2012 on domestic violence or harassment charges, which affected his ability to participate in services and visit Jonathan. Respondent's visits with Jonathan were always supervised, and they never moved to unsupervised visits because respondent was not completing the required services, which included maintaining a drug- and alcohol-free lifestyle and individual, anger management, and domestic violence counseling. Respondent was never able to start individual counseling because, to be referred to counseling, he needed to maintain sobriety for 90 days. Evink explained that it is DCFS policy to require 90 days of sobriety as a condition for a counseling referral. Respondent never completed any drug drops for Evink. In November 2012, respondent completed a substance-abuse assessment and was found to be dependent on alcohol and cannabis and to be using cocaine and

abusing opiates. Although it was recommended that respondent perform intensive outpatient services and to attend Alcoholics/Narcotics Anonymous meetings, he did not engage in those services. According to Evink, respondent took anger management classes, but was discharged unsuccessfully. Respondent did not thereafter maintain contact with Evink, and he had not visited Jonathan since October 2012. In January 2013, however, respondent had emailed Evink and asked to see Jonathan, and a visit was scheduled for February 11, 2013 (after the proceeding).

¶ 16 Shelly Angelos testified that she is a supervisor for Children's Home & Aid, a DCFS child welfare contractor. Angelos had supervised Jonathan's case since October 2010. Angelos explained that DCFS requires parents to maintain three months of sobriety before they can fully engage in services. "This policy is set forth as it's critical for parents to have a level of sobriety in order for them to not just participate but to be able to internalize the skills, the tools and techniques that are being taught to them when they are sitting in the services." The policy does not apply to substance abuse treatment; rather, it applies to parenting, domestic violence, anger management, individual and family therapy, as well as in order for a parent to undergo a psychiatric or parental protective parenting assessment. When asked whether the policy prevented respondent from being referred to services, Angelos replied, "Originally during the beginning of the case, no. The previous worker had done the anger management and domestic violence assessment with [respondent] and sent it over to Clarity [the domestic violence therapy provider]. He began domestic violence but never began anger management." Angelos agreed that the policy does not contemplate an assessment of respondent's parental abilities or the effect his substance abuse has on his ability to effectively engage in individual counseling.

¶ 17 Angelos testified that respondent's domestic violence services stopped due to his non-attendance and his ability to maintain sobriety (Clarity also had a policy similar to DCFS's, which requires, upon substance abuse, discharge from counseling). She identified a discharge note received from Clarity, reflecting that respondent was discharged for lack of attendance and having positive drug drops. Angelos testified that the DCFS policy had been in effect as long as she had been there (since 2007), and she agreed that the policy, coupled with the fact that respondent had positive drug drops, prevented respondent from being referred to individual counseling. Further, Angelos testified that, when considering whether to re-refer respondent to domestic violence counseling, her decision was not based solely on the fact that he tested positive for drugs, but also on his absences and level of cooperation with the services to which he was previously referred.

¶ 18 The fitness hearing continued to April 10, 2013. Respondent testified that, after Jonathan's mother was incarcerated, he cared for Jonathan, almost exclusively, for three months (*i.e.*, Jonathan was ages 9 to 12 months). Respondent testified that, after Jonathan was placed in DCFS's care, he participated in visitation with Jonathan once per week, but visitation then became sporadic because sometimes it was cancelled or he would not be able to make it due to work or because he did not have a driver's license and could not get to the agency. Further, respondent testified that he had "other" court issues at the time, and sometimes he would get confused and go to the wrong place at the wrong time. He agreed that he did not visit with Jonathan between October 2012 and March 2013, but asserted that he had asked for visits and it was not his fault. When asked if he feels bonded to Jonathan, he replied, "very much so."

¶ 19 Respondent testified that he was not able to complete all recommended services and that his anger management counseling was stopped, due to "policy;" specifically, because he tested positive

for drugs. Respondent testified that he did not agree that he needed all of the recommended services, but that, if he had been referred to them, he would have participated in order to get Jonathan back. Respondent admitted, however, that he: received the service plans; knew he was supposed to perform random drug drops; chose not to take several requested random drug drops; and tested positive for cocaine in June 2011.

¶ 20 When asked to list examples of how he demonstrated an interest in Jonathan's welfare, respondent testified that, at visitation, he asked the caseworker about Jonathan's schooling, inquired about his life, asked about scratches he saw on Jonathan's face, and brought him clothes and food. Also, respondent noted that he tried to arrange visits that included Jonathan's sister, so they, too, would know each other and have a relationship. Respondent agreed that he did not attend certain court hearings. Respondent also agreed that he was convicted of domestic battery during the pendency of this case and spent 45 days in jail. He also had a 2006 domestic battery conviction. Further, in July 2012, respondent was convicted of criminal damage to property and was sentenced to 180 days in jail (he served 45 days) and 30 months' probation. The court retired to consider the evidence.

¶ 21 On May 23, 2013, court re-convened. Respondent was not initially present, as he was incarcerated for a probation violation and had not yet been brought over from the jail. Jonathan's mother executed a specific consent to Jonathan being adopted by his foster parents. Thereafter, the court found that the State proved by clear and convincing evidence respondent's unfitness pursuant to counts 1, 3, 4, and 5, of the petition, with count 2 having been previously dismissed.

¶ 22 After announcing its fitness rulings, the court immediately commenced a hearing regarding whether it was in Jonathan's best interest to terminate parental rights. The court received testimony

from Angelos and took judicial notice of the evidence and testimony presented during the fitness hearings, as well as the court report filed by the caseworker prior thereto. In addition, once he was brought over, the court heard testimony from respondent that he had engaged in visitation and his requests for more visitation were not answered. Respondent testified that he loves Jonathan and that, while he is not perfect, he has never done anything to harm Jonathan, has never been violent with him, nor done drugs around him. Further, respondent testified that he has family support and can provide Jonathan with food, clothing, schooling, and everything he needs. "I feel there's no reason for me not to have him." On cross-examination, respondent agreed that he had recently missed some drug drops and: used marijuana on January 8, 2013; used alcohol and marijuana on April 10, 2013; and tested positive for opiates on April 24, 2013.

