2017 IL App (2d) 170012-U
No. 2-17-0012
Order filed June 5, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re BRIAN S. and JAMES S., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 13-JA-442
	)	13-JA-443
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Kathy S., Respondent-Appellant).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings, that respondent was unfit as to her two children, were not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Respondent, Kathy S., appeals from the trial court's rulings terminating her parental rights to her sons Brian S. and James S. Respondent argues that the trial court's findings, that she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the children's removal during certain nine-month periods after the adjudications of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); (3) failed to

make reasonable progress towards the return of the children during certain nine-month periods (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (4) failed to protect the minors from conditions within the environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2014)), were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent has three children: James, born on October 24, 2003; Brian, born on October 1, 2009; and Cameron, born on January 22, 2013. Edward S. is the father of James and Brian, but Cameron was later adjudicated to have a different father. Respondent consented to Cameron's adoption, and Cameron is therefore not a part of the instant appeal. At the time the children came into care, respondent and Edward were not living together. Edward was living with the three boys, his friend, Carrie B., and Carrie's two children.

¶ 5 On September 23, 2013, the State filed petitions alleging that James and Brian were neglected. The State alleged that their environment was injurious to their welfare in that Cameron had multiple bruises and swelling on his face, and Edward and respondent did not have an adequate explanation about how the injuries occurred. A Department of Children and Family Services (DCFS) statement of facts was filed summarizing the situation as follows. On September 19, 2013, Edward brought 7-month-old Cameron to the hospital; Cameron had multiple bruises and swelling all over his face. Edward reported that Carrie was living with him and taking care of her children and Cameron while respondent was at work. Carrie contacted Edward and said that her daughter had hit Cameron with a toy. Edward took him to the hospital to make sure that he did not have any other injuries. Brian and James were not at home when the incident occurred. Medical personnel determined that the severity and extent of Cameron's injuries showed that they were caused by abuse.

¶ 6 Respondent stated that she was separated from Edward, and a divorce was pending. She had been hospitalized twice during the past month for psychiatric issues and had not seen Cameron during that time. She reported being diagnosed with borderline personality disorder, bi-polar disorder, and major depressant disorder with some PTSD. Respondent further reported that she was a " 'cutter' " but that she had never cut herself in front of the children.

¶ 7 The statement of facts stated that respondent had two indicated reports with DCFS. The first was from May 20, 2013, when respondent was shoplifting at Kmart while Cameron was with her. She said that she was stealing baby clothes because it was picture day at Head Start. The second indicated report was from July 29, 2013. It included that respondent had been psychiatrically hospitalized due to significant mental health issues, that she had her children with her during numerous attempts to self harm, and that Cameron was not developing well. It further stated that respondent had allowed Brian and James be in the hallway outside of the two hotel rooms where she and Edward were living while unsupervised, which led to hotel personnel later finding the boys near a utility room.

¶ 8 Also on September 23, 2013, the parties waived their right to a shelter care hearing. The trial court gave temporary guardianship and custody of Brian and James to DCFS. On November 21, 2013, based on the parents' factual stipulation, the trial court adjudicated the boys to be neglected based on Cameron's injuries. A DCFS report to the court filed that day stated that respondent had been staying with Edward since being released from Swedish American Hospital for a medication adjustment on October 21, 2013. She was having weekly supervised visits with the children at the DCFS office. Respondent was being referred to counseling and parenting services, and it was recommended that she continue with her mental health services.

¶ 9 A DCFS report to the court filed on January 15, 2014, stated that respondent had asked

about her referrals for counseling and parenting services, but she had not completed "[f]ollow-up."

¶ 10 A dispositional hearing took place on March 10, 2014. Pursuant to a stipulation, the trial court found the parents unfit or unable to take care of the children. DCFS was given guardianship and custody of the boys. A DCFS report filed with the court that day stated as follows. Respondent had not followed through with her counseling referral. She had been attending parenting through "YSB." However, YSB was unable to continue the classes with her due to her mental instability. Specifically, on March 5, 2014, DCFS was advised that respondent had attempted suicide and had to go to Swedish American Hospital. Respondent reported that she did not always take her medication consistently, and prior to the most recent incident of self-harm, she had not taken her medication for two days. She "did not utilize any appropriate coping skills, she did not attempt to reach her caseworker or caseworker's supervisor to verify information[,] and she did not let any of her providers know she was having difficulty getting her prescription filled."

