2014 IL App (2d) 140353-U
No. 2-14-0353
Order filed September 16, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ZOE W. and CARSON W., Minors,	)	Appeal from the Circuit Court
	)	of De Kalb County
	)	
	)	Nos. 11-JA-14
	)	11-JA-15
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Erin W., Respondent-Appellant).	)	Ronald G. Matekaitis,
	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Where respondent continued to reside with drug user from time of adjudicatory hearing until year prior to best-interests hearing: (1) trial court's determination that respondent was unfit is not contrary to the manifest weight of the evidence and (2) finding that termination of parental rights was in the minors' best interests was also not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Erin W., appeal orders of the circuit court of De Kalb County finding her an unfit parent and terminating her parental rights regarding the minors, Zoe W. and Carson W. For the reasons that follow, we affirm.

¶ 4 Before proceeding further, we recognize that we are filing this disposition several days after the deadline specified in Illinois Supreme Court Rule 311(a)(5) (eff. February 26, 2010). Briefing in this appeal was not complete until less than three weeks ago. As such, we find good cause for the late filing of this order. See *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 26.

¶ 5 II. BACKGROUND

¶ 6 We provide the following summary to facilitate an understanding of this disposition; additional facts will be presented as they pertain to the issues raised in this appeal. On March 11, 2010, the Department of Children and Family Services (DCFS) received a report that respondent and the minors' father (who are married) were the victims of a robbery while attempting to purchase drugs in Rockford. The minors were present. The father exited the car the family was driving in and approached an unknown male. He attempted to purchase ecstasy. The man that the father was speaking with ran, and the father pursued him. Two other men approached the car and told respondent that she needed to help the father. When she turned to look, they grabbed her purse. Respondent pursued them, with Zoe accompanying her while Carson remained in the car. DCFS received another report on November 21, 2010, when Zoe indicated that her parents were using drugs. The minors were placed with their paternal grandparents at this time (in 2012 and 2013, the minors' placement was moved between their paternal grandparents, a paternal uncle, and traditional foster care).

¶ 7 During a meeting with an investigator from DCFS on January 27, 2011, both parents were informed that they would have to stop using drugs for the case to be closed. Moreover, the investigator told them that if one of them continued to use drugs, DCFS may have to ask the other parent to choose between the partner and the children. Such warnings were conveyed to them throughout the pendency of the case.

¶ 8 Respondent began intensive outpatient services in the spring of 2011; the father wanted to participate in a methadone program but was otherwise uninterested in services. Respondent continued to reside with the father. Respondent was doing well in drug treatment, but DCFS remained concerned that she was living with the father. Respondent's urine drops were negative (since 2011, respondent had not tested positive for heroin, though she did have one positive test for methamphetamines or amphetamines in April 2013, which, she asserts, was erroneous). On October 9, 2012, the State moved to terminate both parents' parental rights. The father continued to test positive for drugs. Respondent moved in with her husband's parents in the fall of 2013.

¶ 9 A fitness hearing began on February 14, 2014, and, on April 4, 2014, respondent was found unfit. The trial court noted that respondent had been repeatedly warned that if the father continued to use drugs, she would have to choose between him and her children. It was explained that her home would not be considered safe if one of the parents continued to use drugs. The father was continuing to "drop dirty" and "his participation in [rehabilitation services] was minimal." The trial court explained, "Mother [has] asked to be evaluated as a single individual even as she has chosen to remain with father and his lengthy history of substance abuse, knowing and having been repeatedly told over the course of two years that by choosing to remain with father [she] would make it impossible for the children to return home." The court noted that respondent did not separate from the father until "after the goal change" to substitute care pending determination of termination of parental rights. The court observed that while respondent professed an intent to divorce the father, she had not filed a petition for dissolution. It stated that while respondent has stated she had "cut[] father loose," "frankly, it's too late and the Court lacks confidence based on mother's prior actions and statements that she

will follow through." It then found respondent unfit on three bases (failure to make reasonable efforts to correct the conditions that led to the removal of the minors within the first nine months following the adjudication of neglect (750 ILCS 50/1D(m)(i) (West 2010); failure to make reasonable progress toward return of the children within the first nine months following the adjudication of neglect (750 ILCS 50/1D(m)(ii) (West 2010); and failure to make reasonable progress toward return of the children during any nine-month period following the adjudication of neglect (750 ILCS 50/1D(m)(iii) (West 2010)).

¶ 10 A best-interests hearing was conducted on April 4, 2014, as well, and the trial court determined that it was in the minors' best interests that respondent's parental rights be terminated. The trial court first stated that respondent should have (and, in fact, did) appreciate how dangerous the father was to the children when he took the family to buy drugs in Rockford. It noted that "where one spouse is acting in such an uncontrollable fashion as to place the other spouse and the children in a situation that is so dangerous that causes the children to be taken away from their care certainly would be the basis for any divorce in any court in this state." It stated that "actions do speak louder than words" and it questioned that, while respondent is now attempting to create a safe environment, "where [was] that sense of urgency two years ago." The court acknowledged that respondent had been looking for an apartment. However, it also observed that respondent told an individual "that she wasn't interested in a particular apartment because [the father] said it was too far from work." It then found that respondent's "choices have not been in the children's best interests" and added that it "lacks confidence in mother's stated plans of action, especially when such stated plans lack any affirmative, concrete evidence that provide support to those stated claims." Accordingly, the trial court held that it was in the minors' best interests that respondent's parental rights be terminated. She now appeals.

