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2011 IL App (4th) 110184-U

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NOS. 4-11-0184, 4-11-0185 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.B., S.K. and C.M., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Jersey County
v. (No. 4-11-0184))	Nos. 07JA15
BOBBI SUE MOSER,)	07JA16
Respondent-Appellant.)	07JA7
<hr/>)
In re: K.B., S.K., and C.M., Minors,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0185))	Honorable
JOSEPH BUSHNELL,)	Eric S. Pistorious,
Respondent-Appellant.)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* In case No. 4-11-0184, where respondent mother failed to challenge one ground of unfitness and did not contest the trial court's best-interest finding, the trial court's decision to terminate her parental rights was not against the manifest weight of the evidence;
- ¶ 2 *Held:* (1) In case No. 4-11-0185, where the State's petition was not deficient for failing to specify a nine-month period in the petition to terminate parental rights, no error occurred; and
- ¶ 3 (2) Where respondent father failed to challenge one ground of unfitness and did not contest the best-interest finding, the court's decision to terminate his parental rights was not against the manifest weight of the evidence.

¶ 4 In March 2010, the State filed a petition to terminate the parental rights of respondent mother, Bobbi Sue Moser, and respondent father, Joseph Bushnell. In a February 2011 written order, the trial court found respondents unfit and concluded it was in the minors' best interest that parental rights be terminated.

¶ 5 On appeal in case No. 4-11-0184, respondent mother argues the trial court erred in (1) finding her unfit and (2) finding it the minors' best interest that her parental rights be terminated. We affirm.

¶ 6 On appeal in case No. 4-11-0185, respondent father argues (1) the State's petition to terminate parental rights was deficient and (2) the trial court erred in finding him unfit. We affirm.

¶ 7 I. BACKGROUND

¶ 8 In August 2006, the State's Attorney in Calhoun County filed a petition for adjudication of wardship, alleging S.K., born in November 2005, was a neglected minor pursuant to section 2–3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2–3(1)(b) (West 2008)), because respondent mother created an injurious environment. In September 2006, the State filed a petition for adjudication of wardship, alleging C.M., born in December 2003, was a neglected minor for the same reason. The petitions alleged respondent mother created an injurious environment when she allowed her car to travel down the road with the back door open with a minor in the backseat, she transported another person under the influence of alcohol and/or drugs, and she failed to provide adequate supervision. The trial court found probable cause to believe S.K. and C.M. were neglected and an immediate and urgent necessity existed to place the minors in shelter care.

¶ 9 In November 2006, the trial court found the minors were neglected based on respondent mother's operation of a motor vehicle with the rear door open and a child in the backseat. In its February 2007 dispositional order, the court found respondent unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minors. The court adjudicated the minors as wards of the court and granted guardianship to the Department of Children and Family Services (DCFS). The minors' cases were later transferred to Jersey County.

¶ 10 In May 2007, a juvenile petition was filed in Jersey County, alleging K.B., born in May 2007, was at a risk of harm because her parents, respondent father and respondent mother, created a substantial risk of physical injury to her by other than accidental means. The petition alleged both of K.B.'s siblings had been removed from the home due to medical neglect and a dangerous home environment; respondents failed to complete counseling; respondent father had been indicated by DCFS for sexual abuse of K.B.'s sibling; and respondent father had been convicted of aggravated domestic battery to a pregnant person against respondent mother. The trial court found probable cause to believe K.B. was neglected and an immediate and urgent necessity existed to place her in shelter care.

¶ 11 In June 2007, the trial court found K.B. was neglected because she was in substantial risk of physical abuse based on the history of domestic violence. In its July 2007 dispositional order, the court found it in K.B.'s best interest that she be made a ward of the court and placed custody and guardianship with DCFS.

¶ 12 In March 2010, the State filed a petition to terminate respondents' parental rights. As to respondent father, the State alleged he was unfit under section 1(D)(m)(ii) of the Adoption

Act (750 ILCS 50/1(D)(m)(ii) (West 2008)) and his parental rights should be terminated because he failed to (1) make reasonable efforts to correct the condition that was the basis for K.B.'s removal and (2) successfully complete recommended treatment services (mental health). As to respondent mother, the State alleged she was unfit under section 1(D)(m)(ii) of the Adoption Act and her parental rights should be terminated because (1) she failed to make reasonable efforts to correct the condition that was the basis for the minors' removal from her, (2) she failed to successfully complete recommended treatment (mental health), and (3) the minors had been in foster care since before adjudication on June 29, 2007.

¶ 13 In June 2010, the trial court conducted a hearing on the petitions to terminate parental rights. The court took judicial notice of the evidence presented at a December 2009 hearing. Mary Crawford, a DCFS representative, testified respondent mother missed four out of five therapy appointments. At the June 2010 hearing, Crawford testified respondent father returned to the Department of Corrections since December 2009 and he had one visit with K.B. Respondent mother had continued to work at Hardee's since that time, obtained housing, and got married. Since December, respondent mother had maintained her counseling appointments with an urgency not seen in the previous five years.

¶ 14 Respondent mother testified she was attending counseling and married Chris Wheeler in January 2010. She had been working since September 2009 and obtained an apartment.

