

NOTICE

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NO. 4-10-1010

Filed 05/06/2011

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Lo.P. and Le.P., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 09JA2
NATOSHA PHELPS,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred
in the judgment.

ORDER

Held: The trial court's finding that respondent mother was unfit pursuant to section 1(D)(p) of the Adoption Act (750 ILCS 50/1(D)(p) (West 2008)) was not against the manifest weight of the evidence.

Respondent, Natosha Phelps, appeals the trial court's termination of her parental rights to her two children. She argues the court's unfitness finding was against the manifest weight of the evidence. We affirm.

Respondent is the mother of two children, Lo.P. (born September 24, 2008) and Le.P. (born January 17, 2010). (The parental rights of each child's father were also terminated during the proceedings at issue but this appeal relates only to respondent.) In December 2004, prior to the birth of her children, respondent was the subject of a petition for the appoint-

ment of a guardian. The petition alleged respondent was a disabled person in need of a plenary guardianship due to suffering from histrionic personality disorder with antisocial and borderline traits. Respondent was alleged to be without sufficient understanding or capacity to make or communicate responsible decisions concerning her own care. The petition was granted and, eventually, respondent's younger brother was appointed as her guardian.

In January 2009, respondent and three-month-old Lo.P. came to the attention of the Illinois Department of Children and Family Services (DCFS) after respondent left Lo.P. in the care of her mother, Brenda Phelps, who had previously been convicted of sexual-abuse crimes against respondent. At that time, Lo.P. was taken into protective custody and respondent was deemed to have unresolved mental-health issues. It was noted that she made suicidal statements and reported hearing voices.

On January 14, 2009, the State filed a petition for adjudication of wardship. In the proceedings that followed, the trial court adjudicated Lo.P. neglected, made him a ward of the court, and placed Lo.P. in DCFS's custody and guardianship. On July 14, 2009, respondent executed a final and irrevocable surrender of her parental rights and the court entered an order terminating respondent's parental rights. Ultimately, however, the court voided all of its orders, as well as respondent's

surrender, based upon a lack of notice to respondent's guardian.

In January 2010, while Lo.P.'s case was pending, respondent gave birth to Le.P., who was born premature and with medical issues. At the time of Le.P.'s birth, respondent tested positive for cocaine. Le.P. was taken into protective custody upon his release from the hospital.

On June 24, 2010, the State filed a first supplemental petition for adjudication of wardship as to both Lo.P. and Le.P. On July 8, 2010, the trial court adjudicated Le.P. neglected. On August 24, 2010, it adjudicated Lo.P. neglected. The same date, it consolidated the minors' cases and entered its dispositional order. Lo.P. and Le.P. were made wards of the court and their custody and guardianship was placed with DCFS.

On August 30, 2010, the State filed a petition to terminate respondent's parental rights. It alleged respondent was unfit pursuant to section 1(D)(p) of the Adoption Act (750 ILCS 50/1(D)(p) (West 2008)), stating:

"She has an inability to discharge her parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation as defined in Section 1-116 of the Mental Health and Developmental Dis-

abilities Code, or developmental disability as defined in Section 1-106 of that Code and there is sufficient justification to believe that the inability to discharge her parental responsibilities shall extend beyond a reasonable time period ***."

The State further alleged it was in the children's best interests to terminate respondent's parental rights.

On November 18, 2010, the trial court conducted a hearing on the fitness portion of termination proceedings. The court took judicial notice of the petitions for adjudication of wardship, adjudicatory orders, the dispositional order, and respondent's guardianship file. The State also submitted two psychological evaluations performed on respondent.

The first evaluation, dated September 1, 2000, was performed by Dr. William Robison when respondent was 16 years old. Dr. Robison identified respondent as a person with "an underlying low-level depression, with significant levels of anxiety that relate to social and interpersonal functioning." She had a "tendency toward dependency on others along with a tendency to be a victim in social relationships ***." Dr. Robison found respondent appeared "to be developing behavior patterns that could provide the foundation for the development of a personality disorder." He noted respondent displayed several

features of borderline behavior. Dr. Robison identified respondent has having a full scale IQ of 75, in the borderline range, and a performance IQ of 80, in the low average range.

On August 13, 2010, Dr. William Kohen, a clinical psychologist, performed a second evaluation on respondent, then age 26. Dr. Kohen assessed respondent as having continued depressive feelings and "oppositional, negative, and self-defeating behaviors (passive aggressive and antisocial tendencies)." She also had issues with substance abuse. Dr. Kohen's intelligence testing on respondent showed her abilities fell in the borderline to mild mental retardation range and her achievement test results fell "at low levels." He documented respondent's full-scale IQ as 66. Dr. Kohen opined respondent's "cognitive deficits put a low ceiling on what she [was] capable of learning and doing" and also that "[h]er overall adaptive behavior [was] low." Dr. Kohen noted respondent was unable to manage her own money and had not lived on her own for any extended period of time.

Dr. Kohen further stated respondent had very little parenting experience and testing results showed she was unable to "adequately understand children's needs." He assessed respondent as having multiple problems that were a barrier to effective parenting and living independently and successfully. Dr. Kohen noted respondent's poor judgment in relationships with men and

her susceptibility to negative influences. He further stated as follows:

"[Respondent] has a long way to go to achieve a stable lifestyle before she can assume responsibility for parenting a young child. [Respondent's] prognosis for making sustained, positive changes and for meeting service plan goals within an appropriate time frame has to be considered poor to guarded."

