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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> DAVID R. and TAYE W., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 09-JA-193
	)	09-JA-194
	)	
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee v. Chastity W., Respondent, and	)	Mary Linn Green,
Joseph W., Respondent-Appellant.)	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Hudson and Birkett concurred in the judgment.

**ORDER**

*Held:* The court allowed respondent's counsel's motion for leave to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and affirmed the trial court's order terminating respondent's parental rights.

¶ 1 Respondent, Joseph W., appeals from an order of the circuit court of Winnebago County terminating his parental rights to the minors, David R. III<sup>1</sup> and Taye W. We affirm.

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<sup>1</sup>There are two David R's. The minor at issue was named after David R., Jr., who was at one time married to Chastity W., the mother. For ease of reference the minor will be called David. R. III.

¶ 2 Respondent is the biological father of David R. III, born August 30, 2001, and Taye W., born March 11, 1999. Chastity W. is the biological mother and is also the mother of Tia W. and Devita W. David R., Jr. is the biological father of Devita W. For purposes of these proceedings, Tia W.'s biological father was unknown.

¶ 3 On May 13, 2009, the Illinois Department of Children and Family Services (DCFS) took the four minors into protective custody after receiving a hotline report that Chastity W. allowed her former husband, William Reynolds, to sexually abuse Devita, Taye, and Tia. Chastity confirmed that the children told her of the abuse but stated that she did not believe them. On May 15, 2009, the court gave DCFS temporary custody, and the children were placed together in foster care. On June 4, 2009, Tia was removed from her foster home and placed elsewhere upon the revelation that Tia had sexually abused her siblings. On July 24, 2009, the court adjudicated David R. III and Taye W. neglected minors.

¶ 4 Chastity W. was criminally charged with permitting the sexual abuse of a child, a felony, and was confined in the Winnebago County jail. She pleaded guilty and was sentenced to eight years' imprisonment in the Illinois Department of Corrections. During these proceedings, and shortly prior thereto, respondent was married to Chastity W., although it is undisputed that they were not married at the time of the abuse and that respondent, who was living in Chicago and did not know his children's whereabouts, had no knowledge of the abuse. Apparently, Chastity W. thought she would have a better chance of having her children returned to her if she was married. David R., Jr. was married and living in Florida during these proceedings. David R., Jr. and his wife consistently expressed their desire to take in all of the children. While he was married to Chastity W., David R., Jr. had parented all of the children. Eventually, all of the children except Tia were placed with David R., Jr. and his wife in Florida.

¶ 5 On September 7, 2012, the State filed petitions to terminate respondent's parental rights as to David R. III and Taye W. As to respondent, the petitions alleged that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (count I); that he failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children within nine months after they were adjudicated neglected (count II); that he failed to make reasonable progress toward the return of the children within nine months after they were adjudicated neglected (count III); that he failed to make reasonable progress toward the return of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (count IV); that he was unable to discharge his parental responsibilities due to mental impairment, mental illness, or mental retardation (count V) ; and that it was in the best interests of the minors that his parental rights be terminated.

¶ 6 On February 7, 2013, trial on unfitness was held. Because this is respondent's appeal, we will confine our recitation of the evidence to that presented with respect to respondent. The following evidence was presented at the trial.

¶ 7 Jill Rohner

¶ 8 Rohner was a licensed clinical social worker with Youth Network Services in Rockford, Illinois, who began counseling respondent in September 2011. According to Rohner, respondent was diligent in attending all of his sessions. She worked with respondent on achieving the goals of the DCFS service plan, which included divorcing Chastity W. and relinquishing the apartment where the abuse had occurred.<sup>2</sup> Rohner also worked on protective parenting issues with respondent. Rohner testified that respondent read books on how to protect children against predators and that

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<sup>2</sup>Respondent took over the apartment where the children were living when they were sexually abused.

respondent was able to relate information that he obtained from his reading, although Rohner believed that respondent had not internalized what he read. Rohner testified that respondent was not honest with her about the relationship he maintained with Chastity W., which had a bearing on his ability to protect his children from potential future abuse. While respondent reported to Rohner that he had infrequent contacts with Chastity W., Rohner documented that respondent had weekly visits with Chastity W. Rohner's concern regarding the apartment was that respondent, who did not have visitation rights, could potentially bring the children there, putting them through additional trauma. According to Rohner, respondent offered various excuses for why he could not divest himself of the apartment.

