2014 IL App (4th) 131087-U

NO. 4-13-1087

FILED
April 15, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: H.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 12JA18
JANICE ARTIS,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which terminated respondent's parental rights.

¶ 2 In May 2013, the State filed a petition to terminate the parental rights of respondent, Janice Artis, as to her son, H.C. (born February 5, 2012). Following a November 2013 fitness hearing, the trial court found respondent unfit. Later that same month, the court conducted a best-interest hearing and, thereafter, terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness findings were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Parties' Briefs to This Court

¶ 6 Before outlining the factual circumstances surrounding this appeal, we first note

that in their briefs to this court, respondent and the State provided comprehensive details of the permanency and status hearings that occurred after the trial court entered its May 2012 dispositional order, which also included the content of the Department of Children and Family Services (DCFS) reports filed immediately prior to those proceedings. Such detail is not properly before this court and is inappropriate, given that the sole issue before us concerns the trial court's fitness findings, which occurred after the State filed a petition seeking to terminate parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2012)).

¶ 7 Seeking to terminate parental rights is a very significant step that requires, in the fitness portion of the hearing on the State's termination petition, the use of the formal rules of evidence in civil cases. See *In re M.S.*, 239 Ill. App. 3d 938, 946, 606 N.E.2d 768, 773 (1992) (the rules of evidence that normally apply to civil cases also apply to fitness hearings under the Adoption Act); *In re Jay. H.*, 395 Ill. App. 3d 1063, 1069, 918 N.E.2d 284, 289 (2009) ("[I]t would be illogical to apply the rules of evidence to adjudicatory hearings, the result of which may only be temporary, but not to apply those same rules to parental-fitness hearings, where parents face permanent revocation of parental rights.").

¶ 8 The same rules of evidence that apply to fitness hearings, however, do not apply when a trial court conducts permanency-review or status hearings under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 to 7-1 (West 2012)). See *In re A.L.*, 409 Ill. App. 3d 492, 502, 949 N.E.2d 1123, 1131 (2011) (where this court held that "the same civil rules of evidence that we deemed applicable to fitness hearings under the Adoption Act do not apply at either dispositional hearings or permanency[-]review hearings, which are governed, in part, by *** the Juvenile Court Act"). Essentially, no rules of evidence limit what a trial court can receive and consider at dispositional hearings or permanency-review hearings, which are really

later-stage dispositional hearings. Given this situation, it would normally be inappropriate for the trial court to consider matters presented to the court at dispositional or permanency-review hearings in a parental termination hearing, where the formal rules of evidence apply.

¶ 9 In *In re J.G.*, 298 Ill. App. 3d 617, 628, 699 N.E.2d 167, 175 (1998), this court acknowledged that at a fitness hearing, the trial court "must necessarily take notice of certain facts relating to how the case has reached the point at which termination of parental rights is sought by the State." However, "state action to terminate the relationship between a parent and child must be accomplished by procedures that comport with due process." *In re D.T.*, 212 Ill. 2d 347, 359, 818 N.E.2d 1214, 1224 (2004). Thus, a court cannot take judicial notice of the entire record preceding a fitness hearing without first finding that the content of that record is admissible under the civil rules of evidence. *J.G.*, 298 Ill. App. 3d at 629, 699 N.E.2d at 175. See *In re H.C.*, 305 Ill. App. 3d 869, 880, 713 N.E.2d 784, 791 (1999) ("wholesale judicial notice of everything that took place prior to the []fitness hearing is unnecessary and inappropriate"; a court's fitness findings "should be based only upon evidence properly admitted at the []fitness hearing" (Internal quotation marks omitted.)).

¶ 10 The parties' comprehensive discussions in their respective briefs to this court regarding the details of the permanency and status hearings is not only improper but also inconsistent with the evidence of which the trial court took judicial notice at the November 2013 fitness hearing. At the start of respondent's fitness hearing, the State appropriately requested that the court take judicial notice of the following: (1) the February 8, 2012, petition for adjudication of wardship; (2) the February 9, 2012, stipulated temporary custody order; (3) the April 2012 adjudicatory order; (4) the May 2012 dispositional order; and (5) the various permanency orders the court entered from October 2012 to June 2013.

¶ 11 However, we reiterate the following suggestions this court made regarding the proper procedure to employ had the State requested that the trial court take judicial notice of the entire record preceding the November 2012 fitness hearing at issue:

> " 'If the State wishes the trial court to take judicial notice of portions of the court file in a particular []fitness proceeding, the State can make a proffer to the court of the material requested to be noticed. [Respondent's] counsel should then be allowed an opportunity to object to the State's request. Such a procedure would serve to focus the trial court's attention on only those matters that are admissible under the rules of evidence, as well as make it easier for a reviewing court to determine what the trial court actually relied on in making its decision of unfitness. Above all, the trial court's decision as to whether a parent is unfit should be based only upon evidence properly admitted at the []fitness hearing.' " *A.L.*, 409 Ill. App. 3d at 503-04, 949 N.E.2d at 1132 (quoting *J.G.*, 289 Ill. App. 3d at 629, 669 N.E.2d at 175-76).

