2019 IL App (2d) 190376-U
No. 2-19-0376
Order filed October 16, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A.M., a minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 15 JA 74
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Tyleshia H., Respondent-	)	Francis M. Martinez,
Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding respondent unfit and terminating her parental rights where respondent did not make reasonable progress toward the return of the minor to her care. The trial court did not rely on inadmissible hearsay in making its determination, and trial counsel's assistance was not ineffective.

¶ 2 Respondent, Tyleshia H., appeals from the trial court's ruling that she was an unfit person under multiple sub-sections of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) and terminating her parental rights. On appeal, respondent argues that the court's finding of unfitness was against the manifest weight of the evidence and was influenced by multilevel hearsay evidence presented in the State's case. Respondent further argues that she received ineffective assistance of counsel at multiple stages of the proceeding. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Late in the evening on February 27, 2015, respondent was transported to the hospital after ingesting ibuprofen tablets and cough medicine in a failed suicide attempt. As a result of that attempt, A.M., then eight months old, was in the care of her putative father, J.M. While respondent was being treated, J.M. called emergency services and stated that he was unwilling to care for A.M. because he did not know if he was her biological father.[1] The police took protective custody of A.M., who was placed in a traditional foster home by the Department of Children and Family Services (DCFS). Respondent was released from the hospital the next day with a referral to Rosecrance for further psychiatric care.

¶ 5 On March 2, the State filed a neglect petition, alleging that A.M. was neglected due to respondent having mental health issues that prevent her from properly parenting. 705 ILCS 405/2-3(1)(b) (West 2014). On March 4, respondent waived her right to a shelter care hearing and agreed with the trial court's order to award DCFS temporary guardianship and custody of A.M. Respondent failed to appear at both the adjudication and dispositional hearings. On November 11, 2015, the court entered the order of disposition, which required respondent to cooperate with all the recommended services by DCFS.

¶ 6 At the first permanency review on March 28, 2016, respondent appeared and the trial court admonished her. "[I]f you don't make reasonable efforts or progress toward the reunification, *** the State can file a petition to terminate your parental rights. I don't want that to happen, but ** [w]e won't be coming to court forever." The trial court deferred making any

[1] J.M. was subsequently ruled out by DNA as A.M.'s biological father and was discharged from the case. No father is a part of this appeal.

findings as to respondent's efforts, and the permanency goal was set for A.M. to return home in 12 months.

¶ 7 At the next three permanency reviews, the trial court found that respondent had made both reasonable efforts and progress toward reunification. On February 14, 2017, the court changed the goal to return home in five months, stating that respondent "has made tremendous progress in the last six months. So sort of a rocky start, but we've made tremendous progress." Although the goal remained return home in five months at the July 2017 permanency review, respondent missed several visits between February and July and was dropped from parenting coaching due to missing those visits. Respondent explained that she had a difficult time getting in contact with the DCFS caseworker, Charles Ward. The court ordered Ward to return respondent's phone calls.

¶ 8 The next permanency review hearing took place over four days from November 2017 to March 2018. During that time, the trial court heard testimony from both respondent and Ward regarding respondent's communication with DCFS, visitation with A.M., and completion of services. The trial court noted that the testimony between respondent and caseworker was "diametrically opposed." Respondent failed to appear at two of the hearing dates, including March 19, 2018, when the court found that respondent had not made reasonable efforts or progress toward reunification and changed the goal to return home in 12 months.

¶ 9 The final permanency review occurred August 13, 2018. Respondent did not appear. The trial court found that she had not made reasonable efforts or progress toward reunification and changed the goal to substitute care pending the court's determination of termination of parental rights.