¶ 11 A permanency review took place on July 1, 2014. The trial court deferred any findings regarding respondent due to her mental instability.

¶ 12 A DCFS service plan dated August 11, 2014, was filed on December 16, 2014. It stated the following. Respondent did not believe that Carrie, who was also a friend of hers, had injured Cameron. Respondent stayed with Edward the majority of the time, even though they were separated. She did not believe that she neglected the children, as she had been dealing with her own mental health. She did not acknowledge "what put Cameron in harm[']s way" or the possible harm that could have occurred to James or Brian. The "most recent episode" involving respondent's mental health was that she cut her arm and was brought to the hospital and released.

She had been dropped from parenting classes due to her instability, and she could not start counseling until she was more stable in her behaviors and compliant with medication. Respondent was residing at a psychosocial rehabilitation center, and she reported conflicting ideas of where she would live once she was discharged.

¶ 13 A DCFS permanency hearing report to the court also filed on December 16, 2014, stated that respondent had been living at the Midway Neurological and Rehabilitation Center in Bridgeview for most of 2014. Visits were attempted in June 2014, but the facility was reported to be an inappropriate setting, and respondent struggled with dealing with all three children during the visit. Visits were therefore changed to weekly supervised visits in the community. Per respondent's "treatment team," she was able to engage in recommended services such as parenting classes. DCFS had provided her with numerous referrals in her area, but she had not identified a specific agency where she would attend parenting classes. Respondent had difficulty maintaining healthy boundaries with Edward.

¶ 14 Also on December 16, 2014, by agreement of the parties, the trial court reserved findings regarding the parents until the next court date.

¶ 15 An addendum to the permanency hearing report was filed on April 7, 2015. It stated that respondent had not completed any services to date. Her case manager at Midway Neurological stated that she still struggled with daily living skills, money management, boundaries with peers, and medication compliance. During visits, she was unable to redirect and discipline the children, requiring the case aide to step in. For example, she did not try to stop James and Brian from fighting or was ineffectual in her efforts. Due to her lack of progress and difficulty during visits, the visits were temporarily halted until her treatment providers reported improvement.

¶ 16 Also filed on April 7, 2015, was a service plan dated March 16, 2015. Respondent was

rated unsatisfactory on the goals of improving her parenting skills and managing her mental health symptoms. She had not been progressing at the rehabilitation facility, and therefore was unable to attend parenting classes. She was not consistently taking her medication or using coping skills effectively.

¶ 17 After a hearing on April 7, 2015, the trial court found that respondent had not made reasonable efforts or progress. It maintained the permanency goal at return home within 12 months.

¶ 18 A DCFS service plan dated September 1, 2015, was filed on September 29, 2015. It stated that respondent had not completed any services to date and was currently psychiatrically hospitalized in Freeport. It rated her unsatisfactory in the areas of improving her parenting skills and managing her mental health symptoms.

¶ 19 A report to the court regarding Brian filed on September 29, 2015, discussed his emotional and behavioral issues. He was reported to experience auditory hallucinations at night, difficulty sleeping, and "extreme behaviors" in regards to visiting his parents. He had been diagnosed with PTSD, reactive attachment disorder, bipolar disorder with homicidal ideations, and schizoaffective disorder.

¶ 20 A permanency review hearing took place on November 5, 2015. Respondent acknowledged not engaging in any services and asked for a deferred finding. The trial court found that respondent had not made reasonable efforts or progress. It further found that it was in the children's best interest to maintain the permanency goal at return home within 12 months.

¶ 21 A report to the court about the boys filed on May 10, 2016, stated that Brian's and James's foster parents had asked for them to be removed from their respective homes. A legal screen had taken place on April 27, 2016, with the recommendation of a goal change to

termination of parental rights.

¶ 22 At a permanency hearing on May 10, 2016, the trial court found that respondent had not made reasonable efforts or reasonable progress, and that it was in the children's best interest that their goals be changed to substitute care pending court determination on termination of parental rights.

¶ 23 The State filed a petition to terminate parental rights on June 23, 2016. It alleged that respondent was unfit in that she had: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the children's removal during certain nine-month periods after the adjudications of abuse or neglect, specifically November 21, 2013, to August 21, 2014; August 21, 2014, to May 21, 2015; May 21, 2015, to February 21, 2016; and September 22, 2015, to June 22, 2016 (750 ILCS 50/1(D)(m)(i) (West 2014)); (3) failed to make reasonable progress towards the return of the children during the nine-month periods listed above (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (4) failed to protect the minors from conditions within the environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2014)).

