

NOTICE  
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2013 IL App (4th) 120948-U  
NOS. 4-12-0948, 4-12-0949 cons.

FILED  
February 26, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-12-0948)	)	No. 11JA18
ANGEL LONG,	)	
Respondent-Appellant,	)	
In re: J.L., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-12-0949)	)	Honorable
KEVIN TRADER,	)	Michael D. Clary,
Respondent-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The trial court's unfitness and best-interest determinations were not against the manifest weight of the evidence.

¶ 2 Respondent mother, Angel Long, and respondent father, Kevin Trader, were found unfit and their parental rights to their minor child, J.L. (born April 3, 2009), were terminated. Angel appeals (4-12-0948), and Kevin appeals (No. 4-12-0949), both arguing the trial court erred in finding them unfit and terminating their respective parental rights. These appeals were consolidated for our review. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 23, 2011, the Department of Children and Family Services' (DCFS) hotline received a phone call, alleging Angel was allowing a known methamphetamine "cook" to stay in her home, methamphetamine was being manufactured in her home, and Angel was using methamphetamine in her home. DCFS and law enforcement went to Angel's home and discovered ingredients for manufacturing methamphetamine as well as methamphetamine itself. Angel admitted she had smoked marijuana and would test positive for methamphetamine. J.L. was not home at the time of the investigation and was being cared for in the home of another person. One of the residents of that home was known to police as a methamphetamine cook and another was a registered sex offender. Another resident, who was involved in an unrelated DCFS case, had just been released from prison, where he had been incarcerated on methamphetamine-related charges. As a result, DCFS took protective custody of J.L.

¶ 5 On February 24, 2011, the State filed an amended four-count petition for adjudication of wardship, alleging J.L. was a neglected minor because she was living in an injurious environment in that (1) Angel left her at another person's home from the age of two months to one year without a formal care plan (count I), (2) that person used methamphetamine while J.L. was in her care (count II), (3) Angel used drugs (count III), and (4) two individuals living in the home where Angel left J.L. had prior DCFS involvement (count IV).

¶ 6 On February 25, 2011, the trial court found probable cause for the State's petition, citing Angel's drug use and the fact she left J.L. with inappropriate caretakers. The court placed J.L.'s temporary custody and guardianship with DCFS.

¶ 7 On June 8, 2011, the trial court entered an adjudicatory order, finding J.L. to be a neglected minor due to Angel's drug use and Angel leaving J.L. with inappropriate caretakers.

¶ 8 On July 20, 2011, the trial court entered a dispositional order adjudicating J.L. a ward of the court and placing her guardianship with DCFS. Both Angel and Kevin were ordered to complete all recommended services.

¶ 9 During a January 19, 2012, permanency review hearing, DCFS caseworker Cherylanda Trice testified Angel was to engage in substance abuse treatment, individual therapy, parenting classes, as well as obtain stable housing and employment. According to Trice, Angel had not participated in any of those services. Angel had been incarcerated since October 2011. Kevin was to engage in mental health treatment, substance abuse treatment, and parenting classes. While Kevin reported starting mental health treatment, Trice testified she could not confirm that information.

¶ 10 On January 23, 2012, the trial court entered a permanency order changing the permanency goal to substitute care pending termination of parental rights.

¶ 11 According to the February 22, 2012, client service plan, Kevin's progress was unsatisfactory because he had been arrested and had not participated in services. The plan rated Angel's progress as unsatisfactory because she too was incarcerated and had not participated in services.

¶ 12 On May 23, 2012, the State filed an amended petition for termination of Angel and Kevin's parental rights. The State's petition alleged Angel and Kevin were unfit because they (1) abandoned J.L., (2) failed to maintain a reasonable degree of interest, concern, or responsibility for J.L.'s welfare, (3) deserted the minor for more than three months preceding the commencement of the instant action, (4) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor within nine months (June 8, 2011, to

March 8, 2012) after the adjudication of neglect, and (5) failed to make reasonable progress toward the return home of the minor within nine months (June 8, 2011, to March 8, 2012) after the adjudication of neglect. The amended petition additionally alleged Kevin was unfit because he was depraved.

¶ 13 During the July 2012 hearing on the State's petition to terminate, retired DCFS caseworker Doug Schroer testified he reviewed Angel and Kevin's progress between April 2011 and August 2011. Schroer testified Angel was to engage in substance abuse treatment, mental health counseling, and parenting classes. Angel was rated unsatisfactory for each. In addition, Angel attended just one visit with J.L. between March 2011 and August 2011. She had tested positive during previsit drug testing on several occasions and could not proceed with visits on those occasions. Kevin was to engage in substance abuse treatment and obtain mental health assistance. Kevin could not receive substance abuse treatment until he first addressed his mental health problems. However, Schroer rated Kevin as satisfactory for attempting to engage in the process. Kevin attended four of nine scheduled visits with J.L. Kevin was unable to attend any visits between March 2011 and June 2011 due to his incarceration.

¶ 14 Trice testified she reviewed Angel and Kevin's progress between August 2011 and February 2012. Trice testified Angel was required to engage in substance abuse treatment, individual therapy, parenting classes, as well as obtain stable employment and housing. Trice testified Angel rated unsatisfactory for all of the services. According to Trice, Angel had no contact with DCFS for the majority of the time the case was open. Angel did not communicate with DCFS between August 2011 and at least January 2012. Trice testified it was her understanding Angel was incarcerated for at least part of that six-month period. With regard to

Kevin, Trice testified he was to engage in mental health treatment, parenting classes, substance abuse treatment, as well as obtain stable housing and employment. However, Kevin was rated unsatisfactory because of his lack of contact with DCFS and failure to complete services. At the time of the termination hearing, Kevin had not engaged in either substance abuse treatment or parenting classes. While Kevin testified he was seeking mental health treatment at Crosspoint, Trice testified her investigation revealed Kevin had only been seen "a few times in the last-six month period." Further, Trice was unable to set up any visits between Kevin and J.L. because based on her conversations with the mental health professional at Crosspoint, Kevin "still had some severe mental health instability that could potentially be a safety risk to [J.L.]"

