2012 IL App (4th) 120269-U Filed 8/14/12

NOS. 4-12-0269, 4-12-0308, 4-12-0320, 4-12-0321 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.F., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-12-0269) AMANDA FRYE, Respondent-Appellant.	)	Appeal from Circuit Court of Champaign County Nos. 10JA66 11JA54
In re: D.F., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-12-0308) PATRICK FRYE, Respondent-Appellant.	)	
In re: B.F., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-12-0320) PATRICK FRYE, Respondent-Appellant.	)	
In re: B.F., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-12-0321) AMANDA FRYE, Respondent-Appellant.	)	Honorable Richard P. Klaus, Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: In case Nos. 4-12-0269 and 4-12-0308, where respondents were unfit and it was in D.F.'s best interest that their parental rights be terminated, the trial court's decision on termination was not against the manifest weight of the evidence.

¶ 2 *Held*: In case Nos. 4-12-0320 and 4-12-0321, where respondents were unfit, the trial court's order finding B.F. was neglected and making him a ward of the court was not against the manifest weight of the evidence.

¶ 3 In September 2011, the State filed a motion to terminate the parental rights of respondents, Amanda Frye and Patrick Frye, as to their child, D.F., in case No. 10-JA-66. In March 2012, the trial court found respondents unfit. In April 2012, the court found it in D.F.'s best interest that respondents' parental rights be terminated.

¶ 4 In November 2011, the State filed a petition for adjudication of neglect against respondents as to their child, B.F., in case No. 11-JA-54. In February 2012, the trial court found B.F. was a neglected minor based on an injurious environment. In April 2012, the court found it in B.F.'s best interest that he be made a ward of the court and granted custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 5 In case Nos. 4-12-0269 and 4-12-0308, respondents argue the trial court erred in (1) finding them unfit and (2) finding it in D.F.'s best interest that their parental rights be terminated. In case Nos. 4-12-0320 and 4-12-0321, respondents argue the court's order finding them unfit and making B.F. a ward of the court was against the manifest weight of the evidence. We affirm.

¶ 6 I. BACKGROUND

¶ 7 In October 2010, the State filed a petition for adjudication of abuse/neglect and

shelter care in case No. 10-JA-66 with respect to D.F., born in December 2008, alleging he was an abused minor pursuant to section 2-3(2) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2) (West 2010)). The petition claimed D.F. was abused because respondent father inflicted physical injury upon him and created a substantial risk of physical injury to him. The petition also alleged D.F. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2010)), claiming his environment was injurious to his welfare when he resided with respondents because the environment exposed him to the risk of physical harm, domestic violence, and substance abuse. The trial court found probable cause to believe D.F. was abused and neglected and an immediate and urgent necessity existed to place him in the temporary custody of DCFS.

¶ 8 In December 2010, the trial court found the minor neglected based on an injurious environment. In its January 2011 dispositional order, the court found respondents unfit. The court also found it in the minor's best interest that he be made a ward of the court and placed in custody and guardianship with DCFS.

¶ 9 In September 2011, the State filed a motion to terminate respondents' parental rights. The State alleged respondents were unfit because they failed to (1) make reasonable efforts to correct the conditions that were the basis for the minor's removal from them (750 ILCS 50/1(D)(m)(i) (West 2010)); (2) make reasonable progress toward the minor's return within the initial nine months after the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2010)).

¶ 10 Prior to the fitness hearing and in response to the State's request to admit facts,

respondent father admitted he continued to live with respondent mother and he was unemployed. He was also terminated from the "Change" program, failed to attend individual counseling, and took himself off his psychiatric medication. Respondent mother admitted she lived with respondent father, was unemployed, and tested positive for opiates in July 2011.

¶ 11 In November 2011, the State filed a petition for adjudication of neglect and shelter care in case No. 11-JA-54 with respect to B.F., born in October 2011, alleging he was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2010)) because his environment was injurious to his welfare when he resided with respondents because they had failed to correct the conditions that resulted in the prior adjudication of parental unfitness in D.F.'s case. The trial court found probable cause to believe B.F. was neglected and an immediate and urgent necessity existed to place him in the temporary custody of DCFS.

¶ 12 In January 2012, the trial court held a fitness hearing as to D.F. and an adjudicatory hearing as to B.F. Jacqueline Rennier, formerly a child-welfare specialist with Lutheran Social Services (LSS), testified respondent mother was living with a friend when Rennier took over the case. Shortly thereafter, respondent mother moved back in with respondent father after an order of protection against him was dropped. Respondent mother was unemployed at the time. On March 2, 2011, respondent father called Rennier to report he tried to wake respondent mother with no success, stated she was "frothing at the mouth," and noticed some of her prescription medication was missing. Respondent mother later told Rennier she did not overdose on the medication.