¶ 24 A hearing on the petition to terminate parental rights took place on July 28, 2016, and December 9, 2016. Caseworker Sherry Brown testified as follows. Respondent participated in an integrated assessment. As a result, she was required to participate in individual counseling for mental health, psychiatric services which would include medication management, services for domestic violence, parenting classes, and any recommended services that came from those services. At the beginning of the case, respondent had minimal contact with the children. She would call Brown or her supervisor once a month or once every other month. In 2014,

respondent was living at a psychiatric facility but was able to participate in services while living there. Brown identified parenting classes in the area, but respondent failed to engage in them. She left the psychiatric facility in March 2015 and was in Freeport for some time. She set up a psychiatric appointment and a counseling appointment, but she did not follow through with them. Respondent eventually moved back to Rockford and was supposed to engage in psychiatric services at Rosecrance Ware, but she failed to consistently do so. Respondent had not completed services and never consistently engaged in medication monitoring.

¶ 25 Both Brian and James had emotional and behavioral issues. Supervised visits began at the facility where respondent was living, twice a month for two hours. They were stopped because the facility was not an appropriate environment for children. Visits never became unsupervised because respondent went in and out of the treatment facility, and DCFS needed a pattern of consistency for the children. Also, it was difficult to maintain contact with respondent due to changing phone numbers. The children could not currently be placed with respondent because she did not have a place to stay and had not demonstrated any stability regarding her ability to maintain basic care for herself, such as medication management. During visits, she occasionally brought the children gifts and snacks.

¶ 26 Kaitlyn Folliard, James's and Brian's caseworker since May 2016, provided the following testimony. James and Brian were in specialized foster care due to their diagnoses and behavioral issues. Brian was previously diagnosed with PTSD, but he was doing better, so his therapist changed the diagnosis to trauma unspecified and reactive attachment disorder. Brian was currently doing well in his foster placement. James had ADHD and reactive attachment disorder. Respondent regularly contacted Folliard to ask about the boys' well-being.

¶ 27 On December 20, 2016, the trial court found that the State had proven all four counts

against respondent by clear and convincing evidence. Regarding count 1, the trial court stated that the evidence showed that she never completed any of her services, that visitation was inconsistent from every month to every other month, and that she never addressed her major issue of mental health services and an appropriate medication schedule. Regarding count 2, the trial court stated that the evidence showed that respondent had been found not to have made reasonable efforts at the permanency reviews on April 7, 2015, November 5, 2015, and May 10, 2016. For count 3, the trial court stated that respondent had been found to have not made reasonable progress during the same permanency reviews, and that the evidence showed that steps were never taken to return the children home. For count 4, the "whole series of incidents started" when respondent took Cameron with her and committed a theft, after which Carrie physically abused Cameron.

¶ 28 The case then proceeded to the best interest hearing, after which the trial court found that the State had proven by at least a preponderance of the evidence that it was in James's and Brian's best interest for respondent's parental rights to be terminated. Respondent timely appealed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, respondent argues that it was against the manifest weight of the evidence for the trial court to find that she was unfit on all four counts; respondent does not challenge the trial court's ruling on the children's best interest.

¶ 31 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the

Adoption Act (750 ILCS 50/1(D) (West 2014)). *Id.* If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 32 A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009). We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 26. A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 28. In child custody cases, we afford even more deference to the trial court's ruling than under the traditional manifest-weight-of-the-evidence standard, due to the cases' delicacy and difficulty. *Id.*

¶ 33 We first examine the trial court's determination on count 3, that respondent failed to make reasonable progress during the time periods alleged. One statutory ground of unfitness is a parent's failure to make reasonable progress towards the child's return during any nine-month period after the initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2014). Our supreme court has defined reasonable progress as " 'demonstrable movement toward the goal of reunification.' " *In re C.N.*, 196 Ill. 2d 181, 211 (2001) (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)). Progress towards the child's return is measured by the parent's compliance with the service plans and the court's directives, in light of both the condition which caused the child's removal and conditions that became known later and which would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. We review reasonable progress using an objective standard, and reasonable progress can be

found if the trial court can conclude that it can return the child to the parent in the near future. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. In contrast to reasonable progress, reasonable efforts is related to the goal of correcting the conditions which caused the child's removal and is judged by a subjective standard of the amount of effort that is reasonable for the particular parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006).