¶ 9

Samantha Becker

¶ 10 Becker was the DCFS caseworker assigned to David R. III and Taye W. When Becker became involved with the children in 2009, respondent was not yet part of the case. When respondent entered the case in July 2010, Becker's concern was whether he was fit and able to provide for the children. Becker testified that respondent married Chastity W. after the case began and after he was aware of the criminal charge against her. Respondent maintained that Chastity W. was innocent until proven guilty, although at times he represented that he would divorce her. After respondent's paternity was established, DCFS made a critical decision not to allow him visitation because the children had never had a relationship with him, and because DCFS wanted the children to become more stable before introducing a new parent into their lives. According to Becker, although respondent was faithful in attending counseling, he made no progress. Specifically, he denied that he had contact with Chastity W., and then when he was confronted with the jail's documentation of his contact, he denied that the records were accurate. Becker testified that respondent inquired sporadically about the children's welfare and that he wrote them a couple letters

but that he did not provide any support or material items for them or ask about their educational needs and achievements. According to Becker, respondent wanted visitation with the children.

¶ 11 Luke Salberg

¶ 12 Beginning in 2010, Salberg was a Youth Network Services counselor assigned to respondent. One of the goals was to help respondent understand the things he could do to protect the children if he were to have custody of them. Salberg testified that respondent's progress was minimal. According to Salberg, respondent was "stagnant for the most part." Salberg testified that respondent would not focus on the children and what needed to happen in order to provide them with a safe home but would focus instead on how he felt he was not being appropriately served by DCFS. According to Salberg, respondent did not understand why he had to go through counseling when he was not the abuser. Salberg testified that respondent was not forthright about his relationship with Chastity W. Salberg stated that respondent's continuing relationship with Chastity W., who had allowed the abuse, demonstrated that he did not put his children first. Salberg's second concern was that respondent was living in the same apartment where the children were abused. Salberg described the abuse as "significant and severe" and expressed concern that the apartment could pose a risk for the children's well being should they return there. According to Salberg, respondent never made any progress toward the treatment goals of finding a different apartment and accepting the trauma that his children had gone through. Salberg testified that respondent was not "really sensitive" to the trauma the children had experienced and that respondent did not believe that the abuse had happened. Salberg believed that respondent made progress in reading books on the impact of sexual abuse on children. According to Salberg, respondent was lethargic, depressed, and emotionally flat. Salberg believed that respondent wanted to parent his children but did not have the ability.

¶ 13 Dr. Valerie Bouchard

¶ 14 Dr. Bouchard was a licensed clinical psychologist who interviewed respondent and administered a number of tests. She spent about an hour with respondent. Dr. Bouchard's diagnoses were anxiety disorder, borderline intellectual functioning (IQ of 77), and paranoid personality disorder. Based upon these diagnoses, Dr. Bouchard opined that respondent suffered from a mental illness that made him unable to discharge his parental responsibilities, although his low intellectual functioning alone would not make him unable to parent. According to Dr. Bouchard, his mental illness affected his judgment and insight and his ability to understand the children's needs. Dr. Bouchard testified that these conditions would extend beyond a reasonable period of time, perhaps several years. According to Dr. Bouchard, dealing with the psychological trauma the children experienced from the sexual abuse would require extra sophistication on the parent's part in order to provide calming and protective support. Dr. Bouchard also opined that the apartment where the abuse occurred and respondent's relationship with Chastity W. could trigger negative memories in the children.

¶ 15 Joseph W.

