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NO. 4-11-0947

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Bra. L., Amb. L., Sha. L., Jac. L., Tyl. L., Bre. L., Chr. L., Tam. L., and Jay L., Minors,	)	Appeal from Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Champaign County
Petitioner-Appellee,	)	No. 10JA19
v.	)	
MARION JEFFERSON,	)	Honorable
Respondent-Appellant.	)	John R. Kennedy,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Trial court's decision to terminate the parental rights of respondent, Marion Jefferson, was not against the manifest weight of the evidence.

¶ 2 On September 18, 2011, the trial court entered an order finding respondent, Marion Jefferson, unfit for the purpose of terminating his parental rights to Chr. L. (born June 1, 2001). On October 14, 2011, the court entered an order finding it was in Chr. L.'s best interests to terminate respondent's parental rights. Respondent appeals, arguing the following: (1) the court erred in finding him unfit for failing to make reasonable progress or efforts because a service plan was not in place to judge his progress; (2) the court erred in finding respondent did not demonstrate a reasonable degree of interest, concern, and responsibility as to Chr. L.'s welfare; (3) the court erred in terminating respondent's parental rights even if he was unfit. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2010, the State filed a petition for adjudication of neglect regarding 10 children. Chr. L. was one of the children named. Respondent was named as Chr. L.'s putative father. Veronica Lattimore was named as the mother of 4 of the 10 children, including Chr. L., and the guardian of the other 6 children named in the petition. The petition contained three counts, all of which alleged the children were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2008)) because living with Lattimore created an environment injurious to their welfare in that they were exposed to domestic violence (count I), risk of sexual abuse (count II), and contact with inappropriate persons (count III). This appeal relates only to Chr. L.

¶ 5 In March 2010, the trial court placed temporary custody of the children with the guardianship administrator of the Illinois Department of Children and Family Services (DCFS). In May 2010, the court entered an adjudicatory order, finding the State established by a preponderance of the evidence and by clear and convincing evidence the children were abused or neglected as defined by section 2-3 of the Juvenile Act (705 ILCS 405/2-3 (West 2008)) because the minors were in an environment injurious to their welfare. The court dismissed counts I and III of the State's petition.

¶ 6 In June 2010, DCFS filed a home and background report prepared by Lutheran Social Services of Illinois (Lutheran Services). The report noted the following with regard to respondent:

> "Marion Jefferson III is the father of Ms. Lattimore's 8-year-old son, [Chr. L.] Ms. Lattimore was 16 and Mr. Jefferson

> was 14 when she became pregnant with [Chr. L.] Ms. Lattimore acknowledged how she and Mr. Jefferson were never 'together,' but reported that Mr. Jefferson was involved in [Chr. L.'s] life before he was incarcerated approximately 3 years ago. Per Ms. Lattimore, Mr. Jefferson has been sentenced to 'life in prison' because he 'robbed some banks.' "

The report noted an assessment interview could not be arranged due to respondent's incarceration.

¶ 7 As for Chr. L., the report noted his maternal aunt, Monica Dixon, was acting as his foster caregiver. She described Chr. L. as a well-behaved, helpful child. However, she expressed concerns about his behavior and mood. The child felt sad about his separation from his mother. However, according to the report, he did not discuss respondent.

¶ 8 On June 23, 2010, a dispositional order was entered adjudging Chr. L. neglected and making him a ward of the court.

¶ 9 In a January 2011 report prepared by Lutheran Services and filed with the trial court by DCFS, Lutheran Services noted respondent remained incarcerated at a federal penitentiary in Pennsylvania for armed robbery. His projected release date was October 17, 2039. The report indicated respondent had not sent any cards or letters to Chr. L. or called Lutheran Services asking about Chr. L.'s welfare.

¶ 10 In April 2011, in a report prepared by Lutheran Services and filed with the trial court by DCFS, Lutheran Services stated respondent was still incarcerated. In addition, the report noted:

"This worker sent a letter to [respondent] on January 25, 2011, regarding his son [Chr. L.'s] continued involvement with DCFS. Mr. Jefferson has since then written weekly letters to [Chr. L.] and continues to also keep in contact with this letter [*sic*] through letters. He has sent [Chr. L.] a total of nine letters to [Chr. L.] as of March 21, 2011. All letters have been reviewed by this agency to ensure appropriate content. Mr. Jefferson has been appropriate in all his communications with [Chr. L.], and remains respectful and open in his communications with this worker."

¶ 11 In April 2011, the State filed a motion seeking a finding of unfitness and termination of respondent's parental rights. The motion alleged respondent was unfit because he failed to make reasonable efforts to correct the conditions that were the basis for the removal of Chr. L. (750 ILCS 50/1(D)(m)(i) (West 2008)), failed to make reasonable progress toward the return of the minor within the initial nine months of the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2008)), and failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of Chr. L. (750 ILCS 50/1(D)(b) (West 2008)).