¶ 34 Respondent argues that the trial court's ruling on count 3 was solely based on its prior findings in permanency reviews, and that the State further failed to present sufficient other evidence that she failed to make reasonable progress. Respondent notes that permanency hearings do not deal with the issue of parental unfitness, do not have a burden or standard of proof, allow any probative evidence, and result in non-final orders. *In re R.L.*, 352 Ill. App. 3d 985, 1000 (2004). On the other hand, fitness hearings require clear and convincing evidence and result in final orders. *Id.* Respondent argues that permanency hearing findings therefore cannot meet the requirement of clear and convincing evidence necessary at fitness hearings.

¶ 35 It is true that the trial court referenced its findings from the permanency hearings when ruling on count 3. However, taken in context, it did so as part of the evidence in ruling on respondent's fitness, as opposed to basing its ruling solely on those prior findings. Significantly, the trial court further stated that evidence from the fitness hearing showed that steps were never taken to return the children home. Additionally, we may affirm a trial court ruling on a parent's fitness on any basis established by the record. *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002).

¶ 36 Respondent further argues that the DCFS service plans, which were admitted into evidence at the fitness hearing, contained improper multilevel hearsay. Respondent acknowledges that DCFS service plans are admissible at fitness hearings as a type of business

records exception to the hearsay rule. 705 ILCS 405/2-18(4)(a) (West 2014); *In re Brandon A.*, 395 Ill. App. 3d 224, 235 (2009). Indeed, determining whether a parent has made reasonable progress includes assessing his or her compliance with service plans (*In re C.N.*, 196 Ill. 2d at 216-17), so it is only logical that they are admissible and able to be considered. However, respondent argues that to the extent that there was multilevel hearsay within the plans, each additional level of hearsay had to meet a hearsay exception before it could be used by the State or the court as material evidence. See Ill. R. Evid. 805 (eff. Jan. 1, 2011) ("Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules."); *People v. McCullough*, 2015 IL App (2d)121364, ¶ 113 (multiple hearsay is not admissible under Rule 805 unless each layer of hearsay conforms to an exception).

¶ 37 We note that the service plans were admitted into evidence without objection by respondent, resulting in forfeiture of any objection to their admission on appeal. See *In re N.T.*, 2015 IL App (1st) 142391, ¶ 41. Respondent argues that she could not object to the service plans as a whole, as they were admissible, and she had no way of knowing on which of hundreds or thousands of hearsay statements the State and trial court would rely. This argument is without merit, as respondent could have limited her objection to any information within the plans that allegedly constituted multilevel hearsay. See *People v. Watt*, 2013 IL App (2d) 120183, ¶ 44 ("On review, a defendant cannot change or add to the basis for his objection."). Even otherwise, Brown, the caseworker who authored the relevant plans and on whose direct knowledge much of the information was based, testified during the fitness hearing.

¶ 38 Respondent maintains that the DCFS service plans themselves are contradictory. She argues that they repeatedly find that her progress is unsatisfactory and that she is unable to

engage in services because of her mental health problems, yet the March 16 and September 1, 2015, service plans stated that she was "addressing her mental health needs." The March 16, 2015, service plan further stated that she "identified that she would be interested in improving her parenting skills." Respondent also argues that there was no testimony from any mental health professional and no testimony based on personal knowledge as to the services available to her at various times, let alone her completion of any of them. She asserts that her undisputed repeated hospitalizations indicated that she was using mental health services. Respondent argues that although counsel and the trial court knew the facts of the case from the permanency reviews and conferences over the years, that knowledge was not evidence and was not an appropriate basis for terminating parental rights. Last, respondent argues that the trial court's statement that the minors were never returned home or steps taken to return them home indicated that the trial court was requiring that she have succeeded in all of her services. Respondent argues that the statute requires reasonable progress, not success.