¶ 10 The State filed a motion to terminate respondent's parental rights on August 20, 2018. In its motion, the State alleged that respondent was an unfit person under section 1(D) of the Adoption Act because respondent failed (1) to maintain a reasonable degree of interest, concern, or responsibility as to A.M.'s welfare; (2) to protect A.M. from injurious conditions in her environment; (3) to make reasonable efforts to correct the conditions that caused A.M. to be removed from her care; and (4) to make reasonable progress toward the return of A.M. to her care. The State alleged two nine-month periods relating to these counts: July 25, 2017 through March 25, 2018; and November 12, 2017 through August 12, 2018.

¶ 11 After a few continuances, the hearing on the State's motion took place on February 8, 2019. In its case-in-chief, the State elicited testimony from Ward and the current caseworker, Stephanie Sanders. The State also introduced into evidence three six-month service plans, dated August 23, 2017, February 20, 2018, and August 2, 2018, the indicated packet, and the hospital records from respondent's 2015 suicide attempt as exhibits 1-5, respectively. The documents were admitted into evidence without objection.

¶ 12 Ward testified that he was the caseworker from 2015 through December 2018 and that, during that time, respondent was required to complete various services. These services included parenting classes/coaching, mental health assessments, substance abuse treatment, and domestic violence counseling, which were documented in the six month service plans. Ward testified that respondent failed to complete parenting coaching because respondent was not visiting with A.M. consistently and therefore was discharged from the program. Respondent was asked to complete two mental health assessments, one at the beginning of the case and another in January 2018. Respondent was required to submit to random drug screenings, and "two or three" were positive

for marijuana in 2018. Ward testified that respondent never submitted proof that she attended a required substance abuse assessment after the positive drug drops.

¶ 13 Ward further testified that respondent was very "inconsistent" in communicating with him, maintaining suitable housing and employment, and visiting with A.M. Ward noted that respondent asked to stop visits with A.M. in September 2017. After respondent asked to start visits again in December 2017, she failed to appear for all three scheduled visits. In January 2018, respondent was asked to complete another mental health evaluation to address why she was not visiting with A.M. Ward explained that the mental health evaluation was "to help [respondent] understand why she was making the decisions that she was at the time" regarding her anger, relationships with others, and instability with housing and employment. Ward explained that respondent eventually completed the mental health evaluation in June 2018 and began visiting with A.M. again thereafter.

¶ 14 Respondent testified on her own behalf. Her testimony revealed that from July 2017 through November 2018 she had at least four different jobs and lived in at least four different places with various friends and relatives. Respondent testified that, upon her request, she did not visit her daughter from the middle of August 2017 through December 2017. She then testified that Ward would not allow her to have visits during that time because she was homeless. When visits began again in December 2017, respondent admitted to missing at least one visit.

¶ 15 On March 6, 2019, the trial court announced its decision on the State's motion. The court found respondent unfit on all four counts. Addressing counts one, three, and four, the court noted that respondent failed to complete parent coaching, did not "adequately address" her mental health issues, had positive drug drops, and had substantial gaps in visits. Specifically addressing count two, the court noted that the hospital records and the indicated packet introduced into

evidence were "sufficient to establish" that respondent "attempted to take her own life while in possession of the minor child" and that "the evidence [was] unrebutted" that respondent failed to protect A.M. from an injurious environment.

¶ 16 The trial court then held a hearing on the best interests of A.M. and found that it was in her best interests for respondent's parental rights to be terminated.[2] Respondent timely appealed.

¶ 17 II. ANALYSIS

¶ 18 Before addressing the merits of respondent's appeal, we address the timeliness of our decision. This case is designated as "accelerated" pursuant to Illinois Supreme Court Rule 311 (eff. July 1, 2018) because it involves a matter affecting the best interests of children. Rule 311(a)(5) provides, in relevant part, that "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Here, the notice of appeal was filed on May 6, 2019, in the circuit court, and the 150-day deadline to issue our disposition was October 3, 2019. We note, however, that on July 8, 2019, respondent filed a motion to submit her initial brief instanter, a week after it was due. The motion was denied without prejudice, to correct a scrivener's error in the prayer for relief. On July 15, 2019, respondent resubmitted the motion, correcting the error, and we granted the motion. We revised the briefing schedule to allow the State until August 19, 2019, to file its brief, and respondent until September 2, 2019, to file her reply brief. Because the case was not ready for disposition until September 3, 2019, we find good cause of issuing our decision after the 150-day deadline.

