

NOTICE
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2012 IL App (4th) 111120-U

Filed 5/9/12

NO. 4-11-1120

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 09JA6
SHAWN HARRIS,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Trial court did not abuse its discretion in allowing the State to introduce case service plans into evidence.

(2) Trial court's finding of unfitness is not against the manifest weight of the evidence.

¶ 2 In November 2011, the trial court terminated respondent father Shawn Harris's parental rights to his daughter, A.H., a minor (born April 5, 2008). On appeal, Shawn makes the following arguments: (1) the court erred in admitting into evidence Chaddock and the Department of Children and Family Services (DCFS) client service plans pursuant to the business record exception found in section 2-18(4)(a) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-18(4)(a) (West 2008)) because the State failed to establish a sufficient foundation for the records; (2) the court erred in allowing a witness to testify as to the contents

and evaluations contained in a client service plan for the period between January 7, 2011, and October 6, 2011; and (3) the court's finding of unfitness was against the manifest weight of the evidence. Respondent mother Melissa Harris is not a party to this appeal. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In March 2009, the State filed a petition for adjudication of wardship regarding A.H. The petition alleged A.H. was a neglected minor because her environment was injurious to her health and well-being. DCFS had received a report Melissa was shoplifting and dropped A.H. on the floor "a couple of times" at a Hy-Vee store. Melissa was confronted by two Quincy police officers who found various stolen items in her coat pocket and diaper bag. Melissa appeared under the influence of drugs and reportedly was in no condition to hold a baby. Melissa was arrested and transported to Blessing Hospital where she threatened suicide and hit her head against the wall and floor. After she was discharged, she was taken to the Adams County jail and charged with retail theft.

¶ 5

When Shawn arrived to pick up A.H., he was arrested on outstanding warrants. A.H. was placed with her maternal grandmother, Sherry Hinkle. Melissa admitted to a DCFS investigator she was taking a variety of prescription medications she received from a doctor in Missouri. She said physicians in Quincy refused to see her because of her history of painkiller addiction.

¶ 6

On March 24, 2009, the trial court entered a shelter care order. On July 7, 2009, the trial court entered an order adjudicating A.H. neglected pursuant to section 2-3 of the Juvenile Act (705 ILCS 405/2-3 (West 2008)) and made her a ward of the court. The court found Melissa had a history of prescription drug abuse and had been arrested for shoplifting. At the

time of her arrest, she was under the influence and had dropped A.H. several times. The court further noted Melissa had another child not in her care. The court found it contrary to A.H.'s health, welfare, and safety to remain in the home of her parents. The court granted guardianship and custody of A.H. to DCFS in August 2009.

¶ 7 In May 2011, the State filed a motion for termination of Melissa and Shawn's parental rights to A.H. The motion alleged Shawn was an unfit parent under section 1 of the Adoption Act (750 ILCS 50/1 (West 2008)) for the following reasons: (1) he failed to make reasonable efforts to correct the conditions which were the basis for A.H.'s removal; (2) he failed to make reasonable progress toward the return of the minor within nine months of the trial court adjudicating A.H. neglected; and (3) he failed to make reasonable progress toward A.H.'s return during any nine-month period after the end of the initial nine-month period following the trial court's adjudication of neglect. The nine-month periods at issue are as follows: (1) July 8, 2009, to April 7, 2010; (2) April 8, 2010, to January 7, 2011; and (3) January 8, 2011, to October 7, 2011.

¶ 8 On November 14, 2011, the trial court held a hearing on the State's petition for termination of parental rights. At the beginning of the hearing the court admitted, over the objection of Melissa and Shawn's attorney, certified copies of court filings regarding Melissa's probation, including the following filed during the pendency of this case: (1) Melissa's probation sentencing order; (2) several petitions to issue mittimus; (3) probation review orders; and (4) a petition to revoke Melissa's probation filed May 24, 2011.

¶ 9 Martha Butler testified she was the first caseworker at Chaddock assigned to Melissa, Shawn, and A.H.'s case in March 2009. She worked on their case until September 2009.

The initial goal for the family was for A.H. to be returned home within 12 months. She created a service plan for the family on May 5, 2009. Butler testified Melissa reported she had a history of prescription drug abuse. Butler also testified drug abuse was an ongoing problem for Melissa.

¶ 10 Butler testified she observed a visitation in April 2009 when Melissa was quite hostile and another visit when she was very unsteady on her feet. Butler testified she was concerned about Melissa trying to pick up A.H.

