



2011 IL App (4th) 110316-U

Filed 8/25/11

NO. 4-11-0316

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Day. A. and Daj. A., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 10JA2
BRANDI BROWN,)	10JA3
Respondent-Appellant.)	
)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held*: (1) The trial court did not err in finding respondent an unfit parent where the State sufficiently proved respondent had failed to make reasonable progress toward the return of the minors.
- ¶ 2 (2) The trial court did not err in terminating respondent's parental rights where the State sufficiently proved termination was in the minors' best interest.
- ¶ 3 Respondent mother, Brandi Brown, was found to be unfit and her parental rights were terminated to her children, Day. A. (born April 6, 2009), and Daj. A. (born September 12, 2007). Respondent appeals, arguing the trial court erred both in finding her unfit and in terminating her parental rights. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On January 4, 2010, the State filed a petition for adjudication of wardship, alleging Day. A. and Daj. A. were abused pursuant to section 2–3(2)(i) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2–3(2)(i) (West 2008)) because

"respondent mother, or someone to whom she entrusted the minor's care, inflicted, or allowed to be inflicted, physical injury to [Day. A.] by other than accidental means, which caused disfigurement, impairment of emotional health, or loss or impairment of any bodily function, in that [Day. A.] has been diagnosed with shaken baby syndrome which has left her blind and spastic. [Day. A.] was also discovered to have three healing rib fractures. Respondent mother offered no plausible explanation for the minor's injuries."

The petition also alleged the minors were neglected pursuant to section 2–3(1)(b) (705 ILCS 405/2–3(1)(b) (West 2008)) because they were residing in an environment injurious to their welfare due to "respondent's unresolved issues of domestic violence." While the minors' father was also named in the State's petition, we note he is not a party to this appeal.

¶ 6 According to the January 4, 2010, shelter-care report, then eight-month-old Day. A. was hospitalized on December 4, 2009, with various head injuries caused by non-accidental head trauma. Day. A. was diagnosed with retinal hemorrhages, cortical blindness (total loss of vision), encephalomalacia (softening of the brain tissue), hypertonia (abnormal increase in the tightness of muscle tone and reduced ability of a muscle to stretch), a subdural hematoma, and a subarachnoid hemorrhage. In addition, Day. A. was discovered to have healing fractures of three

ribs. Upon release from the hospital, Day. A. and her sister, Daj. A., were taken into protective custody.

¶ 7 Following a stipulation by all concerned at the January 4, 2010, shelter-care hearing, the trial court found probable cause and an immediate and urgent need to order shelter care. The court placed the minors' temporary custody with the Department of Children and Family Services (DCFS).

¶ 8 On January 20, 2010, the State filed its first supplemental petition for adjudication of wardship, alleging the minors were neglected because they were residing in an environment injurious to their welfare in that respondent had unresolved issues of alcohol and/or substance abuse creating a risk of harm to the minors.

¶ 9 On February 26, 2010, DCFS filed a client-service plan with the trial court. According to the plan, respondent needed (1) to engage in individual counseling, (2) undergo a substance abuse assessment and comply with substance abuse treatment, (3) complete a domestic violence assessment, (4) complete a parenting class, (5) attend Day. A.'s medical appointments, (6) locate and maintain safe and stable housing, and (7) find a legal means of income. The goal of the plan was the return home of the minors within 12 months.

¶ 10 On March 31, 2010, the State filed its second supplemental petition for adjudication of wardship. The petition alleged the minors were neglected because

"respondent mother failed to direct a caregiver to seek appropriate medical attention for [Day. A.], when repeatedly informed of grave concerns regarding [Day. A.'s] health. Even when respondent mother was personally confronted with the non-responsive minor[,] she

failed to immediately seek medical attention. [Day. A.] was subsequently diagnosed with 'abusive head trauma' which left her partially blind and severely brain damaged."

¶ 11 On April 15, 2010, respondent admitted the allegations contained in the State's second supplemental petition for wardship and stipulated to the factual basis underlying the allegations. Thereafter, the trial court adjudicated the minors neglected.

¶ 12 On June 16, 2010, DCFS filed a status report indicating respondent's progress toward the goal of the minors' return within 12 months was unsatisfactory. Specifically, respondent had (1) failed to undergo a domestic violence assessment, (2) failed to call in daily for random drug screens, (3) tested positive for marijuana, (4) failed to participate in individual counseling, and (5) failed to provide proof of employment.

¶ 13 A June 16, 2010, dispositional report, prepared by Children's Home and Aid (Children's Home), recommended the trial court find respondent unfit and award custody of the minors to DCFS.

¶ 14 On June 30, 2010, the State filed its third supplemental petition for adjudication of wardship. The petition alleged the minors were abused because

"[Day. A.] suffered a traumatic head injury which caused significant and permanent brain damage. The cause of the injury remains unexplained but would not ordinarily occur but for the acts or omissions of a parent or person responsible for the minor's welfare. During the time frame of the injury, [Day. A.] was in the care of respondent mother, or a babysitter, or that babysitter's boyfriend."