¶ 19 We now turn to the merits of respondent's appeal. Respondent argues that the trial court erred in finding her unfit under section 1(D) of the Adoption Act for three reasons: (1) the court relied on inadmissible hearsay evidence in making its finding, (2) her trial counsel was

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[2] Respondent does not contest the trial court's best interests finding on appeal.

ineffective, and (3) the court's decision was against the manifest weight of the evidence. We take each of her arguments in turn.

¶ 20 We start by considering respondent's first argument that the trial court erred in finding respondent unfit because the State did not provide any foundation or exception for hearsay statements in both Ward's testimony and State's exhibits 1-5. Respondent argues the court improperly relied on inadmissible hearsay statements in the exhibits in making its finding. The State responds that respondent forfeited this issue by failing to object to the admission of the testimony and exhibits at the hearing and, even if we consider the issue, that any such statements were admissible. We agree with the State.

¶ 21 Although respondent's trial counsel did not object to the admission of the testimony and exhibits and thus did not preserve this issue on appeal, we may review an unpreserved error in juvenile proceedings under the plain-error doctrine. "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Illinois Supreme Court Rule 615(a) (eff. Jan.1, 1967). The plain-error doctrine allows a reviewing court to consider an unpreserved error where either a clear or obvious error occurs and the evidence is so closely balanced that such error threatens to tip the scales of justice against the accused, regardless of the seriousness of the error, or a clear or obvious error occurs and is so serious that it affects the fairness of the trial and challenges the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Walker*, 323 Ill. 2d 113, 124 (2009). Respondent seemingly argues that the second prong applies in the case at hand, stating the admission of Ward's testimony and the State's exhibits "so badly prejudiced" her that it "must be addressed and remedied" on appeal. Because a parent's right to raise her biological child is a fundamental liberty interest (*In re Andrea D.*, 342 Ill. App. 3d 233, 242 (2003)), we will address respondent's

argument that the trial court improperly relied on inadmissible hearsay in making its unfitness finding. Rulings on whether a statement is hearsay is a question of law subject to *de novo* review. *In re A.B.*, 308 Ill. App. 3d 227, 234 (1999).

¶ 22 The first step in conducting plain-error review is to determine whether error occurred, which requires a substantive review of the issue. *Walker*, 323 Ill. 2d at 124. Termination proceedings under the Juvenile Court Act of 1987 (Act) employ the general rules of civil practice and the provisions of the Code of Civil Procedure, including evidentiary rules on hearsay, unless the Act specifically governs the procedure at issue. *In re Bernice B.*, 352 Ill. App. 3d 167, 175 (2004) (quoting *In re A.B.*, 308 Ill. App. 3d at 234-35). Section 2-18-(4)(a) of the Act provides, in relevant part,

> "Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. *** *All other circumstances of the making of the memorandum, record, photograph or x-ray, including lack of personal knowledge by the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility*." (Emphasis added) 705 ILCS 405/2-18-(4)(a) (West 2018).

To establish the foundational requirements for the business record exception provided in the Act, the State must have established the documents were made (1) as a memorandum or record of the

event, (2) in the ordinary course of business, and (3) at the time of the event or within a reasonable time thereafter. *In re J.Y.*, 2011 IL App (3d) 100727, ¶ 13. Here, the State did just that.

