2016 IL App (2d) 150752-U
No. 2-15-0752
Order filed February 16, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re TRAYVON H., a Minor	)	Appeal from the Circuit Court
	)	of DeKalb County.
	)	
	)	No. 13-JA-45
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Robert H., Respondent-Appellant.)	)	Honorable
	)	Ronald G. Matekaitis,
	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court's order terminating respondent's parental rights was affirmed where the State proved that respondent was an unfit parent by clear and convincing evidence.

¶ 2 Respondent, Robert H., appeals the trial court's order terminating his parental rights to his minor son, Trayvon H. He argues that the trial court erred in finding that he was an unfit parent. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Trayvon's mother, Tonya, tested positive for opiates at his birth and admitted to using heroin within a week prior to Trayvon's delivery. Trayvon also tested positive for opiates and

heroin at birth. He showed symptoms of withdrawal and was ultimately transferred to Rockford Memorial Hospital's Neonatal Intensive Care Unit for methadone treatment. After a call to the Department of Children and Family Services (DCFS) on the date of Trayvon's birth, a DCFS investigator interviewed respondent and Tonya at the hospital. During the interview respondent was intoxicated, he admitted to drinking alcohol that day, and he also admitted to using heroin. On September 24, 2013, while Trayvon was still hospitalized, DCFS took protective custody of him.

¶ 5 On September 25, 2013, the State filed a petition alleging that Trayvon was neglected based on an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)). Specifically, the petition alleged that: Trayvon was going through drug withdrawal at birth and had to be placed on methadone treatment; Tonya had ongoing substance abuse issues and was using heroin while pregnant with Trayvon; respondent had ongoing substance abuse issues; respondent and Tonya were homeless; and Trayvon's sister was born substance-exposed and parental rights as to the sister were terminated.

¶ 6 On September 26, 2013, the trial court entered an *ex parte* temporary custody order, finding that probable cause existed for the filing of the neglect petition, and it granted DCFS temporary guardianship and custody over Trayvon. The trial court also granted the State leave to allow service by publication to respondent and Tonya. On October 4, 2013, the trial court renewed the temporary custody order, finding that although neither attended, respondent and Tonya had notice of the proceeding. The court also appointed counsel for respondent and Tonya.

¶ 7 On November 22, 2013, the court adjudicated Trayvon neglected, made him a ward of the court, and continued guardianship and custody with DCFS. Neither respondent nor Tonya had personally appeared or participated in the proceedings up to that point.[1]

¶ 8 Between November 22, 2013, and September 5, 2014, respondent did not contact DCFS or otherwise complete an integrative assessment.[2] According to a dispositional hearing report prepared by Lutheran Social Services of Illinois (LSSI) in December 2013, respondent did not make contact with LSSI despite its reasonable efforts to establish contact with him. Trayvon's foster mother, however, notified LSSI that respondent had visited Trayvon at the foster mother's home. The foster mother also told LSSI that respondent was actively using substances and did not intend to participate in services or pursue reunification. LSSI left letters for respondent with the foster mother instructing him to contact the agency.

¶ 9 At the permanency review hearing on September 5, 2014, the trial court found that respondent failed to make reasonable efforts or reasonable progress toward Trayvon's return. The trial court noted that respondent had not contacted LSSI or DCFS and failed to comply with any services. The trial court changed the goal from return home in 12 months to substitute care pending determination of termination of parental rights.

¶ 10 On October 7, 2014, the State filed a petition to terminate respondent's parental rights. The petition alleged that respondent was an unfit parent in that he (1) abandoned Trayvon (750 ILCS 50/1(D)(a) (West 2014)); (2) failed to maintain a reasonable degree of interest, concern, or

[1] Tonya signed a surrender and general consent to adoption on September 5, 2014.