¶ 12 On September 14, 2011, at a hearing on the State's motion, respondent's attorney stated he was currently incarcerated at a federal prison in Florida. Ruth Lee, an adoption specialist at Illini Christian Ministries who had worked on this case at Lutheran Services, testified respondent wrote letters to the agency on a weekly basis, one to her and one to Chr. L. She characterized these letters as appropriate and caring. The trial court found the State proved respondent unfit by clear and convincing evidence on counts I, II, and III. With respect to count

III, the court found respondent had maintained a reasonable degree of interest in the child but not a reasonable degree of concern or responsibility.

¶ 13 At a best-interests hearing on October 13, 2011, the trial court found:

> "The most compelling issue in evidence is Mr. Jefferson's long term incarceration which will prevent him from being a custodial option in regard to this child for any time that he is a child. And it's clear that the—if the parental rights of Mr. Jefferson were terminated, [Chr. L.] might have an opportunity to achieve permanency within the context of another family. I believe that's in the best interests of [Chr. L.].

As a result, the court terminated respondent's parental rights.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Before a trial court can terminate parental rights, the State must prove by clear and convincing evidence (*In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001)) the parent is unfit as defined by the Adoption Act (750 ILCS 50/0.01 through 24 (West 2008)) (*In re B.B.*, 386 Ill. App. 3d 686, 698, 899 N.E.2d 469, 480 (2008)). A reviewing court will reverse a trial court's finding of unfitness only when it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940-41 (2002). A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *In re Cornica J.*, 351 Ill. App. 3d 557, 566, 814 N.E.2d 618, 626 (2004).

¶ 17 An individual's parental rights can be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). The manifest-weight-of-the-evidence standard of review applied to a court's fitness findings calls for deference to be given to the court's decision. A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *Cornica J.*, 351 Ill. App. 3d at 566, 814 N.E.2d at 626.

¶ 18 Once a parent has been found unfit in a termination proceeding, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). The State has the burden of proving termination is in the best interest of the child by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). "A trial court's finding termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence." *M.F.*, 326 Ill. App. 3d at 1115-16, 762 N.E.2d at 706. Under this standard, a reviewing court gives the trial court deference because it is in a better position to observe the parties' and witnesses' conduct and demeanor. *M.H.*, 196 Ill. 2d at 361, 751 N.E.2d at 1139. We will not substitute our judgment for that of the trial court regarding witness credibility, the weight to be given witness testimony, or inferences to be drawn from the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008).

¶ 19 We first address respondent’s argument he should not have been found unfit for failure to make reasonable progress or efforts because there was no service plan by which his efforts or progress could be measured. According to respondent’s brief:

> "In this matter, there was no service plan for Marion by which his progress or efforts could be measured. Incarcerated, he was powerless to divine what the Department of Children and Family Services would have him do to fulfill the mandate of the trial court *** to retain his parental rights. Indeed, there was no evidence that he had the power or the opportunity to engage in any services whatsoever. The testimony at trial simply does not support, by clear and convincing evidence, that Marion failed to make reasonable progress or efforts as alleged by the State, nor could he, as his incarceration made that impossible."

This might be a good argument in a case where a parent would be released from prison before his or her child reached the age of majority. However, that is clearly not the situation in this case.

¶ 20 Respondent is currently imprisoned in a federal penitentiary with a projected parole date of October 17, 2039. Chr. L. will be 38 years old at that time. Nothing respondent could do would bring him any closer toward gaining custody of Chr. L. As a result, the trial court's finding respondent failed to make reasonable progress toward gaining custody of Chr. L. during the first nine months after the adjudication of neglect clearly is not against the manifest weight of the evidence in this case.

¶ 21 As a result of our determination the trial court did not err in finding respondent unfit for failing to make reasonable progress toward his reunification with Chr. L. during the first nine months after the adjudication of neglect, we need not address respondent's other arguments regarding his fitness. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003)

(trial court's finding of unfitness may be affirmed where the evidence supports a finding of unfitness on any of the alleged grounds).

¶ 22 We next address respondent's argument it was "fundamentally unfair to terminate his rights to [Chr. L.] and allow [Chr. L.'s mother] to retain hers when guardianship was the selected goal." We disagree. This court has stated:

> "[W]hen the evidence supports a finding that one parent is unfit under section 1 of the [Juvenile] Act and it is in the best interest of the child that the parental rights of that parent be terminated, the trial court may so order even though the parental rights of the child's other parent have not been terminated or are not, as of that moment, even subject to a petition for termination. A petition seeking to terminate the parental rights of one parent may be brought after such a petition has already been successfully brought against the other parent; that one parent has not been (and may never be) found unfit is merely one additional factor which the trial court may give whatever weight it believes appropriate when it is deciding at a dispositional hearing whether it is in the best interest of the child that the parental rights of the first parent be terminated." *In re S.M.*, 219 Ill. App. 3d 269, 277, 579 N.E.2d 1157, 1163 (1991).

Based on the evidence in this case, the trial court's determination Chr. L.'s best interests would be served by terminating respondent's parental rights was not against the manifest weight of the

evidence.

¶ 23 III. CONCLUSION

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

¶ 25 Affirmed.