¶ 15 At the conclusion of the hearing, the trial court found Angel and Kevin unfit where they (1) failed to maintain a reasonable degree of interest, concern, or responsibility, (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal, and (3) failed to make reasonable progress toward the return of the minor.

¶ 16 The September 25, 2012, best-interest report indicated J.L. was bonded with her foster family, with whom she had lived for 1 1/2 years, and referred to her foster parents as "mommy" and "daddy." The report also indicated the family was willing to adopt J.L. According to the report, it would be detrimental to J.L. to remove her from the only home she knew. The report recommended the termination of Angel and Kevin's parental rights.

¶ 17 During the September 28, 2012, best-interest hearing, Angel testified she was employed as "a third shift fork truck driver" and was making enough money to support herself. According to Angel, she was "working on buying her own place" and would be ready to care for J.L. in six months. Nancy Allen-Abbot, the DCFS placement supervisor, testified J.L. had

resided in her foster placement since February 2011. J.L. was attending a preschool program and was "maintaining her regular doctor appointments and vision and hearing tests." J.L. was doing well in her foster placement and had bonded with her foster family, who was willing to provide permanency through adoption. Kevin did not testify. At the conclusion of the hearing, the trial court found it was in J.L.'s best interest to terminate Kevin and Angel's parental rights.

¶ 18 This appeal followed.

## ¶ 19 II. ANALYSIS

¶ 20 On appeal, Angel and Kevin argue the trial court erred in finding them unfit and terminating their parental rights. We disagree.

### ¶ 21 A. Parental-Fitness Determination

¶ 22 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

#### ¶ 23 1. *Finding of Unfitness as to Angel (No. 4-12-0948)*

¶ 24 In this case, the trial court found Angel unfit for, *inter alia*, failing to make reasonable progress during the nine-month period (June 8, 2011, to March 8, 2012) following the

adjudication of neglect. Reasonable progress is an objective standard which focuses on the amount of progress toward the reunification goal that can reasonably be expected. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999); *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 25 In this case, Angel failed to complete any of the recommended services during the nine-month period following the adjudication of neglect. While we recognize Angel was in custody for a portion of that period of time, she did not seek to engage in services during the time she was not incarcerated. We note DCFS had no contact with Angel from August 2011 until January 2012. Angel had no visitation with J.L. between August 2011 and August 2012. As a result, Angel was no closer to having J.L. returned at the time of the hearing than she was when J.L. was adjudicated neglected. Based on the evidence in the record, we conclude the trial court's finding of unfitness as to Angel was not against the manifest weight of the evidence.

¶ 26 *2. Finding of Unfitness as to Kevin (No. 4-12-0949)*

¶ 27 The trial court found Kevin unfit for, *inter alia*, failure to make reasonable progress during the nine-month period (June 8, 2011, to March 8, 2012) following the adjudication of neglect.

¶ 28 Here, Kevin did not complete the recommended services regarding his mental health, substance abuse, and parenting issues. While Kevin was incarcerated multiple times during the pendency of this case, he did not complete services during the times he was free. In fact, he had no contact at all with DCFS from August 2011 until January 2012. While Kevin reported undergoing mental health treatment, the record does not indicate what, if any, progress had been made in that regard. Based on the evidence in the record, we conclude the trial court's

finding of unfitness as to Kevin was not against the manifest weight of the evidence.

¶ 29

#### B. Best-Interest Determination

¶ 30

Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2010); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs[.]" 705 ILCS 405/1-3(4.05) (West 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." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

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

¶ 31                                    1. *Best-Interest Finding as to Angel (No. 4-12-0948)*

¶ 32                                    In this case, J.L. had been doing well in her foster placement and had a strong bond with her foster family. J.L., who was approximately 3 1/2 years old at the time of the best interest hearing, had been in foster care for more than a year and a half. J.L. referred to her foster parents as "mommy" and "daddy." Her foster parents were willing to provide her permanency through adoption. By comparison, Angel has not successfully completed services. While Angel testified she was employed at the time of the best-interest hearing, she did not have the present ability to provide J.L. with suitable housing. Based on the evidence presented, we hold the trial court's order finding the termination of Angel's parental rights was in the minor's best interest was not against the manifest weight of the evidence.

¶ 33                                    2. *Best-Interest Finding as to Kevin (No. 4-12-0949)*

¶ 34                                    As stated, J.L. was thriving in her foster placement and her foster parents were willing to adopt her. By comparison, Kevin had not successfully completed services related to his mental health, substance abuse, and parenting issues. Moreover, it is unclear from the record whether Kevin is employed or otherwise able to provide J.L. with stable housing. As a result, we cannot say Kevin was in a position to care for J.L. at the time of the best-interest hearing or at any time in the near future. Based on the evidence presented, we hold the trial court's order

finding the termination of Kevin's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 35

### III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's judgment in case Nos. 4-12-0948 and 4-12-0949.

¶ 37 No. 4-12-0948, Affirmed.

¶ 38 No. 4-12-0949, Affirmed.