[2] Although not specifically defined in the record, an integrative assessment appears to be an initial interview conducted by DCFS to determine what services a respondent needs to receive and complete before a minor can be returned to his or her care.

responsibility as to Trayvon's welfare (750 ILCS 50/1(D)(b) (West 2014)); and (3) failed to make reasonable progress toward the return of Trayvon within 9 months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 11 Ten days later, respondent signed a specific consent for the foster mother to adopt Trayvon. But Trayvon was subsequently removed from the foster mother's care after he appeared in court with severe facial bruising. The court continued guardianship and custody with DCFS. The matter was continued to May 15, 2015, for a hearing on the State's petition to terminate respondent's parental rights.

¶ 12 A. Unfitness Hearing

¶ 13 Angelica Cabada, the LSSI caseworker since September 2014, testified that after Trayvon was adjudicated a neglected minor in November 2013, respondent did not complete an integrative assessment or have any contact with LSSI or DCFS. Nevertheless, a service plan was created that required respondent to participate in a substance abuse evaluation and follow any recommendations. LSSI mailed the service plan to respondent's last known address. Cabada further testified that respondent was incarcerated in November 2013. After his incarceration, LSSI mailed certified letters to respondent, which included his service plans. Cabada received respondent's signed receipts, but respondent never contacted the agency or engaged in any services. The only contact that LSSI had with respondent was when he called the agency two weeks before the May 2015 termination hearing. During that phone call, Cabada told respondent about Trayvon's removal from the foster mother's home and respondent refused to sign another surrender of his parental rights. Cabada also testified that respondent did not attempt to have visitation with Trayvon before he was incarcerated or to have Trayvon visit him while he was incarcerated. Respondent did not send any letters or cards to Trayvon.

¶ 14 On cross-examination, Cabada testified that a background check on respondent revealed that he had been arrested over 100 times. His latest arrest, which led to his incarceration, was for possession of a controlled substance. Thus, Cabada testified, LSSI included substance abuse treatment in its service plan. Cabada testified that she was not certain what services are available to a prisoner. She testified that other prisoners have been able to receive services or complete integrative assessments while incarcerated. Cabada also testified that Trayvon had never been in the care of his mother or respondent, as he was taken into DCFS custody upon his release from the hospital. Respondent knew, however, that DCFS was involved with Trayvon because DCFS interviewed respondent at the hospital and gave him contact information. Cabada testified that respondent never did "anything to show that he wanted to be in [Trayvon's] life."

¶ 15 Respondent testified that, beginning in November 2013, he was incarcerated at the Cook County Correctional Facility for nine months before he was sentenced to East Moline Correctional Center. Respondent never received any letters, service plans, or requests to complete an integrative assessment from either DCFS or LSSI, and neither agency had asked him to do anything. Instead, he had received three letters from LSSI instructing him to attend court proceedings. Respondent would have done his best to comply with a service plan, although no services are offered at East Moline Correctional Center. Nevertheless, respondent testified that he completed a substance abuse treatment program while at the Cook County Correctional Facility. He clarified on cross-examination that he was mandated to complete the program as part of his conviction and sentence, and he did not inform DCFS that he completed the program. Respondent had no proof of completion, although he maintained that the county jail "shipped [the certificate] to my – to the people."

¶ 16 Respondent also testified that he saw a DCFS investigator at the hospital in September 2013, but he did not speak to the investigator. Respondent understood, however, that Trayvon was taken into custody by DCFS upon his release from the hospital. Respondent testified that he did not attend the court proceedings before he was incarcerated, and he chose not to contact DCFS once he became incarcerated because he "knew where [Trayvon] was. He was okay." While Trayvon was in the foster mother's care, respondent sent letters to and corresponded with her on a weekly basis. The foster mother, Shatara, told respondent that Trayvon was removed from her care after respondent signed his specific consent to adoption, and respondent knew that Trayvon was then returned to the care of DCFS. Respondent did not contact DCFS after Trayvon was removed from Shatara's home, because he was under the assumption that Trayvon would be placed with another family member. He testified that he did not send Trayvon any letters or cards during this time because he did not know where to locate him. Respondent contacted Cabada two weeks before the termination hearing in May 2015, after he received a letter from DCFS "telling [him] they was [*sic*] trying to take my son."

