2013 IL App (4th) 120789-U

NOS. 4-12-0789, 4-12-0790, 4-12-0791, 4-12-0792, 4-12-0793 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 17, 2013
Carla Bender
4th District Appellate
Court, IL

In re: Zo. L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-12-0789)	)	No. 10JA50
AMY D. LARKIN,	)	
Respondent-Appellant.	)	
----------	)	
In re: C.L., a Minor,	)	No. 10JA51
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0790)	)	
AMY D. LARKIN,	)	
Respondent-Appellant.	)	
----------	)	
In re: J.L., a Minor,	)	No. 10JA52
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0791)	)	
AMY D. LARKIN,	)	
Respondent-Appellant.	)	
----------	)	
In re: D.L., a Minor,	)	No. 10JA53
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0792)	)	
AMY D. LARKIN,	)	
Respondent-Appellant.	)	
----------	)	
In re: Zy. L., a Minor,	)	No. 10JA54
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0793)	)	Honorable
AMY D. LARKIN,	)	Craig H. DeArmond,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding that (1) because Illinois Supreme Court Rule 901(d) (eff. Feb. 26, 2010) is directory rather than mandatory, the trial court's noncompliance with that rule did not require reversal and (2) the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In October 2011, the State filed petitions to terminate the parental rights of respondent, Amy Larkin, as to her children, Zo. L. (born May 10, 2001); C.L. (born May 10, 2001); J.L. (born December 12, 2008); D.L. (born September 20, 2005); and Zy. L. (born December 14, 2009). Following a fitness hearing that ended in February 2012, the trial court entered a written order, finding respondent unfit. In August 2012, the court conducted a best-interest hearing that resulted in the termination of respondent's parental rights.

¶ 3 Respondent appeals, arguing that (1) the trial court's violation of Illinois Supreme Court Rule 901(d) (eff. Feb. 26, 2010) requires reversal and remand, and (2) the court's fitness and best-interest findings were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Circumstances Preceding the State's Petition To Terminate Respondent's Parental Rights

¶ 6 In March 2010, the State filed separate petitions for adjudication of wardship, alleging that respondent's children were neglected minors under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2010)). Specifically, each petition alleged that respondent's drug use created an environment injurious to the children's

welfare. In addition, the State alleged that Zy. L. was neglected because at birth, his physiological system contained a controlled substance (cocaine) (705 ILCS 405/2-3(1)(c) (West 2010)).

¶ 7 At the July 8, 2010, adjudicatory hearing, the trial court accepted respondent's admission that her children were neglected as alleged by the State. Thereafter, the court entered an order, adjudicating respondent's children neglected. Following an August 2010 dispositional hearing, the court adjudicated the children wards of the court and appointed the Department of Children and Family Services (DCFS) as their guardian. (Although the court's written order appointed DCFS as the children's guardian, the record shows that at the August 2010 dispositional hearing, the court verbally ordered the children to remain with respondent provided respondent complied with her client-service-plan goals.)

¶ 8 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 9 In October 2011, the State filed separate petitions to terminate respondent's parental rights as to her children pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2010)). The State's petition alleged that respondent was an unfit parent in that she (1) failed to maintain a reasonable degree of interest, concern, or responsibility for her children's welfare (750 ILCS 50/1(D)(b) (West 2010)), (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of her children from her custody within nine months after the adjudication of neglect (July 8, 2010, through April 8, 2011) (750 ILCS 50/1(D)(m)(i) (West 2010)), and (3) failed to make reasonable progress toward the return of her children within nine months after the adjudication of neglect (July 8, 2010, through April 8, 2011) (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 10 C. Respondent's Fitness Hearing

¶ 11 A summary of the evidence presented at respondent's fitness hearing, which began in December 2011 and was continued twice until February 2012, showed the following.

¶ 12 1. *The State's Evidence*

¶ 13 Rebecca Woodard, a DCFS caseworker assigned to respondent's case from January 2010 through February 2011, testified that DCFS became involved with respondent's case after Zy. L. was born with cocaine in his physiological system. Respondent's client-service-plan goals required, in pertinent part, that she complete substance-abuse treatment. Woodard noted that in November 2010, respondent was discharged from that DCFS-contracted substance-abuse-treatment center for lack of attendance. During Woodard's involvement, respondent retained custody of her children until February 2011, when the trial court appointed DCFS as the children's guardian because respondent admitted that she had used cocaine.

¶ 14 Doug Schroer, the DCFS caseworker responsible for respondent's case from March 2011 through April 2011, testified that respondent did not attend any drug treatment sessions for approximately six weeks because she had been in jail for traffic offenses. Schroer testified further that with regard to respondent's client-service-plan goals to (1) complete substance-abuse treatment and (2) keep all appointments with her service providers and DCFS, he rated respondent's progress as "unsatisfactory."