¶ 15 Respondent father testified he had been undergoing domestic-violence counseling but "slacked off" after his mother passed away. He was serving a prison sentence after he "caught a theft charge" and violated his probation. While in prison, he applied for parenting and

anger-management classes. He stated he was in rehabilitation for drugs and behavior and was trying to get his general equivalency diploma.

¶ 16 In December 2010, the trial court found respondents unfit due to their lack of progress toward their goals for more than two years. In February 2011, the court conducted the best-interest hearing. Mary Crawford testified the children were in traditional foster-care homes. They have had all their medical, schooling, and psychological needs addressed. C.M. has sexually reactive behaviors and was undergoing counseling. S.K. is doing well very in her placement, and K.B. is a "typical three-year-old."

¶ 17 Respondent mother testified she is employed, has her own place, and has undergone counseling. She stated she loved her children and wanted them back at home with her.

¶ 18 Respondent father testified he has completed courses in anger management and parenting along with drug treatment while he was in prison. He currently resided with a woman he had known "for a long time." He said he was trying to get a job and he would have the means to provide for K.B. He stated he was "ready to move forward" with his life and hoped to have a relationship with his daughter.

¶ 19 In its written order, the trial court indicated respondent mother had been found unfit because (1) she failed to make reasonable efforts to correct the condition that was the basis for the minors' removal; (2) she failed to successfully complete recommended mental-health treatment; and (3) the minors had been in foster care since before adjudication on June 29, 2007. The court found respondent father was unfit because he failed to (1) make reasonable efforts to correct the condition that was the basis for the removal of the minor from him and (2) success-

fully complete mental-health treatment. The court found it in the minors' best interest that respondents' parental rights be terminated. Both respondents appealed, and this court consolidated the cases.

¶ 20

II. ANALYSIS

¶ 21

A. Respondent Mother (No. 4-11-0184)

¶ 22

Respondent mother argues the State did not prove she failed to make reasonable progress toward the return of the minors within nine months of adjudication. The trial court found respondent mother unfit because (1) she failed to make reasonable efforts to correct the condition that was the basis for the minors' removal from her; (2) she failed to successfully complete recommended mental-health treatment; and (3) the minors had been in foster care since before adjudication on June 29, 2007.

¶ 23

We note section 1(D)(m—1) of the Adoption Act (750 ILCS 50/1(D)(m—1) (West 2008)), which sets forth a ground of unfitness based on the length of time the minor is in foster care, has been held unconstitutional in *In re H.G.*, 197 Ill. 2d 317, 757 N.E.2d 864 (2001). Respondent focuses her argument on the reasonable-progress ground and the appropriate nine-month period applicable to her. Respondent, however, does not make an argument challenging the trial court's reasonable-efforts finding. "Evidence of a single statutory ground is sufficient to uphold a finding of parental unfitness." *In re T.Y.*, 334 Ill. App. 3d 894, 905, 778 N.E.2d 1212, 1220 (2002). Respondent's omission concedes she is unfit on the unchallenged ground and makes it unnecessary to address her remaining arguments. *In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001). Moreover, as respondent does not contest the best-interest portion of the court's decision, we conclude the court's order terminating respondent's parental rights was

appropriate.

¶ 24 B. Respondent Father (No. 4-11-0185)

¶ 25 1. *Nine-Month Period*

¶ 26 Respondent father argues the trial court erred in not finding the State's motion to terminate parental rights defective because the motion failed to list a specific nine-month period on which the State was relying. We note the State alleged respondent was unfit and listed section 1(D)(m)(ii) of the Adoption Act, which states a parent is unfit for failing "to make reasonable progress toward the return of the child to the parent within [nine] months after an adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(ii) (West 2008). Without a specific citation to the statute, the State alleged respondent's parental rights should be terminated for his failure to (1) make reasonable efforts to correct the condition that was the basis for the minor's removal from him and (2) successfully complete mental-health treatment. The trial court found respondent father unfit and listed the reasons as the failure to make reasonable efforts and the failure to complete recommended mental-health treatment.

¶ 27 Without objection at the unfitness hearing and without citation to applicable authority now on appeal, respondent father argues the State did not specify a specific nine-month period or periods on which the State was relying. However, the requirement that the specific nine-month period be specified only applies to section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2008)). Moreover, the applicable nine-month period as to the reasonable-efforts ground in subsection (i) and the reasonable-progress ground in subsection (ii) begins on the date the trial court adjudicates the minor abused or neglected. *In re D.F.*, 208 Ill. 2d 223, 243, 802 N.E.2d 800, 812 (2003). As that is the only time period that can apply, the

State did not err in not specifically stating a time frame in regard to reasonable efforts or reasonable progress.

¶ 28 *2. Unfitness*

¶ 29 Respondent father argues the trial court erred in finding him unfit for failing to make reasonable progress. However, the trial court found defendant unfit for failing to make reasonable efforts, and defendant makes no argument on that ground. As stated, "[e]vidence of a single statutory ground is sufficient to uphold a finding of parental unfitness." *T.Y.*, 334 Ill. App. 3d at 905, 778 N.E.2d at 1220. As defendant does not challenge the reasonable-efforts finding, we need not address his other arguments on unfitness. Moreover, as respondent does not contest the best-interest portion of the court's decision, we conclude the court's order terminating his parental rights was appropriate.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment in these consolidated cases.

¶ 32 No. 4-11-0184: Affirmed.

¶ 33 No. 4-11-0185: Affirmed.