¶ 11 According to Butler, the service plan she created contained a parenting task because both Melissa and Shawn needed to be more aware of how Melissa's prescription drug problem could be affecting A.H. and the care she was receiving. Butler also stated both Melissa and Shawn were to have mental health assessments, successfully complete any recommended treatment, and participate in parenting classes. Butler stated Shawn had a substance abuse task on his plan because Shawn needed to be more aware of Melissa's drug use and how it would affect A.H. According to Butler, Shawn needed to be able to recognize Melissa's symptoms and understand her issues.

¶ 12 Butler testified she rated Shawn on September 16, 2009. However, it appears she actually evaluated him on September 10, 2009. She rated Shawn's progress unsatisfactory on his cooperation and mental health tasks because he did not follow through with the services or tasks set up for him. He was also rated unsatisfactory on his substance abuse task because Butler had received no documentation Shawn had attended Alcoholics Anonymous or Al-Anon meetings. The same was true with regard to parenting classes. Butler testified Shawn attended three parenting classes but did not attend any with Melissa and then stopped going altogether.

¶ 13 Butler also rated Shawn's progress unsatisfactory with regard to support, housing,

and visitation. Butler stated Shawn did not seem to recognize issues with Melissa during visitation. Butler cited an instance when Melissa was very angry and hostile during a visit, but Shawn did not say anything to Melissa about her behavior. On another visit, when Melissa was unsteady on her feet, Shawn did not tell her she should not be holding A.H. while in that condition because she might drop A.H. Overall, Butler rated Shawn and Melissa's progress on the goal of A.H.'s return home within 12 months as unsatisfactory.

¶ 14 The trial court admitted over defendant's foundation objection People's exhibit No. 2, which was the service plan Butler created on May 5, 2009, and People's exhibit No. 3, a service plan which included Butler's evaluations made on September 10, 2009. Butler testified these records were made and kept in the regular course of DCFS and Chaddock business. She also testified People's exhibits Nos. 2 and 3 were a complete and accurate account of the services assigned to the parents and how the parents performed the assigned tasks.

¶ 15 Angie Wainman testified she was a child welfare specialist at Chaddock and worked with Melissa, Shawn, and A.H. from approximately August 2009 until May 2011. She evaluated the parents' performance on March 8, 2010. A service plan, which included Wainman's evaluation, was filed on April 5, 2010, with the trial court. The State introduced this service plan as People's exhibit No. 4. Wainman rated Shawn satisfactory on all his tasks except legal means of support and housing because his housing had not been consistent. She rated Shawn's overall progress toward the goal of return home in 12 months as satisfactory.

¶ 16 Wainman testified she made an unannounced visit to Shawn and Melissa's home on June 4, 2010, but was unable to complete the visit. When she knocked on the storm door of the residence, she heard Melissa say, "Oh, shit." She then heard a lot of rustling around the

apartment. She continued to knock and ask Melissa to answer the door, but she received no answer.

¶ 17 Wainman met with Shawn and A.H. at their home on September 14, 2010, to discuss some safety concerns she had with regard to A.H. Shawn said Melissa was at a probation meeting. Shawn told Wainman he was concerned about Melissa not attending Narcotics and Alcoholics Anonymous meetings and about a recent drug drop she gave that was questionable. Shawn agreed to the implementation of a safety plan requiring Melissa to move out of the home until she could demonstrate consistency in attending substance abuse services. After Melissa returned from her meeting with probation, Wainman told Melissa A.H. would be returned to foster care if Melissa did not move out of the family residence. Melissa agreed to leave the home. Shawn told Wainman on September 24, 2010, he and Melissa were getting a divorce.

¶ 18 Wainman testified she rated another service plan on or about September 24, 2010. A service plan, which included her evaluation, was filed with the trial court on October 19, 2010. The State introduced this service plan as People's exhibit No. 5 at the termination hearing.

¶ 19 Wainman added an additional day care task to the plan for Shawn because A.H. had been returned home and needed day care while Shawn was at work during the day. As of September 14, 2010, Melissa was not living at the family home pursuant to a safety plan because of her substance abuse and noncompliance issues. Shawn's progress was rated as satisfactory as to his assigned tasks. She rated his progress on the goal of return home within 12 months as satisfactory.

¶ 20 Shawn agreed he would not allow Melissa to have unsupervised contact with A.H. On October 28, 2010, Melissa told Wainman she wanted to be a family again with Shawn.

Wainman informed Melissa of the possible consequences of moving back into Shawn's home without the permission of Chaddock and DCFS.