¶ 13 On March 9, 2011, Rennier received a call from respondent mother regarding cuts and bruises on D.F. following a visit. Rennier observed D.F. and saw a "little red spot" on his

back but no cuts and bruises. After D.F. received bruises from a fall at daycare, respondent mother called Rennier, suggested something else had caused the bruising, and requested D.F. be moved from his foster placement.

¶ 14 In February 2011, Rennier observed a home visit where respondent father was "very upset" and verbally abusive. Respondent father refused to take a drug analysis on that date. He also took himself off of his prescribed psychiatric medication. Respondent father told Rennier he did not need the medication and "everything that brought the child into care was just lies."

¶ 15 Rennier stated respondent father was generally cooperative about scheduling visits and was "very loving, very affectionate, [and] caring" toward D.F. Respondent mother was regular in attending visits, and Rennier found her to be "very caring, very loving, [and] affectionate" toward D.F.

¶ 16 Champaign police officer Nick Krippel testified that on February 18, 2011, he was dispatched to a domestic-violence call. Respondent mother claimed respondent father "drug her into a bedroom by pulling on her, closed the door, accused her of cheatin[g] on him[,] and hit her in the left side of her face." She made it out of the bedroom, locked herself in the bathroom, and called the police. Krippel did not believe an act of domestic violence had occurred as respondent mother did not exhibit any injuries.

¶ 17 Demetria Candler, a child-protection specialist at DCFS, testified she received a call on October 29, 2011, that respondent mother had given birth to B.F. Respondent mother told her she had been diagnosed with bipolar disorder and post-traumatic stress disorder. Candler took protective custody of B.F. once he was discharged.

¶ 18 Debbie Nelson, a counselor at Cognition Works, testified she received a referral for respondent mother. During an intake assessment, respondent mother disclosed she had been abused in the past as well as in her current relationship. Respondent mother completed the "Options" program, which addressed abuse in relationships, in October 2011. She was referred to the "Impact" program, which is for nonoffending parents whose children have been exposed to domestic violence. She was terminated from the "Impact" program in May 2011 for lack of attendance. She eventually completed the program in July 2011.

¶ 19 Nelson testified respondent father had been terminated twice from the "Change" program. He was once terminated "for demonstrating anger during the group session." Nelson stated respondent father was cooperative with Cognition Works' program at the time of the hearing.

¶ 20 George Cook, a social worker with Cognition Works, testified he received a referral for respondent father in December 2010. During the intake session, respondent father denied any abuse toward D.F. or women. He first claimed D.F.'s injuries were the result of an accident but then stated respondent mother's family made up the allegations to gain custody of D.F. Respondent father was referred to the "Change" program but was terminated for demonstrating anger. During individual counseling sessions with Cook, respondent father denied abuse toward others and made serious threats against respondent mother's family. During his second time in the "Change" program, respondent did not make any progress as to acknowledging his past abusive behaviors or in accepting any responsibility toward the situation that led to DCFS involvement. Cook put respondent father in the high-risk category for reoffending. Respondent father was terminated from the "Change" program a second time because of a report of domestic

violence against respondent mother.

¶ 21 Cynthia Johnson, a former therapist and now foster-care supervisor at LSS, testified she engaged in counseling with respondent mother from January 2011 through November 2011. Respondent mother was initially diagnosed with "borderline disorder." During the initial sessions, Johnson found respondent mother had "a significant amount of denial" and struggled to acknowledge the domestic violence and injuries to D.F. that took place in her case. In March 2011, respondent mother cancelled a session because of an "accidental overdose." She denied she was attempting to commit suicide. In October 2011, respondent mother admitted she had been dishonest "in a majority of [the] counseling sessions." Respondent mother did not achieve any of her goals during therapy.

¶ 22 Meghan Tellier, a child-welfare specialist at LSS, testified she was assigned to this case in November 2011. Tellier stated respondent mother completed a parenting class, a substance-abuse assessment, and a psychological evaluation; attended individual counseling; and complied with random drug testing. Respondent father completed a substance-abuse assessment and a parenting class. He was unsuccessfully discharged from individual counseling and was twice terminated from the "Change" program at Cognition Works.

¶ 23 Respondent father testified he lived with respondent mother. He stated he completed all of the services he was asked to complete and had never missed a visit. He stated he never harmed respondent mother or anyone else.

¶ 24 Following closing arguments, the trial court found respondents unfit by clear and convincing evidence. The court also found B.F. was a neglected minor based on an injurious environment.

¶ 25 In March 2012, the trial court conducted the best-interest hearing. The best-interest report indicated D.F. has a close bond with his foster parents. He appears to enjoy school and no behavioral issues have been reported. His residential environment was stable and free of family discord and domestic violence. D.F.'s foster parents expressed their willingness to provide permanency through adoption.