¶ 23 Ward's testimony established that he created the six-month service plans to record the events that took place regarding respondent's compliance with the required services. Included in the plans were specific timeframes and dates of the events that transpired and whether respondent successfully completed a service. Additionally, Sanders testified that the plans introduced into evidence were regularly kept in the DCFS file. Contrary to respondent's assertion, the caseworkers' testimony establishes the proper foundation for the six-month service plans to be admitted into evidence. The majority of respondent's argument focuses on the six-month service plans, but we note for clarity that both the indicated packet and hospital records were admitted with certifications, following the statutory procedure laid out in section 2-18(4) of the Act. See 705 ILCS 405/2-18(4)(b) ("Any indicated report filed pursuant to the Abused and Neglected Child Reporting Act shall be admissible in evidence.") and *In re Jamarqon C.*, 338 Ill. App. 3d 639 (2003) (holding that certified hospital records kept in the ordinary course of business were sufficient to meet the State's burden of clear and convincing evidence of unfitness).

¶ 24 Respondent additionally argues that there were hearsay statements throughout the six-month service plans. We find this argument to be unpersuasive. In *In re A.B.*, 308 Ill. App. 3d 227, the court held that the lengthy testimony regarding the contents of service plans was in error because "[t]he witnesses had secondhand knowledge, at best, of the events that led to the conclusions contained in the service plans." *In re A.B.* 308 Ill. App. 3d at 237. That is not what happened in the present matter. Ward provided first-hand testimony of his interaction with

respondent, as well as her missed visitation and failure to complete services. Further, we note that the *A.B.* court held that "the client service plans alone, without the aid of the supporting testimony, are sufficient to establish at least one ground of parental unfitness by clear and convincing evidence." *Id.*

¶ 25 We therefore cannot find any error in the trial court's admitting the testimony and exhibits into evidence. We further hold that the court did not err in using the admitted evidence in making its findings of respondent's unfitness.

¶ 26 Next, respondent argues that her trial counsel was ineffective for failing to object at three distinct times: (1) the removal of A.M. from respondent's care during the shelter care hearing, (2) the admission of evidence during the adjudication and disposition hearings, and (3) the admission of the State's evidence during the termination hearing. In response, the State maintains that respondent forfeited any argument of ineffective assistance of counsel for the proceedings before the termination hearing and that respondent's trial counsel's assistance during the termination hearing was not below an objective standard of reasonableness. Again, we agree with the State.

¶ 27 A respondent parent is entitled to counsel at all stages of neglect proceedings. 705 ILCS 405/1-5(1) (West 2018). Any ineffective claims of a respondent's trial counsel must meet the dual-prong *Strickland* standard, that is a respondent must show that counsel's representation fell below an objective standard of reasonableness and that a reasonable probability exists that, but for the error, the result would have been different. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32.

¶ 28 We first address the claim that counsel was ineffective during the shelter care, adjudication, and dispositional hearings. In *In re M.J.*, 314 Ill. App. 3d 649, 654-55 (2000), the

court held that appellate jurisdiction is not perfected with respect to issues in the neglect proceedings when a respondent parent does not file a notice of appeal from the order of disposition. We therefore agree with the State that respondent forfeited any argument of ineffective assistance at the adjudication and dispositional proceedings by not filing a notice of appeal after the disposition order was entered. We also note that, like the respondent parent in *In re M.J.*, the disposition order was not mentioned in the appropriately filed notice of appeal, which only identified the termination hearing. *Id.* at 655. We therefore only address respondent's argument that her trial counsel was ineffective for failing to object to the admission of the State's evidence during the termination hearing.

¶ 29 In respondent's opening brief, she argues that if trial counsel objected to the admission of the State's exhibits during the termination hearing, there would be no evidence to support the State's motion to terminate respondent's parental rights. However, in her reply brief, she concedes that "if there was no error in failing to object to the state's evidence, or to call witnesses to contradict their claims, then counsel was not ineffective." Given our above analysis on the admissibility of the State's evidence, we accept respondent's concession of this argument and hold that counsel was not ineffective.