¶ 21 Wainman testified she took some presents and a Christmas tree to Shawn and A.H.'s residence on December 16, 2010. After knocking on the front door, she heard A.H. say something and saw a light on inside the residence. However, no one answered the door. She sent another worker who was with her to the back of the house to knock on the back door. Wainman then saw Shawn walking down the street with groceries. Wainman made eye contact with Shawn, but he went into the alley. Wainman asked Shawn who was taking care of A.H. Shawn claimed the upstairs neighbors were watching her. Shawn went into the back porch area of the home, up the stairs, and shut the door. Wainman heard Shawn ask the upstairs neighbor to cover for him by saying the neighbor was watching A.H. or that A.H. went somewhere with someone. Shawn came back downstairs and said A.H. had left with the person watching her. Wainman told Shawn she did not believe him because she overheard his conversation with the neighbor. Shawn finally told Wainman he asked Melissa to take care of A.H. while he went to get groceries. Wainman told Shawn he should have used the neighbor's phone to call Wainman, and she would have assisted him. Melissa and A.H. were in the basement of the apartment. Melissa's unsupervised contact with A.H. violated Shawn's agreement not to allow Melissa unsupervised visitation with A.H. Wainman called her supervisor, explained what occurred, and removed A.H. from Shawn's care. She was later placed in a traditional foster home.

¶ 22 On or about February 24, 2011, Wainman rated a third service plan. A service plan, which included her evaluation, was filed with the trial court on March 10, 2011. The State introduced this service plan as People's exhibit No. 7. The permanency goal on that plan was

return home pending status hearing. The tasks were the same as on the prior service plan. She rated Shawn as unsatisfactory on (1) his cooperation task because he violated a safety plan, (2) his parenting task because he was not keeping A.H. safe by violating the safety plan, and (3) his substance abuse task because he failed to provide proof he attended Al-Anon meetings as required. She rated Shawn's progress as satisfactory with regard to the tasks concerning legal means of support, housing, day care, and visitation. She rated his overall progress as unsatisfactory.

¶ 23 Wainman identified People's exhibit Nos. 4, 5, 6, and 7 as the service plans she testified about in court. She also testified these plans were a complete and accurate account of all the services Shawn and Melissa were asked to complete while Wainman was their caseworker and how they rated on the tasks. She testified it was in the regular course of both DCFS and Chaddock's business to make and keep these records. Counsel for both Melissa and Shawn objected to the admission of these records based on an inadequate foundation. However, the trial court admitted the records.

¶ 24 Anita Ferguson, a child welfare specialist at Chaddock, began working with Melissa, Shawn, and A.H. in June 2011. Ferguson testified she had an in-home appointment scheduled with Melissa and Shawn on August 24, 2011. Melissa called that day to let her know they would be unable to do the visit because Shawn had been sentenced to 30 days in jail on that date.

¶ 25 Ferguson testified she rated a service plan on August 30, 2011, created for the family by Angie Wainman. The State introduced this service plan, which included Wainman's evaluations, as People's exhibit No. 8. The permanency goal at that time was substitute care

pending court determination.

¶ 26 Ferguson rated Melissa unsatisfactory on her substance abuse task because she had positive drug drops in July. She also rated Melissa as unsatisfactory on her mental health task. According to Ferguson, as of March and April 2011, Melissa was no longer involved with mental health services. Ferguson rated Shawn as satisfactory on his cooperation, parenting, legal means of support, housing, and visitation tasks. However, Ferguson rated Shawn's progress as unsatisfactory with regard to the substance abuse and mental health tasks because Shawn and Melissa were no longer involved in services. Ferguson received no documentation from Shawn or Melissa with regard to mental health, substance abuse, or group or individual counseling.

¶ 27 Ferguson talked to Melissa on the telephone on or about September 27, 2011, and tried to schedule an in-person visit with the family during that conversation. Melissa said they were unable to schedule an in-home visit because Shawn was being released from prison that day, she was going to get him, and then they had to get bills paid.

¶ 28 Shawn testified he received all the service plans in this case except the last one. Shawn acknowledged it was his responsibility to complete the tasks on his service plan and to ask for a copy of his service plan if he had not seen it. He took full responsibility for the incident where his daughter was in his house. Although not entirely clear, this appears to be a reference to him leaving A.H. alone with Melissa in violation of the agreed safety plan. He claimed to have been honest with DCFS other than on that occasion. Shawn also testified he and Melissa had been working on their marriage through Chaddock. He testified his relationship with Melissa was pretty good at that time. He also testified he had regularly tried to attend two Alcoholics Anonymous meetings per week with Melissa.

¶ 29 Shawn testified he had neither seen Melissa under the influence nor observed her taking any pills or painkillers other than what she had been prescribed since this case began. He testified he had not seen Melissa sweating profusely or being unsteady on her feet except in the summer. He testified he only missed scheduled visits with A.H. when he was incarcerated or when his boss at ADM made him work overtime.

¶ 30 The trial court found the State had shown by clear and convincing evidence both Melissa and Shawn were unfit because they failed to make reasonable progress toward A.H.'s return during any nine-month period after A.H. was adjudicated neglected. The court then proceeded to the best interest phase of the proceeding.