¶ 26 The best-interest report also indicated respondents continued to reside with each other and both were unemployed. The report stated respondents have failed to address the reasons the minors were placed into care. The report recommended respondents' parental rights be terminated.

¶ 27 Following closing arguments, the trial court found it in D.F.'s best interest that respondents' parental rights be terminated. In a dispositional order as to B.F., the court found respondents unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minor. The court also found it in B.F.'s best interest that he be made a ward of the court and placed in custody and guardianship with DCFS. Respondents appealed both orders, and this court consolidated the appeals.

¶ 28 II. ANALYSIS

¶ 29 A. Termination of Respondents' Parental Rights as to D.F.
(Case Nos. 4-12-0269 & 4-12-0308)

¶ 30 On appeal, respondents argue the trial court erred in finding them unfit and in finding it in D.F.'s best interest that their parental rights be terminated. We disagree.

¶ 31 1. *Unfitness Findings*

¶ 32 In a proceeding to terminate a respondent's parental rights, the State must prove

unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Veronica J.*, 371 Ill. App. 3d 822, 828, 867 N.E.2d 1134, 1139 (2007). "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).

¶ 33 In the case *sub judice*, the trial court found respondents unfit for failing to (1) make reasonable efforts, (2) reasonable progress, and (3) maintain a reasonable degree of interest, concern, or responsibility as to D.F.'s welfare. " 'Reasonable effort' is a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal. [Citation.] The focus is on the amount of effort reasonable for the particular parent involved." *In re R.L.*, 352 Ill. App. 3d 985, 998, 817 N.E.2d 954, 966 (2004). "In contrast to the goal of reasonable progress, reasonable efforts relate to the much narrower goal of correcting the conditions that were the basis for the removal of the child from the parent." *In re J.A.*, 316 Ill. App. 3d 553, 565, 736 N.E.2d 678, 688-89 (2000).

¶ 34 Here, D.F. was removed from his parents' care because of ongoing domestic abuse, mental-health issues, and substance abuse. As to respondent father, the evidence indicates he has made minimal efforts to correct these conditions. He continued to deny any fault for

D.F.'s situation and blamed others for his problems. He also continued to exhibit anger issues throughout the life of the case and lashed out at child-welfare staff and counselors. He tested positive for marijuana four times between December 2010 and March 2011. He also took himself off his psychiatric medication. While respondent father did attend some services and visits, his failure to take responsibility for his son's removal and overall intransigence exhibited a failure to make reasonable efforts to correct the conditions that led to D.F.'s removal.

¶ 35 Respondent mother has exhibited the same failure to make reasonable efforts. She denied any fault for D.F.'s situation. On more than one occasion, she accused D.F.'s foster parents of sexual and physical abuse against him. She admitted to her counselor that she had been lying during almost all of her counseling sessions. She also continued to live with respondent father even though she regularly reported his physical and verbal abuse of both her and D.F. While respondent mother complied with most of her services and visited with D.F., she failed to make efforts to correct the conditions that led to D.F.'s removal.

¶ 36 The trial court also found respondents unfit for failing to make reasonable progress toward the return of D.F. within the initial nine months after the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2010). The initial nine-month period following the adjudication of neglect ended on September 2, 2011. "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

> "[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act

> encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

"At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006).

¶ 37 Neither respondent exhibited reasonable progress in this case. Respondent father was terminated from the "Change" program on two occasions, he was unemployed, he failed to attend counseling, and he took himself off of his psychiatric medication. Respondent mother was unemployed and continued to blame others for her situation. She lied during counseling and failed to reach any of her goals in individual therapy. The evidence showed respondents' actions were not of such a quality that D.F. could be returned to either one of them in the near future. Thus, the trial court's findings of unfitness were not against the manifest weight of the evidence. Because of our findings on the reasonable efforts and reasonable progress counts, we need not address the finding of unfitness on the remaining ground.

¶ 38 2. *Best-Interest Findings*

¶ 39 Respondents argue the trial court erred in finding it in D.F.'s best interest that their parental rights be terminated. We disagree.

¶ 40 "Courts will not lightly terminate parental rights because of the fundamental

importance inherent in those rights." *Veronica J.*, 371 Ill. App. 3d at 831, 867 N.E.2d at 1142 (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). 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 2010). 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." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a) to (4.05)(j) (West 2010).

¶ 41 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found

to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 42 The best-interest report indicated D.F. was thriving in his placement and his aggression and behavioral issues have improved through developmental therapy and work with his foster parents. His foster parents have ensured his educational, medical, and emotional needs are being met. D.F. has resided with his foster parents since October 2010, and he has developed a close bond with them. His residential environment was stable and free of family discord and domestic violence. Moreover, D.F.'s foster parents expressed their willingness to provide permanency through adoption.