¶ 15 On July 1, 2010, the trial court entered an adjudicatory order, finding the minors abused pursuant to section 2–3(2)(i) of the Juvenile Court Act (705 ILCS 405/2–3(2)(i) (West 2008)) because Day. A. "sustained unexplained non-accidental abusive head trauma that could only have occurred as the result [of] the acts or omissions of a parent or person responsible for [the] care of the minor."

¶ 16 On July 30, 2010, the trial court entered a dispositional order finding respondent unfit and unable to care for, protect, train, educate, supervise or discipline the minors and placement of them with her contrary to the health, safety and best interest of the minors. Having previously adjudicated the minors abused and neglected, the court made the minors wards of the court and placed their custody and guardianship with DCFS.

¶ 17 On November 15, 2010, Court Appointed Special Advocates (CASA) filed a case report. The report indicated respondent had been evicted from her apartment for failure to pay rent and for allowing the minors' father on the premises. According to the report, the minors' father had been banned from the premises and been arrested for trespassing for a violation of that ban. The report also indicated respondent had ceased attending the recommended Alcohol Anonymous/Narcotics Anonymous/Cocaine Anonymous (AA/NA/CA) meetings. While respondent was in the 15th week of her 24–week domestic violence program, the report indicated she would have to restart the program if she had one more unexcused absence. According to the report, respondent was employed full time on October 11, 2010, at AFNI, in Bloomington. While respondent's drug screens had been negative, she had consistently failed to call in everyday to learn whether a screen would be required. The report recommended respondent be found unfit and the permanency goal changed to "return home pending status hearing," with DCFS to

maintain guardianship of the minors.

¶ 18 The November 18, 2010, permanency report, prepared by Children's Home, indicated respondent had "made little progress with her service plan." According to the report, respondent had been discharged from individual counseling and had to restart the program. In addition, respondent was one absence away from having to restart the domestic violence program. The report also noted respondent's infrequent drug screens and attendance at AA/NA meetings and expressed concern with respondent's eviction from her apartment. The report recommended respondent continue to be found unfit and the permanency goal remain "return home in 12 months."

¶ 19 On December 1, 2010, the trial court entered a permanency order, finding respondent continued to be unfit because she had not made reasonable and substantial progress toward the goal of returning the minors home.

¶ 20 On January 11, 2011, CASA filed a status report indicating respondent had made unsatisfactory progress in her service plan in the areas of drug screening, AA/NA/CA attendance, obtaining a sponsor, and providing stable housing.

¶ 21 The January 11, 2011, permanency report, filed by Children's Home, recommended the trial court continue to find respondent unfit and change the goal to substitute care pending the court's determination on the termination of parental rights.

¶ 22 On January 18, 2011, the State filed a petition seeking the termination of respondent's parental rights. The State alleged respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. The petition also alleged respondent had failed to make reasonable progress toward the return of the minors within nine

months after the adjudication of neglect or abuse.

¶ 23 During the March 16, 2011, hearing on the termination of respondent's parental rights, Jason Fischer, a caseworker for CASA, testified he developed the service plan for respondent. According to Fischer's testimony, the initial service plan required respondent to seek "individual counseling, substance abuse treatment, domestic violence treatment, parenting class, appropriate housing and income[,] and attend [Day. A.'s] medical appointments." Fischer testified he reviewed the plan with respondent and explained she needed to complete the services to have the minors returned to her. Fischer also explained termination could be a possible consequence of failing to complete those services.

¶ 24 As of June 2010, the overall permanency goal was the return home of the minors in 12 months. Fischer testified respondent's individual counseling progress was rated unsatisfactory at her first case review on June 11, 2010. Fischer explained respondent had positive drug tests but respondent had told her therapist she was not using drugs. Respondent's progress toward the domestic violence goal was also rated unsatisfactory because respondent was late in both completing her initial assessment and in completing the program. Fischer testified respondent rated satisfactory in her housing and parenting goals. However, her income goal was rated unsatisfactory because she had been fired from her job at Wendy's.

¶ 25 Fischer testified respondent's next case review was on December 2, 2010. Respondent received an unsatisfactory rating for individual counseling because of her lack of attendance. Respondent was discharged from the program and had to restart counseling. Fischer also testified respondent was rated unsatisfactory for substance abuse because of her inconsistent attendance at meetings and drug test submissions. Respondent was also rated unsatisfactory with

regard to her domestic violence goal because she had missed a number of group meetings but did not restart the program.

¶ 26 Fischer testified while respondent was rated satisfactory in having completed her parenting class, her progress was rated unsatisfactory for her housing goal, which previously had been satisfactory. Fischer testified respondent had been evicted in September 2010 for allowing the minors' father to be in the residence. Respondent knew he was not allowed in the apartment. Fischer explained an incident occurred, and the police were called to the apartment. While respondent told Fischer she was staying with friends since the eviction, she refused to provide Fischer with an address. Fischer also reported respondent's progress on her income goal was unsatisfactory.