¶ 15 Stephanie Ramirez, the DCFS-contracted caseworker who had managed respondent's case since April 2011, testified that (1) respondent had not completed her drug-treatment goal and (2) in August 2011, respondent's drug screen produced a "faint positive" for cocaine.

¶ 16 2. *Respondent's Evidence*

¶ 17 Delores Jones, respondent's substance-abuse counselor, testified that in July 2011,

respondent sought treatment from a different drug-treatment center because respondent was not satisfied with her previous drug-treatment center's unwillingness to work around her schedule. Jones noted that respondent was performing well but acknowledged that she had yet to successfully complete the program.

¶ 18 Gayle Van Vickle, a Vermilion County probation officer, administered the August 2011 drug screen that allegedly resulted in a "faint positive." According to Van Vickle, that drug screen had produced a negative result, rather than a "faint positive."

¶ 19 Respondent testified that after her release from jail in April 2011, she moved into a home with Calvin Foreman, the biological father of J.L., D.L. and Zy. L. Respondent explained that she was unable to obtain her own housing because, in addition to her inability to pay rent, she could not obtain utility services because of her unpaid power bills, which totaled over $2,000. Respondent admitted that in February 2011, she had used cocaine, and that she had yet to successfully complete her drug-treatment program. At the February 2012 hearing, respondent successfully moved to reopen evidence and testified that she had completed her substance-abuse-treatment goal.

¶ 20 3. *The Trial Court's Fitness Finding*

¶ 21 Following the presentation of evidence at respondent's February 2012 fitness hearing, the trial court requested written closing arguments. In July 2012, approximately 132 days after receiving the parties' closing arguments, the court entered its written order.

¶ 22 The trial court found that respondent had made "minimal progress in her services; most of which revolved around her substance[-]abuse issues," which the court determined was "the primary issue [respondent] was required to address." In that regard, the court summarized

its findings as follows:

> "Since the date of [respondent's] admission of use on February 24, 2011[,] [respondent] had been incarcerated for traffic offenses from March 5 to April 20, 2011, had another "faint positive" drop on August 18, 2011, been dropped from individual counseling for failing to attend before it was discontinued due to a goal change, and had failed to maintain stable housing suitable for return of the children.
>
> All of these deficiencies lead to the inescapable conclusion that for the period of time between July 8, 2010 and April 8, 2011 [respondent] failed to maintain a reasonable degree of interest concern or responsibility for her children. In addition, since she had yet to successfully complete or even fully attend substance[-] abuse treatment, she failed to make reasonable efforts or progress toward correcting the conditions which were the basis for the removal of the children in the first place."

Thereafter, the court found that the State had proved the allegations of unfitness alleged in its June 2012 petition by clear and convincing evidence.

¶ 23 D. The Pertinent Evidence Presented at Respondent's Best-Interest Hearing

¶ 24 1. *The State's Evidence*

¶ 25 As summary of the evidence presented by the State at the August 2012 best-interest hearing provided, in part, by Ramirez and Deborah Larkin, the maternal grandmother of

the children, showed that in April 2011, Zo. L., C.L., J.L., D.L., and Zy. L. were placed with Larkin. Ramirez described Larkin's home as "very clean" and that Larkin was an extremely organized person who adequately provided for the children's welfare. Ramirez noted that the children "all have their rooms, and their rooms are all appropriate." Ramirez also noted that C.L. had anger issues associated with his belief that he was abandoned by respondent and to a lesser degree, that Larkin had failed to protect him, but stated that coupled with the services DCFS was attempting to provide for C.L., she had no concerns with Larkin adopting the children and providing for their welfare.

¶ 26 Larkin testified about her efforts to address the different medical and emotional issues each child was facing, noting that C.L. was not receptive to counseling. Larkin noted that all the children were doing well in school and active in extracurricular sports activities. Larkin expressed her willingness to adopt the children but, because of her strained relationship with respondent, she would likely not permit respondent immediate contact until the children were "emotionally settled."

¶ 27 2. *Respondent's Evidence*

¶ 28 Respondent testified that she (1) gave birth to a sixth child that remains in her care and (2) had room in her home to care for Zo. L., C.L., J.L., D.L., and Zy. L., noting that at the time of the hearing, she had successfully completed all of her client-service-plan goals. Respondent also noted that she remains in contact with Zo. L. through social networking and that she was willing to seek assistance for C.L. and his anger-management issues.

¶ 29 3. *The Trial Court's Best-Interest Finding*

¶ 30 After considering this evidence and counsel's arguments, the trial court terminated

respondent's parental rights as to her children.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 A. Respondent's Claim that the Trial Court Violated Supreme Court Rule 901(d)

¶ 34 Respondent argues that the trial court's violation of Rule 901(d)—which requires the court to render its judgment in a custody proceeding not later than 60 days after the completion of the hearing—requires reversal and remand. Specifically, respondent contends that because 132 days elapsed between the parties' submission of closing arguments and the court's fitness finding, "[t]he order finding [respondent] to be an unfit parent should be stricken, the findings reversed, and the termination hearing should be repeated." We disagree.