¶ 17 Respondent acknowledged that he previously had his parental rights to his daughter terminated.[3] Respondent testified that he knew "the process with DCFS." He knew that parental rights would be terminated if he did not comply with service plans or keep in contact with the court or the agencies, but he was "never given a chance in this case." Respondent further testified, however, that he met with a DCFS investigator, Judith Witkowski, in September 2013. Respondent "chose not to" start any services at that time because he "didn't want to start any in DeKalb," but was going to wait until he got himself "together in Chicago." Nevertheless, respondent testified that he "took the opportunity of [his] own to go through the drug program to

[3] Tonya was also the mother of that child.

get [himself] together while [he] was in jail." He also testified that, upon his release from prison, he was going to "go and do what [he] got [*sic*] to do to get" Trayvon back.

¶ 18 The court found that the State established by clear and convincing evidence that respondent was unfit with respect to all three statutory bases alleged in the petition. It initially adopted the "findings and argument and the respective memorandums [*sic*] of law submitted by the State, CASA, and DCFS as the findings of the court." On appeal, this court retained jurisdiction and entered a limited remand for the purpose of allowing the trial court to make its own written findings. Those written findings were filed with this court, as ordered, on February 5, 2016.

¶ 19 In its written findings, the trial court found that Trayvon, who was nearly two years old at the time of the hearing, had never lived with respondent or Tonya. The trial court noted that before he was incarcerated, respondent failed to appear at the proceedings or engage in services despite being aware of the proceedings and talking about services with a DCFS investigator. The trial court found that respondent had a history of substance abuse.

¶ 20 The court also found Cabada's testimony to be credible. The court noted that LSSI attempted unsuccessfully to have respondent complete an integrative assessment. Nevertheless, LSSI prepared a service plan, mailed it to defendant at his last known address in Chicago as well as to the prison where he was incarcerated, and LSSI received a return card for certified mail signed by respondent. Respondent failed to engage in any services required by the service plan. The court also found that respondent failed to offer any proof that he completed the substance abuse program, which was required as part of his criminal sentence. It also found that respondent was familiar with DCFS and its procedures, as evidence by his parental rights being terminated with respect to another child. Yet respondent failed to engage LSSI after receiving

the service plan, and he failed to reach out to LSSI or DCFS as to the reasons for Trayvon's removal from the foster mother's home. Based on respondent's experience with DCFS, the trial court found respondent's actions "disturbing."

¶ 21 The trial court also found respondent's testimony to be "incredible as it related to even the minimal testimony he offered as to maintaining contact with" Trayvon. It found that no witnesses corroborated respondent's testimony that he wrote letters to Trayvon every week. Instead, respondent presented no credible evidence that he ever saw, visited, or had Trayvon visit him. The court found that respondent presented no evidence that he ever provided financial support to Trayvon. Respondent never testified that he inquired into Trayvon's health, especially after he was informed that Trayvon was removed from his foster mother's home.

¶ 22 Additionally, the trial court found that respondent never raised any issues "with respect to notice, the absence of an integrated assessment, his professed failure to receive a service plan, [or] the lack of contact with LSSI or DCFS at any time prior to the termination hearing." The trial court also addressed respondent's testimony that, after he signed his specific consent to adoption, he wanted to "get [himself] together" so that he could "get [Trayvon] back" from the foster mother. It noted that "a child is not some used car that you can store or leave at the garage and when you are ready to pick it up you can retrieve it *** A child that has rarely if ever seen father since he was taken into care and who has been in care his entire life cannot wait for father to 'get himself together.'" Respondent only "affirmatively reached out to" DCFS or LSSI once his "choice of where to 'park his child' became unraveled." But even then, respondent failed to inquire "as to all the facts and circumstances that caused the child to be removed from the home or even as to the child's current welfare at the time."