See also *In re A.B.*, 308 Ill. App. 3d 227, 239, 719 N.E.2d 348, 358 (1999) (where the Second District endorsed this court's analysis in *J.G.*). Of course, a respondent may acquiesce to the court's taking judicial notice of otherwise inadmissible evidence by formally waiving that prohibition, which a respondent may elect to do for strategic reasons. See *A.L.*, 409 Ill. App. 3d at 505, 949 N.E.2d at 1133 (inferring the respondent's acquiescence to the court's consideration of otherwise inadmissible evidence was for strategic purposes).

¶ 12 Accordingly, we confine our review of the facts surrounding this appeal to those

gleaned from evidence properly admitted at the November 2013 fitness hearing.

¶ 13 B. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 14 On February 6, 2012, DCFS received a hotline tip stating that following his birth, H.C. tested positive for cannabis. On February 8, 2012, the State filed a petition for adjudication of wardship, alleging that H.C. was a neglected minor under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)). Specifically, the State contended that H.C.'s environment was injurious to his welfare because respondent (1) "had previous juvenile court involvement" in McLean County case No. 11-JA-20 and (2) continued to smoke cannabis twice a week since December 2011. (In June 2013, H.C.'s biological father, Scott Curtis, surrendered his parental rights; Curtis is not a party to this appeal.)

¶ 15 At a shelter-care hearing conducted the next day, respondent stipulated that an immediate and urgent necessity required H.C.'s placement in shelter care. Thereafter, the trial court entered a stipulated temporary custody order, finding probable cause existed to place H.C. in shelter care based on the following:

> "[Respondent] mother failed to attain a fitness finding in [case No.] 11-JA-20 and admitted to continued drug use (cannabis) while pregnant [with H.C.]. [Respondent] tested positive for cannabis use on [February 5, 2012)]."

(We construe the phrase "failed to attain a fitness finding" as respondent's failure to regain custody of her other child, D.A. (born March 3, 2009); Curtis is not D.A.'s biological father.) The court then appointed DCFS as H.C.'s temporary guardian.

¶ 16 Following an April 2012 adjudicatory hearing, the trial court found H.C. was a neglected minor based on the same findings it noted at the shelter-care hearing, adding that re-

spondent tested positive for cannabis use on February 9, 2012. At a May 2012 dispositional hearing, the court declared H.C. a ward of the court and maintained DCFS as his guardian.

¶ 17 C. The State's Motion To Terminate Parental Rights

¶ 18 In May 2013, the State filed a petition to terminate respondent's parental rights pursuant to the Adoption Act, alleging that respondent was an unfit parent in that she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to H.C.'s welfare (750 ILCS 50/1(D)(b) (West 2012)) and (2) make reasonable efforts to correct the conditions that were the basis for H.C.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)).

¶ 19 D. The November 2013 Fitness Hearing

¶ 20 1. *The State's Evidence*

¶ 21 Respondent testified that her inability to obtain a favorable fitness finding in case No. 11-JA-20 was the reason the trial court removed H.C. from her care in case No. 12-JA-18, the instant case. Respondent explained that during case No. 11-JA-20, she had been abusing drugs and was in an abusive relationship with D.A.'s biological father, Jake Deerwester. As a result, DCFS required respondent to successfully complete parenting classes, domestic-violence counseling, and substance-abuse treatment, which respondent stated she had accomplished. Respondent acknowledged that in the instant case, she was again required to successfully complete domestic-violence and substance-abuse counseling.

¶ 22 Respondent admitted that she sent a September 4, 2013, letter to the State, in which she made the following statement:

> "It has been explained to me, that the only real concerns about my case center on two separate witness reports that I [had] some contact with my ex-boyfriend, *** Curtis, which would indi-

cate a repeated pattern of me disregarding the tools that I have learned [by] continuing to see him."

Respondent explained that the term "tools" meant the techniques she learned during her domestic-violence counseling, which emphasized the importance of terminating abusive relationships.

¶ 23 Respondent denied (1) contacting Curtis between March 2013, when their relationship ended, and September 2013, when she wrote her letter; (2) ever visiting the "Sport-N-Bait Lounge"; (3) being with Curtis near a specific Bloomington, Illinois, intersection on October 21, 2013; and (4) any recent activity on the social media site, "Facebook." The State then asked respondent to identify the time frame of two pictures retrieved from a Facebook page bearing her name that depicted her with Curtis under the caption "New Pics July 2013." Respondent estimated that the pictures were three years old, which coincided with the cancellation of her Facebook account. Respondent could not remember the circumstances under which the pictures were taken or how the two pictures appeared on a Facebook account bearing her name.