¶ 35 Supreme Court Rule 901(d) reads as follows:

> "In any child custody proceeding taken under advisement by the trial court, the trial judge shall render its decision as soon as possible but not later than 60 days after the completion of the trial or hearing." Ill. S. Ct. R. 901(d) (eff. Feb. 26, 2010).

¶ 36 Although we agree with respondent that the trial court did not comply with Rule 901(d), at issue is whether a violation of that rule requires reversal. Because we hold that Rule 901(d) is directory rather than mandatory, we conclude that reversal and remand for a new fitness hearing is neither required nor warranted.

¶ 37 "Illinois Supreme Court rules are interpreted under the same principles that govern the interpretation of statutes." *In re W.R.*, 2012 IL App (3d) 110179, ¶ 15, 966 N.E.2d

1139, 1142. Whether a statutory command is mandatory or directory is a question of statutory construction, which we review *de novo*. *People v. Robinson*, 217 Ill. 2d 43, 54, 838 N.E.2d 930, 936 (2005). "[S]tatutes are mandatory if the intent of the legislature dictates a particular consequence for failure to comply with the provision." *People v. Delvillar*, 235 Ill. 2d 507, 514, 922 N.E.2d 330, 335 (2009) (citing *Pullen v. Mulligan*, 138 Ill. 2d 21, 46, 561 N.E.2d 585, 595-96 (1990)). "In the absence of such intent the statute is directory and no particular consequence flows from noncompliance." *Delvillar*, 235 Ill. 2d at 515, 922 N.E.2d at 335.

¶ 38 "[W]e presume that language issuing a procedural command to a government official indicates an intent that the statute is directory." *Delvillar*, 235 Ill. 2d at 517, 922 N.E.2d at 336 (citing *Robinson*, 217 Ill. 2d at 58, 838 N.E.2d at 938-39). The presumption that a statutory provision is directory can be overcome under either of two conditions: "[a] provision is mandatory *** when [(1)] there is negative language prohibiting further action in the case of noncompliance or [(2)] when the right the provision is designed to protect would generally be injured under a directory reading." *Id.*

¶ 39 Our review of the plain language of Rule 901(d) reveals that neither aforementioned condition exists so as to overcome the presumption that Rule 901(d) is directory. First, no language exists prohibiting the trial court from taking further action in the instance of noncompliance with Rule 901(d). Second, the right that the provision is designed to protect, namely the expeditious resolution of child custody proceeding, would generally be delayed further under a mandatory, rather than directory reading. Although injury to the protected right occurs whenever the court takes a child-custody proceeding under advisement in excess of the 60-day limit set forth in Rule 901(d), the question is whether a directory reading, *as opposed to a mandatory*

reading, would generally injure the right that the provision is designed to protect. As respondent's proposed remedy of reversal and remand demonstrates, a mandatory reading of Supreme Court Rule 901(d) would cause further delay in the final resolution of child custody proceedings and belie the purpose of the rule.

¶ 40 Even in extreme cases of noncompliance with Rule 901(d), such as the one presented in this case, by the time the trial court enters its final, appealable order, a remedy of reversal with remand for new proceedings would accomplish nothing more than cause the termination proceeding to begin anew. The supreme court, in issuing Rule 901(d), could not have intended a remedy that would *extend* the amount of time that a child had to endure before experiencing his or her right to permanency. The respondent's proposed remedy would result in such an intolerable delay. Accordingly, because Rule 901(d) dictates no particular consequence for noncompliance, we conclude that the trial court's violation of that rule does not require reversal of the court's fitness findings.

¶ 41 Despite so concluding, we note that Rule 901(d), even if only directory, must still be complied with, and we are confident that the trial court will do so in the future.

¶ 42 B. Termination of Respondent's Parental Rights

¶ 43 1. *The Trial Court's Fitness Finding*

¶ 44 a. The Applicable Statute, Reasonable Progress, and the Standard of Review

¶ 45 Section 1(D)(m)(i) of the Adoption Act provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that

the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

* * *

(m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent[.]" 750 ILCS 50/1(m)(i) (West 2010).

¶ 46 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

"[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."

¶ 47 In *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991), this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as

follows:

> " 'Reasonable progress' *** exists when the [trial] court *** can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent ***." (Emphases in original.)

The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into question this court's holding in *L.L.S.* For cases citing the *L.L.S.* holding approvingly, see *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067-68, 808 N.E.2d 596, 605 (2004); *In re B.W.*, 309 Ill. App. 3d 493, 499, 721 N.E.2d 1202, 1207 (1999); and *In re K.P.*, 305 Ill. App. 3d 175, 180, 711 N.E.2d 478, 482 (1999).