¶ 11 III. ANALYSIS

¶ 12 Respondent now contends that the trial court's three findings of her unfitness and its determination that the minors' best interests are served by terminating her parental rights are all against the manifest weight of the evidence. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *In re A.W.*, 231 Ill. 2d 92, 102 (2008). A careful review of the record establishes there is ample evidentiary support for the trial court's findings.

¶ 13 A. FITNESS

¶ 14 As noted above, the trial court found respondent unfit on three separate bases. A proper finding of unfitness on any single one of these grounds is sufficient to deem respondent unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 820 (2004). Hence, if we affirm the trial court's decision on one such ground, we need not consider the others. Here, as we determine that the trial court's finding that respondent failed to make reasonable efforts to correct the conditions that were the basis of the removal of the children during the nine-month period following the adjudication of neglect (750 ILCS 50/1D(m)(i) (West 2010)), we need not consider the additional grounds upon which the trial court also found respondent unfit (though our review of the record suggests that those findings, which were based on similar evidence to that presented with reference to the count discussed here, are also not contrary to the manifest weight of the evidence).

¶ 15 "Reasonable efforts" are measured with reference to the conditions that led to the removal of a minor from a parent. *In re Daphnie M.*, 368 Ill. App. 3d 1052, 1066 (2006). They are judged "by a subjective standard based upon the amount of effort that is reasonable for a particular person." *Id.* at 1067. The nine-month period at issue here begins to run with the

adjudication of neglect. *In re M.A.*, 325 Ill. App. 3d 387, 392 (2001). The adjudicatory order was entered on July 1, 2011.

¶ 16 Further, the conditions that led to the removal of the minors was based on both parents having used drugs in front of the minors, the father engaged in a drug deal in the presence of the minors, and the minors being present when the parents were robbed while attempting to buy drugs. These are the conditions against which respondent's efforts must be assessed. With respect to her own sobriety, respondent's efforts were adequate. It is also true that respondent maintained employment. However, the trial court's ruling was based primarily on respondent's failure to separate herself from the minors' father, who was not making any significant efforts at rehabilitation. Ample evidence indicates that respondent did not attempt to separate herself from the father—or otherwise attempt to establish a safe household—until well after this nine-month period. Continued residence with a significant other who is abusing drugs has been found to be a factor weighing in favor of a finding of unfitness. See *Tiffany M.*, 353 Ill. App. 3d at 890-91; see also *In re A.S.*, 2014 IL App (3d) 140060, ¶ 18. In short, an opposite conclusion is not clearly apparent.

¶ 17 Respondent's argument with respect to this count focuses on her individual progress. While laudable, respondent does not come to terms with the trial court's ruling regarding her continued residence with an individual who was using drugs. Thus, there is no indication that, beyond addressing her own issues, respondent did anything to ensure her home would be safe and suitable to her children with respect to one of the primary issues that caused their removal, namely, the fact that she was residing with a user of drugs who previously took the minors to a drug buy. Given this glaring deficiency, we cannot say that respondent's individual progress is so compelling as to render an opposite conclusion clearly apparent.

¶ 18 In sum, we cannot say that the trial court's finding of unfitness on this basis is contrary to the manifest weight of the evidence.

¶ 19 B. BEST INTERESTS

¶ 20 Respondent also contests the trial court determination that it is in the minors' best interests that her parental rights be terminated. At this stage of the proceedings, since the parent has already been found unfit, the focus shifts to the needs of the children. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Therefore, "the issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphasis in original.) *Id*. All other considerations are subordinate to the needs of the children. *In re G.L.*, 329 Ill. App. 3d 18, 24 (2002).

¶ 21 Respondent asserts that, at the time of the best-interests hearing, she was maintaining employment, had been successful in rehabilitation services, completed parenting classes, and been discharged successfully from individual counseling. We do not dispute any of this. However, the primary basis for the trial court's ruling was respondent's relationship with the father. The court, stating that actions speak louder than words, was troubled by the fact that respondent did not attempt to establish a stable and safe home for the minors until shortly before the best-interests hearing. She did not separate from the father until September 2013, and she did not start seeking an apartment until "the last couple months" before the hearing. The trial court noted that she told another individual that she was not interested in one apartment because it was not convenient to the father's place of employment. The court further observed that though respondent professed a willingness to divorce the father and get an order of protection, she has not actually done either of those things. As such, the trial court stated that it "lacks confidence in mother's stated plans of action, especially when such stated plans lack any affirmative, concrete

evidence that provide support to those stated claims." It then found that the termination of respondent's parental rights was in the minors' best interests. Given the state of the record, we cannot say that an opposite conclusion is clearly apparent.

¶ 22 Indeed, respondent's does not directly contest these findings. Rather, she contends that she should not be forced to divorce her husband in order to have her children returned to her. We recognize that marital relationships are given great respect in the law. See *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978). However, we note that at this phase of the proceedings, *everything* must yield to the minors' best interests. *G.L.*, 329 Ill. App. 3d at 24. We do not believe the minors should be compelled to have a person who uses drugs regularly involved in their lives to preserve respondent's marriage.

¶ 23 Moreover, we do not read the trial court's decision as requiring respondent to divorce the father. Had respondent taken concrete steps much earlier in the course of the proceedings to establish a safe household, such as actually renting her own apartment and perhaps getting an order of protection, we doubt the issue of divorce would have arose. However, as we read the trial court's decision, getting a divorce was simply one more thing the respondent could have done but did not. As such, it belies her claims that she is willing to separate from the father.

¶ 24 IV. CONCLUSION

¶ 25 In light of the foregoing, the judgment of the circuit court of DeKalb County is affirmed.

¶ 26 Affirmed.