¶ 24 Respondent acknowledged that in late September 2013 she had two cell phone conversations with Curtis—which occurred a few days apart—concerning pictures respondent's caseworker, Nathaniel Funte, took that depicted respondent's vehicle in front of Curtis' residence earlier that same month. Respondent did so because she was upset and did not think Funte's actions were professional. Respondent's intent was merely to inform Curtis of the pictures.

¶ 25 Respondent also acknowledged that she had successfully completed domestic-violence counseling on two separate occasions. Thereafter, the following exchange occurred:

"[THE STATE]: So given your past [abusive relationships], would it be important for you to cut off the unhealthy relationships you had both with *** Deerwester and *** Curtis?

> [RESPONDENT]: They are the fathers of my child [*sic*], so, no. I mean *** so long as it's not something that's a relationship, *** I still talk to [Deerwester] on a level of respect and communication, *** until he signed over his rights ***."

Respondent confirmed that (1) having contact with Curtis is different than being in a relationship with him because a relationship would be harmful to herself and H.C.; (2) she was not in a relationship with Curtis; (3) her domestic-violence counseling taught her that domestic-violence victims need to "cut ties" with their abusers, but she disputed that it meant no contact whatsoever; (4) she last tested positive for drug use in February 2012; and (5) for the past two years, she had had an Alcoholics Anonymous (AA) sponsor and had been attending AA meetings twice a week.

¶ 26 Colleen Rychlewski, a licensed clinical social worker for a DCFS-contracted affiliate, testified that in April 2011, respondent was assigned to her domestic-violence-program group, which respondent successfully completed. Rychlewski explained that the program assists domestic-violence victims by instructing them on healthy communication skills, conflict resolution, and recognizing "red flags" in personal relationships.

¶ 27 In February 2013, respondent returned to Rychlewski for a domestic-violence assessment. During that assessment, Rychlewski determined that respondent had resumed her abusive relationship with Curtis. Rychlewski paraphrased respondent's description of her relationship with Curtis as "rocky," in that they both had abused drugs and argued. That combination would sometimes result in physical violence. Following that assessment, Rychlewski placed respondent in the Safe Equal Caring Understanding Relationships (SECURE) program, which was a different program than the one respondent had previously completed.

¶ 28 At first, Rychlewski characterized respondent's progress as "very well for a long

time," but things changed in June 2013, when Funte became respondent's new caseworker. Rychlewski explained that, unlike respondent's previous caseworker, Funte provided ample feedback from his perspective. Despite Rychlewski's initial assessment of respondent's progress, she acknowledged that in July 2013, Funte told her that he (1) was attending to other interests and happened to observe respondent's van parked in the driveway of Curtis' home and (2) saw "someone who looked like" respondent exiting the home. In late July or early August, Rychlewski asked respondent about Funte's account. Respondent stated that she let Curtis' sister borrow her van. Respondent added that she had not seen Curtis since March 2013. Rychlewski did not inquire further, but she later became concerned.

¶ 29 To successfully complete her domestic-violence-counseling program, respondent volunteered to share her experiences with current participants of the SECURE program that she had recently completed. On September 25, 2013, the day respondent was scheduled to provide her insight, she called Rychlewski, requesting to reschedule her appearance. Later that day, Rychlewski spoke with Funte, who confirmed that he had observed respondent's van at Curtis' home earlier that same day at what appeared to be a yard sale.

¶ 30 At an October 2, 2013, meeting at which Rychlewski, Funte, and respondent appeared, Funte confronted respondent with the September 25, 2013, pictures he had taken of respondent's van parked in Curtis' yard. Respondent denied being at Curtis' home, explaining that she let Curtis' sister borrow her van. Respondent told Rychlewski that on Friday, September 27, 2013, she was at the Six Flags amusement park. When Funte provided proof that the amusement park was closed on that Friday, respondent stated that she would provide a ticket stub to confirm her account. Respondent failed to do so. Respondent later stated that Rychlewski was mistaken, claiming that she told Rychlewski that she had visited the amusement park on Saturday, Septem-

ber 28, 2013. Respondent also told Rychlewski that although she had a Facebook page in her name at that time, she had not posted pictures of her and Curtis.

¶ 31 During the meeting, respondent became defensive and upset, explaining that she did not understand why Curtis continued to be a topic when he was "no longer involved in the case." When Rychlewski mentioned that (1) Curtis was still a valid concern and (2) contact with Curtis was not allowed because of his violent demeanor, respondent stated that no one told her she "was supposed to stay away from him." Respondent also stated that Curtis was not a violent person. Respondent then left the meeting, which Rychlewski characterized as "very tense."