¶ 16 Following the presentation of the State's case, respondent testified. Respondent testified that he was forty-two years old and was a self-employed mechanic. Respondent testified that DCFS never allowed him to have any visitation with David R. III and Taye W. Respondent testified that he administratively appealed the decision not to allow visitation but lost. Respondent testified that he lived with Taye W. for a period after she was born but did not ever live with David R. III. From 2001 on, respondent had no relationship with either child. According to respondent, he did not know the children's whereabouts, and he believed that David R. III was not his because Chastity W. named him after another man. According to respondent, he wrote the children five letters each and received correspondence from them. Respondent also testified that he gave the children gifts. Respondent

testified that he stopped writing letters when Becker told him that the children did not want anything to do with him. Respondent explained that he lived on Ashland in Chicago and that he kept the Rockford apartment only to go to when he had to be in Rockford for court. When asked if he would house the children in the Rockford apartment, respondent said, “By no means would I do that.” Respondent testified that he married Chastity W. in September 2010, after the children were already in foster care.

¶ 17 The trial court found that the State proved by clear and convincing evidence counts I, II, III, IV, and V of its petitions to terminate parental rights, and moved immediately to a best interests hearing.

¶ 18 Becker testified that David R. III and Taye W. were both living in Florida with Devita W. Taye W. had been placed in foster care in Florida for two years, and David R. III was placed in March 2013. They were living with David R., Jr., the man they both had known as their “father” their entire lives. Becker testified that she spoke on the phone the day before with Taye W., who reported that she wanted to continue to live in Florida and be adopted by Mr. and Mrs. David R., Jr., the foster parents. According to Becker, Taye W. reported that she was not interested in having a relationship with respondent. Becker testified that she also spoke with David R. III, who reported that he would like to continue living in Florida with his siblings and be adopted by David R., Jr. and his wife. Becker testified that the foster mother, Mrs. R., informed her that she and her husband were committed to adopting the children. Becker explained that the foster parents and the children were in counseling and that there were no safety or space concerns about the home. Becker testified that respondent and Chastity W. were unable at the present, or in the near future, to provide permanency and safety for the children, Chastity W. because she was incarcerated, and respondent

because DCFS had not heard from him “in quite some time,” and because he was not engaged in any services and had been unsuccessfully terminated from prior counseling.

¶ 19 Respondent testified that he lived in Chicago, and, if the children were given to him, they would all live with respondent’s father in the father’s house. Respondent testified that he fixed cars and could provide for the children’s wants and needs. Besides his family, people from his father’s church would be a support group. Respondent testified that he loved his children “more than a kid loves cake.” Respondent testified that he did not have a relationship with his children because he was not “allowed to” by DCFS. Respondent admitted that he was not supporting the children.

¶ 20 Following arguments of counsel, the trial court found that the goal of adoption was in the minors’ best interests. Respondent filed a timely appeal.

¶ 21 The Juvenile Court Act provides a bifurcated system in which parental rights can be terminated. 750 ILCS 405/2-29(2) (West 2012). There first must be a showing of parental unfitness based on clear and convincing evidence, and then a showing that the best interests of the child are served by severing parental rights. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008). A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. The trial court’s decision to terminate parental rights involves factual findings and credibility assessments that the trial court is in the best position to make. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. Thus, the trial court’s finding of unfitness will not be disturbed unless it is contrary to the manifest weight of the evidence and the record clearly shows that the opposite result was proper. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. Because each case concerning parental unfitness is *sui generis*, requiring a close analysis of its individual facts, factual comparisons to other cases by reviewing courts are of little value. *Konstantinos H.*, 387 Ill. App. 3d at 203.



¶ 22 Section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2012)) provides that a person shall be considered unfit to have a child under any of the grounds set forth in that section, including failure of a parent to make reasonable progress toward the return of the child to the parent during any nine-month period after the end of the initial nine-month period following the adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(iii) (West 2012). Reasonable progress is judged by an objective standard based on the amount of progress measured from the conditions existing at the time custody was taken from the parent. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. Reasonable progress requires, at a minimum, demonstrable movement toward the goal of reunification, measured by the parent's compliance with DCFS's service plans and the court's directives in light of the conditions that led to the child's removal and subsequent conditions that would prevent the court from returning custody of the child to the parent. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. Reasonable progress exists when the trial court can conclude that it will be able to return the child to parental custody in the near future. *Jacorey S.*, 2012 IL App (1) 113427, ¶ 21.