¶ 23 B. Best Interests Hearing

¶ 24 Following the unfitness portion of the hearing, the matter then proceeded to a best interests hearing. Cabada testified that Trayvon had been placed with a traditional foster parent since October 2014. Trayvon had bonded with the foster mother. He would run to her, call her "mama," and seek out her attention. The foster mother provided a safe and loving environment for Trayvon, and she signed a permanency commitment form. The foster mother's extended family accepted Trayvon and included him in family activities. The foster mother also placed Trayvon in daycare, and Trayvon played with other children in the neighborhood. Cabada testified that she believed that it was in Trayvon's best interests to have respondent's parental rights terminated so that the foster mother could adopt Trayvon.

¶ 25 Respondent did not present any evidence.

¶ 26 The trial court found that it was in Trayvon's best interests that respondent's parental rights be terminated and the goal changed to adoption.

¶ 27 Respondent timely appealed.

¶ 28 II. ANALYSIS

¶ 29 Before discussing the arguments respondent raises in his appeal, we address the timeliness of our decision. This case is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Pursuant to Rule 311(a)(5), the appellate court "shall issue its decision within 150 days after the filing of the notice of appeal[]" in an accelerated case. Respondent filed his notice of appeal on July 20, 2015, making the deadline to issue our decision December 17, 2015. We note, however, that respondent did not timely file his opening brief, which was due September 14, 2015. This court issued an "overdue warning letter" on October 5, 2015, advising respondent and his counsel that he had 14 days to file a brief or we would dismiss the appeal without further notice. Respondent again failed to file a brief, and we dismissed the

appeal on November 3, 2015. On November 9, 2015, respondent through counsel filed a motion to recall our mandate and vacate our order dismissing his appeal, explaining that counsel failed to properly docket the case in his calendar. We granted respondent's motion and gave respondent until November 20, 2015, to file his brief. Again, respondent failed to file a brief in compliance with our order. Nevertheless, on November 28, 2015, respondent filed a motion to file his opening brief *instanter*, which we granted. We again revised the briefing schedule. Because this case was not fully briefed and ready for disposition until January 11, 2016, we find good cause for issuing our decision after the 150-day deadline.

¶ 30 Turning to the merits, respondent argues that the trial court erred in finding that he was unfit. Specifically, he contends that the court erred in finding that he (1) abandoned Trayvon; (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to Trayvon's welfare; and (3) failed to make reasonable progress toward the return of Trayvon within 9 months of the adjudication of neglect.

¶ 31 The termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. The court must first determine whether a parent is unfit. *Julian K.*, 2012 IL App (1st) 112841, ¶ 63. If the court finds a parent unfit, it must conduct a second hearing to determine whether termination of parental rights is in the child's best interests. *Julian K.*, 2012 IL App (1st) 112841, ¶ 63.

¶ 32 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) lists the grounds under which a parent may be found unfit. The State must prove a parent's unfitness by clear and convincing evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 63. Although the State may allege several grounds for unfitness in its petition, we may affirm if the evidence supports any one of the grounds alleged. *Julian K.*, 2012 IL App (1st) 112841, ¶ 68. A reviewing court will not

overturn a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. A trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is apparent or the decision is unreasonable, arbitrary, or not based on evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 33 To determine whether a trial court's finding of unfitness is against the manifest weight of the evidence, we must be able to review both the evidence presented at the hearing and the trial court's findings of fact. *In re G.W.*, 357 Ill. App. 3d 1058, 1060 (2005). Here, the trial court initially failed to specifically make findings of fact in either its oral pronouncement or the written order. Instead, the court adopted the "findings and argument" of the State, CASA, and DCFS. We determined that the trial court's failure to set forth an adequate factual basis for its termination order prevented us from conducting a meaningful review of the finding of unfitness. See *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 34. Indeed, our analysis must be "restricted to evaluating the factual basis for the court's stated findings and conclusions." *B.B.*, 386 Ill. App. 3d at 698. Thus, we remind trial courts to pay particular attention to making findings of fact so that meaningful review of the ultimate curtailment of parental rights is given without delay. *G.W.*, 371 Ill. App. 3d at 1060.