¶ 31 Anita Ferguson testified A.H. was three years old and had been placed in a traditional foster care setting. A.H. had been in the same foster placement since December 20, 2010. Ferguson testified A.H. had bonded with her foster parents. A.H. referred to the foster parents as mommy and daddy. According to Ferguson, she observed signs of affection between A.H. and the foster family. The foster parents gave gifts to A.H. and vice versa. The foster parents provided discipline when necessary and made sure she attended school as required. Ferguson also testified the foster parents demonstrated a willingness to adopt A.H. and signed a permanency commitment form. Ferguson stated it was the intent of DCFS and Chaddock to have A.H. remain in the foster placement and be adopted by the foster parents.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 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 50/1 to 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).

¶ 35 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 Gwynn 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.

¶ 36 Shawn first argues the trial court erred in allowing the State to introduce into evidence the client service plans prepared in this case because the State did not establish a sufficient foundation. Shawn points to section 2-18(4)(a) of the Juvenile Act (705 ILCS 405/2-18(4)(a) (West 2008)) as support for his argument. This section states in pertinent 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 the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter.”

Shawn argues the witnesses in this case did not testify the client service plans were made contemporaneously with the event they purported to record or that they were prepared in the regular course of business.

¶ 37 While it does not appear the State established during the hearing a complete foundation for these records pursuant to section 2-18(4)(a) of the Juvenile Act (705 ILCS 405/2-18(4)(a) (West 2008)), we do not find the trial court abused its discretion in admitting these records. The trial court could have easily concluded these records were made contemporaneously because it is clear these client service plans were filed with the court throughout the proceedings in this case with the exception of People's exhibit No. 8. Further, Shawn testified he received copies of all the service plans with the exception of People's exhibit No. 8. As for that exhibit, Ferguson testified she rated the parents on August 30, 2011. The termination hearing was held on November 14, 2011. Further, these client service plans are made in the regular course of DCFS business in child neglect cases.

¶ 38 Even if a complete foundation was not laid for the service plans, any error is harmless. The State did not rely solely on these records, but also introduced testimony from the

caseworkers who worked with Shawn, Melissa, and A.H. Shawn fails to make any argument regarding the admissibility of the testimony of the Chaddock workers regarding Shawn's assigned tasks and his progress on the same for the periods between the time A.H. was adjudicated neglected and January 6, 2011.

¶ 39 As for the trial court's unfitness findings, we first review the court's finding Shawn did not make reasonable progress during the nine-month period from April 8, 2010, to January 7, 2011. We do not conclude the trial court's finding of unfitness was against the manifest weight of the evidence. This court has stated:

“Reasonable progress may be found when the court, based upon the evidence, can conclude a parent's progress is sufficiently demonstrable and is of such a quality that the child can be returned to the parent in the near future. [Citation.] At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

If anything, the evidence shows Shawn moved away from the goal of reunification during this period of time.

¶ 40 Early on during this period, the record shows Shawn made some progress. However, the evidence showed he failed to maintain this progress at the end of this nine-month period. In fact, the evidence shows he took a huge step back at the end of this period and basically was at the same point as when A.H. was first adjudicated neglected.

¶ 41 During this period, A.H. was returned home to Shawn's care. In September 2010,

Shawn told his caseworker he was concerned with Melissa's ongoing substance abuse issues. As a result, in October 2010, he agreed to a safety plan with Chaddock that required Melissa to move out of their home because of her substance abuse issues. The issue was serious enough Chaddock was going to remove A.H. from Shawn's care if Melissa did not move out of the residence. Under the safety plan, Melissa was not allowed to have unsupervised contact with A.H.

¶ 42 However, in December 2010, Shawn allowed Melissa to have unsupervised contact with A.H. while he went to the grocery store. Further, he lied to his caseworker about allowing Melissa to have unsupervised contact and tried to engage the help of a neighbor to assist him in covering up his misconduct. As a result of this incident, A.H. was removed from Shawn's care and placed in a traditional foster home. Shawn was still placing his own needs ahead of his daughter's needs almost a year and a half after the trial court adjudicated A.H. neglected.

¶ 43 Because we do not find the trial court's fitness finding for the period between April 8, 2010, to January 7, 2011, was against the manifest weight of the evidence, we need not determine whether the trial court's other findings of unfitness were against the manifest weight of the evidence. As a result, we do not need to address Shawn's argument the trial court erred in permitting Ferguson to testify regarding the evaluation of Shawn's progress on the final client service plan. Shawn makes no argument with regard to the court's best interest finding. As a result, we will not address that issue.

¶ 44

III. CONCLUSION

¶ 45

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

¶ 46

Affirmed.