Dr. Kohen diagnosed respondent with bipolar disorder with psychotic features, physical abuse of a child by history as a victim, sexual abuse of a child by history as a victim and perpetrator, physical abuse of an adult by history as a victim, posttraumatic stress disorder, cocaine abuse, borderline intellectual functioning to mild mental retardation, and personality disorder not otherwise specified with passive-aggressive and antisocial features. Finally, he identified respondent's global assessment of functioning score as being low, noting she received a 52 on a scale of 1 to 100.

At the fitness hearing, the State also presented the testimony of Joy Hershberger, a child welfare specialist and the children's DCFS caseworker. Hershberger testified she did not believe respondent had the ability to discharge her parental responsibilities. She based her opinion on respondent's incon-

sistent and erratic behavior, noting respondent became upset very easily, had angry outbursts, and had made threats. During Hershberger's testimony, the trial court noted respondent "stormed" from the courtroom, appeared "irate," and mumbled the word "bitch."

Hershberger continued her testimony, stating she believed respondent's behavior was caused by her mental-health issues and substance abuse. She felt respondent's mental-health conditions caused her difficulty with maintaining stability in her life and everyday functioning. Since Hershberger had been involved with the children's case, respondent had not maintained employment or stable housing. Hershberger testified, on numerous occasions, respondent tested positive for cocaine and other illegal substances. Respondent's most recent positive test was in October 2010.

Hershberger stated respondent had never been successfully discharged from any mental-health services as an adult. She believed respondent was still in need of such services, noting respondent experienced significant sexual abuse as a child. Hershberger noted respondent repeatedly made suicidal comments.

Hershberger identified respondent's service plan goals as being parenting objectives, individual counseling, substance abuse services, domestic violence services, and maintaining

financial and housing stability. Over the course of her children's cases, the only goal respondent completed was the parenting objective. Hershberger noted respondent's visitations with Lo.P. were sporadic. Once she surrendered her rights in that case, visitation ceased. However, respondent was able to maintain regular visits with Le.P. and was typically appropriate during those visits. Hershberger testified paternity had not been established for Le.P. and respondent identified 10 putative fathers.

Hershberger did not believe respondent would be able to discharge her parental responsibilities any time in the near future. She did not know if respondent would ever be able to parent on her own given respondent's intellectual level and mental-health diagnosis.

At the conclusion of the hearing, the trial court found respondent unfit as alleged in the State's petition. It then conducted a best-interest hearing in the matter. Following the evidence and the parties' arguments, the court found it was in the children's best interests to terminate respondent's parental rights. On November 18, 2010, the court entered its termination order.

This appeal followed.

On appeal, respondent argues the trial court erred by finding the State proved her unfit by clear and convincing

evidence. She contends the court's decision was against the manifest weight of the evidence.

During proceedings to terminate parental rights, the State must prove parental unfitness by clear and convincing evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1113-114, 762 N.E.2d 701, 705 (2002). On review, the trial court's unfitness finding will not be set aside unless it is against the manifest weight of the evidence. *M.F.*, 326 Ill. App. 3d at 1114, 762 N.E.2d at 705.

Section 1(D)(p) of the Adoption Act (750 ILCS 50/1(D)(-p) (West 2008)) sets forth the following ground for parental unfitness:

"Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation ***, or developmental disability ***, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period."

Thus, to establish unfitness pursuant to section 1(D)(p), the State must show (1) a parent suffers from a mental impairment,

mental illness, mental retardation, or developmental disability that prevents the parent from discharging his or her parental responsibilities and (2) such inability will extend beyond a reasonable period of time. *In re Michael M.*, 364 Ill. App. 3d 598, 608, 847 N.E.2d 911, 920 (2006).

Here, the record shows respondent suffered from mental-health conditions that made her unable to discharge her parental responsibilities both at the time of termination proceedings and in the foreseeable future. Dr. Robison's psychological evaluation on respondent at age 16 showed she appeared "to be developing behavior patterns that could provide the foundation for the development of a personality disorder." He noted respondent displayed several features of borderline behavior. Dr. Robison also noted respondent's "tendency toward dependency on others along with a tendency to be a victim in social relationships." In 2004, respondent was the subject of guardianship proceedings, during which she was deemed a disabled person who lacked the capacity to manage her own affairs.

By the time of Dr. Kohen's evaluation in 2010, respondent's mental-health condition had developed as predicted. Dr. Kohen diagnosed respondent with bipolar disorder with psychotic features, posttraumatic stress disorder, cocaine abuse, and personality disorder not otherwise specified with passive-aggressive and antisocial features. He found respondent had a full-

scale IQ of 66 and her intellectual abilities fell in the borderline to mild mental retardation range. Dr. Kohen stated respondent's "cognitive deficits put a low ceiling on what she [was] capable of learning and doing" and "[h]er overall adaptive behavior [was] low."

Dr. Kohen's evaluation further stated respondent was unable to manage her own money and had not lived on her own for any extended period of time. She had little parenting experience and did not "adequately understand children's needs." Dr. Kohen opined as follows:

"[Respondent] has a long way to go to achieve a stable lifestyle before she can assume responsibility for parenting a young child. [Respondent's] prognosis for making sustained, positive changes and for meeting service plan goals within an appropriate time frame has to be considered poor to guarded."

Hershberger's testimony, which described respondent's behavior during the pendency of her children's case, supported Dr. Kohen's findings. The record showed respondent failed to engage in nearly all of her required services, was unable to maintain employment or appropriate and stable housing, continuously abused illegal substances, had outbursts of anger, and repeatedly threatened to commit suicide.

All of the evidence presented showed respondent had mental-health issues that prevented her from discharging her parental responsibilities. It also showed respondent's inability to parent her children would extend far beyond any reasonable time frame. The trial court's unfitness finding was not against the manifest weight of the evidence.

For the reasons stated, we affirm the trial court's judgment.

Affirmed.