¶ 34 The court found that respondent was an unfit parent due to his "[f]ailure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2012)). Because the language of section 1(D)(b) of the Adoption Act is disjunctive, any one of the three elements—interest, concern, or responsibility—may by itself form the basis for a finding of unfitness. *In re B'Yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. In determining whether a parent has exhibited reasonable interest, concern, or responsibility, a court

must examine the parent's conduct in the context of the circumstances in which it occurred. *In re Adoption of Syck,* 138 Ill. 2d 255, 278 (1990). Relevant circumstances include difficulty in obtaining transportation, a parent's poverty, or the actions or statements of others that hinder or discourage visitation. *Syck*, 138 Ill. 2d at 278-79. Completion of service plan objectives is also relevant. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1065 (2006). A parent is not fit merely because he or she has demonstrated some interest or affection toward a child; rather, the interest, concern, or responsibility exhibited must be objectively reasonable. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004). The focus is on the parent's efforts, not on the parent's success. *Daphnie E.*, 368 Ill. App. 3d at 1064.

¶ 35 Based on a careful review of the record, we hold that the trial court's finding that respondent was unfit was not against the manifest weight of the evidence. Indeed, the evidence at the unfitness hearing revealed an absentee father who exhibited no responsibility and minimal interest or concern as to Trayvon's welfare. Respondent's own testimony establishes that he willfully chose to avoid contact with DCFS, LSSI, and the court during the entirety of the proceedings. He testified that he knew that DCFS took custody of Trayvon in September 2013, and that he talked to a DCFS investigator at that time. He simply chose not to start services or contact DCFS. He explained that he did not contact the agencies because he "knew where [Trayvon] was. He was okay." Respondent's only contact with DCFS, LSSI, or the court during the pendency of the proceedings was in October 2014 when he signed a specific consent to adoption and two weeks before the termination hearing in May 2015. As the trial court noted, respondent only chose to affirmatively reach out to DCFS or LSSI once "his choice of where 'to park his child' became unraveled."

¶ 36 Additionally, respondent failed to complete an integrative assessment or otherwise comply with the agency's service plan. The trial court found Cabada's testimony to be credible as it related to LSSI sending service plans by certified mail to respondent and receiving respondent's signed receipts. But respondent failed to engage in any services or contact the agency in response to those service plans. Moreover, respondent testified that he "knew the process" with DCFS. Specifically, respondent testified that he knew what would happen if he failed to complete services or keep in contact with the court. He also testified that he communicated weekly with Trayvon's foster mother during the nine months following adjudication. The record shows that LSSI communicated regularly with the foster mother and left letters with her that informed respondent to contact the agency. Yet the record also shows that respondent never contacted the agency in response to those letters, and the foster mother informed LSSI that respondent had no intention to pursue reunification with Trayvon.

¶ 37 Finally, the trial court found respondent's testimony to be "incredible" as it related to maintaining contact with Trayvon. No witnesses corroborated respondent's testimony that he wrote Trayvon weekly. As the trial court noted, we are especially concerned that respondent failed to even marginally inquire into Trayvon's health when he was removed from the foster mother's home for injuries. Moreover, the record is devoid of any evidence that respondent ever provided any financial, material, or emotional support to Trayvon.

¶ 38 Based on the evidence, we conclude that the trial court's finding that respondent was an unfit parent was not against the manifest weight of the evidence. As respondent does not contest the best-interest portion of the trial court's decision, we hold that the court's order terminating respondent's parental rights was appropriate.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the judgment of the circuit court of DeKalb County.

¶ 41 Affirmed.