¶ 48 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id.*

¶ 49 b. Respondent's Claim That the Trial Court's Fitness Finding Was Against the Manifest Weight of the Evidence

¶ 50 Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. In particular, respondent contends that her failure to complete substance-abuse treatment is attributable to (1) her scheduling difficulties in balancing work and treatment, and (2) her inability to pay for treatment with Jones following her discharge from her previous substance-abuse-treatment center for lack of attendance. In this regard, respondent asserts that the court impermissibly found her unfit based upon financial reasons alone. We disagree.

¶ 51 Respondent posits that "Illinois law prohibits a [trial] court from finding a parent unfit for financial reasons alone." This argument misconstrues adjudications of parental fitness under the Adoption Act (750 ILCS 50/1(D) (West 2010)) with adjudications of fitness under the Juvenile Court Act (705 ILCS 405/5-740 (West 2010)). The latter provision of Illinois law comes into play during guardianship proceedings, while the former provision comes into play during termination proceedings. Only during guardianship proceedings held pursuant to the Juvenile Court Act is the court explicitly prohibited from finding a parent unfit based upon financial circumstances alone. 705 ILCS 405/5-740(1) (West 2010). However, even assuming *arguendo* that the court were prohibited from finding respondent unfit for financial reasons alone, we disagree that the court's fitness finding was based on such narrow grounds.

¶ 52 In this case, the trial court premised its fitness finding, in part, on the uncontroverted evidence that respondent failed to complete the substance-abuse-treatment program mandated by her client-service plan. Although that plan required respondent to balance a substance-abuse-treatment program with her work schedule, we disagree that her inability to do so is attributable to "financial circumstances alone." As the court found, respondent repeatedly delayed taking action on her treatment plan until the date of a goal change approached. The court

explained as follows:

> "Once we got to a goal change, that's when things got kicked into gear, and that's when we actually started seeing some sort of action. *** The children remained in her care for a substantial period of time until suddenly, she was required to drug drop on a day she didn't realize it was going to happen when she appeared in court February 23rd of 2011. Of course, now by that time, she had two months previous to that said she was going to get herself set up with [a new] treatment [center], because she didn't want to cooperate with [her previous center] anymore. They weren't working with her schedule. Of course she still hasn't set herself up with [substance-abuse treatment] at that point, and that was when she refused to drop, waited all day, and then eventually admitted that she was going to drop dirty because she had been using cocaine. It was only after that day that she started participating in services."

¶ 53 Here, the evidence presented at the fitness hearing makes clear that respondent's failure to complete substance-abuse treatment was attributable, in part, to delays of her own making that were separate and apart from her financial problems. More important, the record shows that respondent was unable to assume responsibility for her children in the near future because she had not complied with her client-service-plan goals.

¶ 54 Accordingly, we conclude that the court's finding that respondent was unfit due to her failure to make reasonable progress toward correcting the conditions that were the basis for

the removal of the children was not against the manifest weight of the evidence. Having so concluded, we need not consider the trial court's other findings of parental fitness. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental fitness).

¶ 55 2. *The Trial Court's Best-Interest Finding*

¶ 56 a. The Standard of Review

¶ 57 At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 58 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 59 b. Respondent's Claim That the Trial Court's Best-Interest Finding Was Against the Manifest Weight of the Evidence

¶ 60 Respondent next argues that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondent contends that "the affection between [respondent] and her children demonstrate [*sic*] that there is a solid attachment and bond between

them and it would not be in the best interests of the minor children that [respondent] have this bond severed." We disagree.

¶ 61 Respondent's actions, in fact, caused the separation in this case. The trial court recognized, correctly, that respondent "shared" such affection that she failed to provide for them at every turn, until, of course, it was too late. Indeed, at the conclusion of the August 2012 best-interest hearing, the trial court summarized its findings and decision as follows:

> "The children have been provided a safe, stable environment. They have been cared for. They have been given the stability that they needed, and the sense of security that they needed, and they have received that at the hands of the foster placement. It is because of the behavior of the mother that they were placed there in the first place. What [respondent] has done has decided to make her changes, to make them at a time that was essentially too late. She can't undo what she has done, and what she has done has caused substantial emotional anguish for these children.
>
> Based upon all of the evidence, [the trial court] find[s] that it is in the best interest of each of the minors that the parental rights of [respondent] be and are hereby terminated."

¶ 62 In this case, ample evidence was presented at the best-interest hearing to support the trial court's decision to terminate respondent's parental rights. Based on that evidence, we disagree with respondent that the facts clearly demonstrated that the court should have reached the opposite result.

¶ 63 III. CONCLUSION

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

¶ 65 Affirmed.