¶ 43 On the other hand, respondents have failed to change the conditions in their home that led to D.F.'s removal in the first place. Moreover, neither parent has shown the responsibility necessary to indicate they would provide for D.F.'s basic needs. The evidence showed respondents would not be able to provide the stability and permanence D.F. needs for the foreseeable future. Based on the evidence presented, we find the trial court's order terminating respondents' parental rights was not against the manifest weight of the evidence.

¶ 44 B. Findings Making B.F. a Ward of the Court
(Case Nos. 4-12-0320 & 4-12-0321)

¶ 45 On appeal, respondents argue the trial court's order finding respondents unfit and that it was in B.F.'s best interest that he be made a ward of the court was against the manifest weight of the evidence. We disagree.

¶ 46 The State alleged B.F. was neglected under section 2-3(1)(b) of the Juvenile Court

Act (705 ILCS 405/2-3(1)(b) (West 2010)), which provides a neglected minor is "any minor under 18 years of age whose environment is injurious to his or her welfare[.]" "The terms 'neglect' and 'injurious environment' do not have fixed definitions but, rather, take their meaning from the particular circumstances of each case." *In re K.L.S-P.*, 383 Ill. App. 3d 287, 292, 891 N.E.2d 946, 950 (2008). In a general sense, the "neglect" of a minor has been defined as a failure to exercise the care that circumstances warrant. *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 746 (2004). The term "injurious environment" has been found to include "a breach of a parent's duty to ensure a safe and nurturing shelter for his or her children." *In re A.P.*, 2012 IL App (3d) 110191, ¶ 18, 965 N.E.2d 441, 446 (citing *Arthur H.*, 212 Ill. 2d at 463, 819 N.E.2d at 747). "[P]roof that one minor is neglected, abused, or dependent is admissible evidence on the issue of neglect, abuse, or dependency of any other minor for whom the parent is responsible." *In re Jaber W.*, 344 Ill. App. 3d 250, 259, 799 N.E.2d 835, 842 (2003); see also 705 ILCS 405/2-18(3) (West 2010).

¶ 47 "The State bears the burden of proving the neglect allegations by a preponderance of the evidence, which means the neglect allegations are more probably true than not." *In re Ch. W.*, 408 Ill. App. 3d 541, 551-52, 948 N.E.2d 641, 651 (2011). On appeal, a trial court's neglect finding will be reversed only if it is against the manifest weight of the evidence. *Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747. A court's finding will be deemed to be against the manifest weight of the evidence "only if the opposite conclusion is clearly evident." *Arthur H.*, 212 Ill. 2d at 464, 819 N.E.2d at 747.

¶ 48 Here, the trial court found respondents unfit as to D.F. The record indicated respondent father hit D.F., which resulted in a swollen lip and a bruised face. Respondent

mother regularly accused respondent father of domestic abuse, only to recant her allegations a short time later.

¶ 49 The home and background report indicated respondent mother was attending individual counseling and a domestic-violence group. She had completed a parenting class, the "Impact" program, and a psychological evaluation. She attended all scheduled visits with her son. She continued to reside with respondent father and remained unemployed.

¶ 50 Respondent father completed a second substance-abuse assessment, and it was determined he did not need further treatment. His drug screens were negative except for a diluted sample in January 2012. He receives unemployment and attended all his scheduled visits.

¶ 51 While respondents were working toward bettering themselves and meeting their parenting goals, the evidence indicates they could not provide the safe and nurturing shelter B.F. needed at this point in his life. The home and background report stated respondent father was in danger of being terminated from the "Change" program for the fourth time due to poor attendance. While respondents had engaged in a number of services in D.F.'s case, "a number of issues remain unaddressed." Psychological evaluations revealed issues that respondents had yet to address.

¶ 52 The report indicated a "major concern" involved the environment created by respondents "and their apparent refusal or inability to recognize there is a problem." More specifically, the report found respondent mother "showed a pattern of blaming others for her children being in care" and was "unable to accept the full consequences of the decisions that led to her children being placed in foster care." Similarly, respondent father still showed anger and intimidating behaviors during counseling sessions and continued "to fail to take any responsibil-

ity for his children being in care."

¶ 53 The same issues that resulted in D.F.'s removal from respondents' custody exist as to B.F. Unless and until respondents can understand the reasons for the removal of their children, and then take responsibility for their actions and apply appropriate parenting skills, they cannot ensure a safe and nurturing environment for B.F.'s benefit. Thus, the trial court's order finding B.F. neglected and making him a ward of the court was not against the manifest weight of the evidence.

¶ 54 III. CONCLUSION

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

¶ 56 Nos. 4-12-0269 & 4-12-0308: Affirmed.

¶ 57 Nos. 4-12-0320 & 4-12-0321: Affirmed.