¶ 39 We conclude that the trial court's finding that respondent failed to make reasonable progress towards the children's return was based on competent evidence and was not against the manifest weight of the evidence. Looking at the periods of November 21, 2013, to August 21, 2014, and August 21, 2014, to May 21, 2015, Brown's testimony and the relevant service plans show that respondent was living at a psychiatric facility during 2014 and moved out in March 2015. Brown testified that respondent was able to participate in parenting classes during that time, and although Brown told respondent about parenting classes in the area, respondent failed to engage in them. Thus, although respondent may have been interested in improving her parenting skills, as stated in the March 16, 2015, service plan that she references, she did not make efforts to participate in such services. Brown's testimony regarding parenting class

availability is also directly contrary to respondent's statement that there was no testimony about the services available to her. It was also clear from Brown's testimony and the service plans that respondent's mental health needed to stabilize before she could engage in any additional services.

¶ 40 Brown further testified that throughout the case, respondent did not consistently take her medication. The service plans, which covered the six-month periods prior to their plan dates, support this testimony. Specifically, the service plans dated August 11, 2014, March 16, 2015, and September 1, 2015, stated that respondent admitted that she was not consistent in taking her medications, which led to self-inflicted harm and hospitalization. The September 2015 plan did state that respondent was "currently addressing her mental health needs," but it did not state that she had made progress in the area of mental health. Rather, it stated that, per a third party report, respondent was currently an inpatient at Freeport Hospital and that DCFS was unable to make contact with her because her phone was disconnected and she had not signed the necessary releases. Thus, although respondent was in a psychiatric facility and/or hospitalized most of the time from November 21, 2013, to August 21, 2014, and August 21, 2014, to May 21, 2015, this does not equate to her making progress in improving her mental health. To the contrary, her personal ongoing failure to consistently take her medication was a barrier in moving forward in this area.

¶ 41 As stated, reasonable progress towards the child's return is measured by the parent's compliance with the service plans and the court's directives (*In re C.N.*, 196 Ill. 2d at 216-17), and reasonable progress can be found if the trial court can conclude that it can return the child to the parent in the near future. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. It is this latter standard that the trial court was clearly referencing in its statement that steps were never taken to return

the children home, which was a proper consideration. During the periods of November 21, 2013, to August 21, 2014, and August 21, 2014, to May 21, 2015, respondent did not begin most of her required services, much less make measurable progress on them, and it was clear that she could not yet adequately take care of herself, much less children with their own special needs. Indeed, respondent never moved to unsupervised visitation with the children, and even the supervised visitation was sporadic during many months due to respondent's living arrangements. Accordingly, the trial court's finding that respondent failed to make reasonable progress during these time periods was not against the manifest weight of the evidence.

¶ 42 We reach the same conclusion regarding the periods of May 21, 2015, to February 21, 2016, and September 22, 2015, to June 22, 2016. Much of these periods were covered by the September 1, 2015, service plan, which we have already discussed. The service plan dated February 23, 2016, stated that respondent had not completed any services to date. It stated that she had just begun to engage in mental health services at the end of the reporting period, and that she reported completing a mental health assessment in January 2016. However, respondent had not provided documentation confirming the assessment, and she had pending appointments for "psychiatric/medication management and counseling." She had been referred to a parenting class, but service referrals were difficult to coordinate because she had moved four times during the reporting period and either had no phone or changed numbers. The moves also made it difficult for her to participate in visits. Respondent was residing with her boyfriend in Rockford. She disclosed that he was a registered sex offender, and DCFS informed her that he could not be involved in visits.

¶ 43 Thus, the evidence showed that although respondent made minimal movement towards beginning mental health services during the latter of the two nine-month periods, she had not

consistently begun attending any such services or begun parenting or other classes. Respondent also moved frequently and was residing with a registered sex offender, so clearly the children could not be returned to her in the near future. As such, the trial court's finding that respondent failed to make reasonable progress during the periods of May 21, 2015, to February 21, 2016, and September 22, 2015, to June 22, 2016, was not against the manifest weight of the evidence.

¶ 44 Respondent could be found unfit for failing to make reasonable progress towards the children's return during any nine-month period alleged (750 ILCS 50/1(D)(m)(ii) (West 2014)), and we have affirmed the trial court's findings as to all of the time periods alleged. Therefore, we need not examine the trial court's finding that respondent was also unfit because she failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare; failed to make reasonable efforts to correct the conditions that were the basis for the children's removal during certain nine-month periods after the adjudications of neglect; and failed to protect the minors from conditions within the environment injurious to their welfare. See *In re H.S.*, 2016 IL App (1st) 161589, ¶ 31 (a finding of parental unfitness may be based upon evidence sufficient to support a single statutory ground).

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 47 Affirmed.