¶ 27 According to Fischer's testimony, since her last review, respondent had failed to meet with Fischer and continued to miss drug tests. While respondent reported she was employed, Fischer testified she had not provided Fischer with a pay stub since November 2010.

¶ 28 Respondent testified she did not use any illegal drugs other than marijuana. Respondent admitted she did not always provide clean drug screens when they were requested. She also admitted failing to provide CASA with any verification of employment. Respondent testified she was staying with various friends but could not recall where she had stayed the previous two or three nights. Respondent testified she had saved \$400 since October but did not have a bank account. Instead, she kept all of her money with her in cash. Respondent also admitted she did not attend substance abuse counseling but explained it was because she "didn't like it there."

¶ 29 At the conclusion of the hearing, the trial court found respondent unfit for

termination purposes for her failure to make reasonable progress with regard to the individual counseling, housing, and substance abuse goals. The court noted respondent was still homeless despite respondent's claim she was full-time employed. The court concluded respondent had failed to make reasonable progress toward the return of the minors within nine months following the adjudication of abuse or neglect, *i.e.*, April 15, 2010, through January 15, 2011.

¶ 30 After finding respondent unfit, the trial court proceeded to the best-interest determination. During the best-interest hearing, Fischer testified the minors had been living with their grandmother, Kimberly Turner, since their December 31, 2009, placement. Turner, a licensed foster parent, had been the only foster parent throughout the proceeding. Fischer testified he observed the minors in their placement and believed it was the least disruptive alternative for them. Fischer also believed the minors had developed a sense of attachment to their foster home. The minors were attending a daycare specifically equipped to deal with Day. A.'s medical problems. Fischer also testified it was his understanding Turner was willing to adopt the minors and had made it clear she would choose the minors' interest over those of her daughter. Fischer opined it was in the minors' best interest that respondent's parental rights be terminated.

¶ 31 The trial court stated it reviewed the best-interest report filed by CASA. The report indicated the minors' current placement provided them with a routine and stable environment to which they felt a sense of belonging and confidence. According to the report, it was the least disruptive placement for the minors. Further, the report showed the minors were strongly attached to their foster parent, who expressed a willingness to adopt both children. The report recommended it was in the minors' best interest to remain in their current placement.

¶ 32 During the best-interest hearing, respondent testified the minors were attached to her mother. She also admitted she was currently unable to take care of Day. A. and that the best place for her children was with her mother.

¶ 33 Turner, a nurse, testified she takes Day. A. to all of her medical appointments and has observed some improvement in Day. A.'s condition. Turner testified she has the financial, emotional, and physical ability to provide long-term care for the minors. Turner also testified she was willing to adopt both minors.

¶ 34 Following the termination hearing, the trial court found it in the minors' best interest to terminate respondent's parental rights.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, respondent argues the trial court erred in (1) finding her to be an unfit parent and (2) terminating her parental rights.

¶ 38 A. Finding of Unfitness

¶ 39 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). "'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.'" *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d

483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 40 In this case, the trial court found respondent unfit for failing to make reasonable progress during the nine-month period following the adjudication of neglect (April 15, 2010, through January 15, 2011). Reasonable progress is an objective standard which focuses on the amount of progress toward the reunification goal that can reasonably be expected. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999); *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991) (reasonable progress is an objective standard by which the trial court can conclude the parent's progress in complying with the directives given for the minor's return is sufficiently demonstrable and of sufficient quality the court will be able to order the minor's return in the near future).

¶ 41 The trial court's finding respondent failed to make reasonable progress during the nine-month period following the adjudication of neglect was not against the manifest weight of the evidence. According to the record, respondent failed to fully comply with the service plan. Respondent missed multiple individual counseling sessions and failed to comply with the required drug screens. Respondent testified she did not attend the recommended substance abuse programs because she "didn't like it there." While respondent maintained she was employed full-time, she had managed to save just \$400 in three months. In addition, respondent had been evicted from her apartment and was homeless at the time of the hearing. Respondent testified she had stayed at three different residences in the week leading up to the hearing. Respondent was no closer to having the minors returned at the time of the hearing than she was when the minors were adjudicated neglected. Thus, respondent failed to make reasonable progress toward the minors' return home.

¶ 42 Based on the evidence in the record, we conclude the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 43 B. Best-Interest Finding

¶ 44 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2–29(2) (West 2008); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs[.]" 705 ILCS 405/1–3(4.05) (West 2008). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and

child; (9) the risks related to substitute care; and
(10) the preferences of the person available to care
for the child." *In re Daphnie E.*, 368 Ill. App. 3d
1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 45 The trial court's best-interest determination is reviewed under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 46 In this case, the minors had been placed with Turner, their maternal grandmother. Fischer testified he observed the minors in their foster home and believed they were attached to Turner and happy in their current placement. Turner testified she was able to provide for the minors' needs. Turner also testified she was willing to provide permanency to the minors through adoption. Moreover, respondent testified the best place for the minors was with Turner because respondent could not provide for the minors' needs. Based on the evidence presented, we hold the trial court's order finding termination of respondent's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 49 Affirmed.