¶ 23 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's counsel moves to withdraw. In his motion, counsel states that, while the record demonstrates several meritorious issues, the record also shows that the State proved count IV of the petition by clear and convincing evidence and that proof of any one ground of unfitness is sufficient to support a finding of unfitness. Count IV alleged that respondent failed to make reasonable progress toward the return of the child during any nine-month period after the end of the initial nine-month period following the adjudication of neglect. Counsel supported his motion with a memorandum of law providing a statement of facts, arguments in support of the allegedly meritorious issues, and an argument why the evidence on count IV was sufficient.

¶ 24 In his motion to withdraw, counsel identifies the two issues on which respondent failed to make progress toward reunification during any nine-month period: (1) his marriage to and contact with Chastity W. and (2) his failure to give up the apartment where the children were abused. We question DCFS's authority to require respondent to divorce Chastity W. Marriage is a basic civil right. *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Marriage is an aspect of liberty protected against state interference. *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 48. However, the evidence showed that respondent failed to grasp the impact of Chastity W.'s behavior on the children, which led to respondent being dishonest with his counselors about his relationship with Chastity W. In *Jacorey S.*, the father was found not to have made progress toward reunification where he continued to live with the mother, who was not making progress. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 25. Here the evidence also showed that, for whatever reason, respondent refused to divest himself of the apartment where the abuse occurred, exposing the children to risk if they were returned to him. He used various excuses to avoid getting rid of the apartment. Additionally, the evidence showed that, while respondent read books pertaining to parenting children who are victims of sexual abuse, he did not internalize what he read. The evidence also showed that respondent remained stagnant in counseling due to his blaming DCFS for his situation. Accordingly, we agree with counsel that there is no meritorious argument to be made on respondent's behalf regarding count IV.

¶ 25 Next, counsel argues that the evidence was sufficient to show that the minors' best interests were served by termination of respondent's parental rights. After a finding of unfitness, the State must prove by a preponderance of the evidence that it is in the child's best interests to terminate parental rights. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33. In reviewing a best-interests determination, the reviewing court uses the manifest-weight-of-the-evidence standard of review.

*S.D.*, 2011 IL App (3d) 110184, ¶ 33. A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). At the best interests hearing, the parent's interest in maintaining the parent-child relationship yields to the child's interest in living in a stable, permanent, loving home. *S.D.*, 2011 IL App (3d) 110184, ¶ 33. In determining best interests, the court is required to consider statutory factors including: (a) the physical safety and welfare of the child, including food, shelter, health, and clothing; (b) the development of the child's identity; (c) the child's background and ties, including familial, cultural, and religious; (d) the child's sense of attachment, including (i) where the child actually feels love, attachment, and a sense of being valued; (ii) the child's sense of security; (iii) the child's sense of familiarity; (iv) continuity of affection for the child; (e) the child's wishes and long-term goals; (f) the child's community ties, including church, school, and friends; (g) the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (h) the uniqueness of every family and child; (i) the risks attendant to entering and being in substitute care; and (j) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012); *S.D.*, 2011 IL App (3d) 110184, ¶ 34.

¶ 26 Here, respondent never had a relationship with David R. III and lived with Taye W. for only a short time following her birth. David. R., Jr. was the only father they had known. Becker testified that both David R. III and Taye W. expressed their desire to remain in Florida with their sibling, Devita, and to be adopted by David R., Jr. and his wife. Taye W. did not want any relationship with respondent. Both children were in counseling in Florida, and Mrs. R. worked from home so she could supervise the children. The home in Florida was large enough to accommodate all of the children. Becker testified that David R., Jr. and his wife were committed to adopting both children.

In contrast, the children did not know respondent or his father, with whom they would be living if respondent gained custody. The children would be separated from Devita. Their counseling would be interrupted. We agree with counsel that no meritorious issue regarding best interests exists.

¶ 27 After examining the record, the motion to withdraw, and the memorandum of law, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 28 Affirmed.