¶ 30 Respondent's final argument is that the trial court erred in finding her unfit on all four counts alleged by the State. In the bifurcated termination process, the State must first prove by clear and convincing evidence that a parent is unfit under any ground listed in section 1(D) of the Adoption Act. *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16. Sub-section 1(D)(m)(ii) of the Adoption Act states that a parent is unfit where she fails to make reasonable progress toward the return of her child to her during any nine-month period, as identified by the State, following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2016). The court may only consider

evidence of the parent's conduct during the relevant nine-month period identified by the State. *In re R.L.*, 352 Ill. App. 3d 985, 999 (2004). Reasonable progress toward the return of the child is judged on an objective standard that focuses on the steps that the parent has taken toward reunification. *In re H.S.*, 2016 IL App (1st) 161589, ¶ 27. The benchmark for measuring the parent's progress toward the return of the child encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). At a minimum, a parent must make demonstrable movement toward the goal of returning the child home. *In re H.S.*, 2016 IL App (1st) 161589, ¶ 27. A trial court's findings of unfitness will not be disturbed on review unless they are contrary to the manifest weight of the evidence. *Id.* at ¶ 23. A court's decision is against the manifest weight of the evidence only if the decision is unreasonable, arbitrary, or not based on the evidence, or if the opposite conclusion is clearly apparent. *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 31 Here, the evidence was sufficient to support the trial court's findings that respondent did not make reasonable progress toward the return of A.M. to her care. The two service plans introduced into evidence during the first identified nine-month time period, August 2017 through March 2018, require respondent to complete a mental health exam and follow its recommendations, maintain stable housing, attend parenting training, and cooperate with DCFS. Both plans state that respondent did not satisfactorily complete any of those tasks. Respondent did not obtain the mental health evaluation until June 2018, well after the nine-month time period alleged. Respondent was evicted sometime in 2017 and stayed with at least four different friends and relatives throughout the identified nine-month period. She refused to supply an address for a

home check. Respondent also did not complete parenting training due to her inconsistent visits with A.M. Upon respondent's request, her visits with A.M. were temporarily suspended from August 2017 through December 2017, and, when visits were scheduled in December 2017, respondent did not attend them. We note that "compliance with DCFS service plans is intimately tied to a parent's progress toward the return of the child." *In re C.N.*, 196 Ill. 2d at 219. Given respondent's failure to comply with the services listed in the plan, we cannot say that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 32 Further, the testimony elicited from both Ward and respondent echoes the documentary evidence introduced at trial. Ward identified that respondent was referred to complete a mental health evaluation during the identified nine-month period to address why she was inconsistent with visits. Respondent admitted that she was referred to complete the mental health evaluation, and she thought it was unnecessary. Ward testified that respondent was evicted in 2017 and did not provide a new home address. Respondent admitted that she moved "a couple of times" because she did not have a place of her own and identified four friends or relatives that she stayed with during the nine-month period alleged. Ward identified that respondent stopped visits with A.M. for several months and failed to attend visits when they began again. Respondent admitted she was "trying to be responsible" and asked to stop visits until she found suitable housing. She also admitted missing at least one scheduled visit in December 2017, identifying transportation as the reason she missed it. Based on the testimony, the trial court could reasonably conclude that respondent did not comply with service plans or the court's directives to cooperate with DCFS during the nine-month period identified by the State, and we cannot hold that the court's decision was against the manifest weight of the evidence.

¶ 33 When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, reviewing courts need not consider the additional grounds of unfitness found by the trial court. See *In re Gwynne P.,* 215 Ill. 2d 340, 363 (2005). We therefore do not discuss the other grounds of unfitness found by the court.

¶ 34 Because the exhibits and testimony were not multilevel hearsay, trial counsel was not ineffective for failing to object to their admission. Further, it was not against the manifest weight of the evidence that the respondent was an unfit person pursuant to section 1(D) of the Adoption Act. We thus affirm the decision of the trial court.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the order of the Circuit Court of Winnebago County.