¶ 23 The court found that the State met its burden and proved that it was in Jonathan's best interest to terminate respondent's parental rights. Respondent appeals.

¶ 24 II. ANALYSIS

¶ 25 On appeal, respondent challenges only the court's order finding him unfit. Respondent's primary argument is that, because DCFS *denied him* services, based on its policy requiring 90 days of sobriety, he could not have failed to make reasonable efforts or progress.[1] He argues that he

[1]Respondent initially suggests that his drug use is irrelevant because it did not form the basis of why Jonathan was removed from his care (specifically referencing count 1 of the neglect petition, which alleged an injurious environment because Jonathan was left with a child care provider who gave alcohol to Jonathan's older sister). We reject outright this line of argument (which respondent appears to abandon in his reply brief). The neglect petition was amended to include that Jonathan's environment is injurious to his welfare because respondent has a substance abuse problem that

would have been in a position to provide more interest in, concern for, and responsibility to Jonathan if he had been permitted to engage in services. As such, respondent argues the State did not prove that he was an unfit parent. We disagree.

¶ 26 A trial court's unfitness finding will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). A finding is contrary to the manifest weight of the evidence where it is unreasonable or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 27 We need not consider all of the grounds under which the trial court found respondent unfit, as any one of them, if not contrary to the manifest weight of the evidence, is sufficient to affirm the court's finding. *In re Gwynne P.*, 215 Ill. 2d at 350 ("[a] parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence"); *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 29 (where State met its burden of proving unfitness on one ground, court declined to consider whether the parent was also unfit on other grounds). Here, we conclude that the evidence, at a minimum, sufficiently supports the court's unfitness finding pursuant to subsection 1(D)(m)(iii) of the Act (*i.e.*, count 5 of the petition to terminate), and we affirm the unfitness finding on that basis.

¶ 28 Section 1(D)(m)(iii) of the Act provides that a parent is unfit if he or she fails to make reasonable progress toward the minor's return home in a nine-month period following the initial nine months after the neglect adjudication. Here, the State notes that the initial nine months ran from

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impairs his ability to parent, resulting in a risk of harm to Jonathan. Respondent *stipulated* to that count. Thus, there is no merit to respondent's suggestion that the court should not have considered his substance abuse or his failure to engage in required services because of such use.

May 4, 2011, (the date Jonathan was adjudicated neglected) through January, 2012. The trial court could have reasonably found that, thereafter, from January to October, 2012, respondent failed make reasonable progress toward Jonathan's return home. As respondent acknowledges, his service plans required that he remain drug free (as did the court's May 4, 2011, order), perform random drug drops, and attend counseling. Although respondent had been participating in domestic violence counseling, Montanez testified on January 17, 2012, that respondent's counseling was terminated unsuccessfully due to lack of attendance and drug use. Further, in July (or August) 2012, respondent spent time incarcerated on domestic violence or harassment charges, which affected his ability to participate in services and visit Jonathan. Angelos testified that respondent did not notify the agency of his incarceration, that his visitation participation had, at times, been sporadic prior thereto, and that he had not yet contacted the agency upon his release. Moreover, respondent failed to appear at permanency review hearings on January 17, July 17, and October 26, 2012. In addition, at the October 26, 2012, review hearing, the court heard evidence from Evink that respondent missed three out of eight visits with Jonathan, his contact with her was sporadic, and he still had not demonstrated that he maintained sobriety.

¶ 29 We note that the common law record reflects that the State identified three nine-month periods it deemed relevant to the neglect allegations, one of which was February 4 to November 4, 2012. Even if we review this time period, instead of the January to October, 2012, period, the result is the same. We note, too, that Evink testified at the fitness hearing that, in November 2012, respondent completed a substance-abuse assessment and was found to be dependent on alcohol and cannabis and to be using cocaine and abusing opiates. Although it was recommended that respondent perform intensive outpatient services and to attend Alcoholics/Narcotics Anonymous

meetings, he did not engage in those services. According to Evink, respondent took anger management classes, but was discharged unsuccessfully.

¶ 30 Accordingly, the trial court's finding that respondent failed to make reasonable progress in a nine-month period following the initial nine months was not contrary to the manifest weight of the evidence. Respondent makes much of the fact that he could not complete services because DCFS, via its policy regarding sobriety, would not refer him to them. This ignores, of course, that respondent could have complied with the policy and been referred to services had he, as ordered, performed the drug drops and remained drug free for 90 days. In other words, respondent blames the policy when the key to satisfying the policy was in his own hands. Respondent also ignores that he *was* referred to domestic violence counseling and was discharged unsuccessfully, not only due to drug use, but because of attendance problems. And, again, it was recommended that respondent perform intensive outpatient services and attend Alcoholics/Narcotics Anonymous meetings, but he did not engage in those services. According to Evink, respondent took anger management classes, but was discharged unsuccessfully from them. As such, it was not unreasonable for the trial court to find that respondent did not reasonably make progress even with respect to the services to which he *was* referred. Finally, respondent ignores the myriad of other reasons, completely separate from participation in services, that could reasonably contribute to the court's findings, including his incarceration, sporadic visitation, sporadic communication and uncooperative behavior with his caseworker, and failure to appear at numerous, critical hearings during the pendency of the case.

¶ 31 The court's finding that respondent was unfit under section 1(D)(m)(iii) was not contrary to the manifest weight of the evidence.

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 34 Affirmed.