¶ 32 On October 9, 2013, Rychlewski sent respondent a letter stating that she had been discharged from her domestic-violence-counseling program because of unsuccessful completion. Respondent claimed she did not receive Rychlewski's letter. Rychlewski opined that respondent continued to contact Curtis and did not make the necessary changes to keep herself and H.C. safe from domestic violence. Rychlewski confirmed that respondent failed to successfully complete her domestic-violence-counseling goal based on her stance that Curtis was (1) no longer involved in her case and (2) not a violent person.

¶ 33 Ashleigh Turley, a day-care receptionist where H.C. had been enrolled and a former classmate of Curtis, testified that between July and September 2013, she saw respondent and Curtis "a few times" at various social events. Turley noted that in July 2013, she saw respondent and Curtis together at the Sport & Bait Lounge socializing with a group of friends.

¶ 34 Sam Sorenson, a case aide, testified that since September 2013, he conducted seven home visits where he had observed respondent parent H.C. appropriately. On October 21, 2013, Sorenson saw respondent with a man he did not recognize walking near a Bloomington, Illinois, intersection. Because he was scheduled to perform a home visit later that same day,

Sorenson contacted Funte to determine whether respondent's home situation had changed. After giving Funte a description of the man, Sorenson identified Curtis in pictures Funte provided as the person accompanying respondent earlier that day.

¶ 35 Kassidi Guerrero, respondent's former caseworker, testified that shortly after becoming respondent's caseworker in January 2013, respondent and Curtis informed her that they were in a relationship. A February 2013 police report detailed that (1) on Valentine's Day 2013, Curtis punched respondent in her face and (2) both respondent and Curtis had glazed, bloodshot eyes, slurred speech, and smelled of alcohol. Respondent later attempted to minimize the incident, asserting that the police report "made it sound worse than what it really was." Respondent informed Guerrero that despite the incident, they remained a couple. In June 2013, Guerrero met with respondent to inform her that Funte would be her new caseworker. At that time, respondent informed Guerrero that "she was determined and focused *** to get [H.C.] back on her own."

¶ 36 Funte testified that he had been involved with respondent's case since October 2012, when he was respondent's case aide, and then in June 2013 as respondent's caseworker. Funte noted that on July 19, 2013, he observed respondent walking from Curtis' home to her van. At an August 20, 2013, case-review meeting, respondent denied she was at Curtis' home on July 19, 2013. At that same meeting, Funte asked respondent about two pictures posted to a Facebook page bearing her name that depicted her with Curtis under the caption "New Pics July 2013." Respondent denied having a Facebook account.

¶ 37 At a September 3, 2013, child/family-team meeting, Funte informed respondent that someone reported seeing her with Curtis at the Sport & Bait Lounge. Respondent denied ever visiting that establishment. On September 25, 2013, Funte unsuccessfully attempted to contact respondent through her father. Concerned that respondent was still seeing Curtis, Funte

drove to Curtis' home and observed respondent's van in Curtis' yard in the midst of what appeared to him to be a yard sale. Thereafter, Funte tried unsuccessfully to locate respondent, noting that on September 27, 2013, he again saw respondent's van at Curtis' home.

¶ 38 On September 30, 2013, Funte received a phone call from respondent on a telephone line later determined to belong to Curtis. During that phone call, Funte scheduled an October 2, 2013, meeting. Funte concurred with Rychlewski's earlier testimony regarding the events that occurred at that meeting.

¶ 39 Respondent did not present any evidence.

¶ 40 2. *The Trial Court's Ruling*

¶ 41 Following argument, the trial court ruled, in pertinent part, as follows:

> "[The court] believe[s] that domestic violence was a reason for a basis for removal of [H.C.] from [respondent], and we talk about a reasonable degree of interest, concern, or responsibility as to [H.C.'s] welfare, there's case law that suggests you only have to show one of those three things. Responsibility can be shown by failing to correct a service that is necessary. Certainly domestic violence was necessary. It was, in [the court's] opinion, the most necessary.
>
> *** [The court] think[s respondent] dealt with substances effectively enough not to be found unfit on that basis, but, clearly, domestic violence was an equal service that [respondent] had to conquer and she did not. She went back with *** Curtis, and I think that's clear from the evidence. [The court] think[s] the evi-

dence is clear and convincing that she has maintained that relationship, and, therefore, [the court] think[s] that the State has proven by clear and convincing evidence both [allegations of unfitness]."

¶ 42 E. The November 2013 Best-Interest Hearing

¶ 43 Three days after respondent's fitness hearing concluded, the trial court conducted a best-interest hearing. Based on the evidence presented at that hearing, the court found that the State had proved by a preponderance of the evidence that it was in H.C.'s best interest to terminate respondent's parental rights.

¶ 44 This appeal followed.

¶ 45 II. THE TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 46 A. The Applicable Statute and the Standard of Review

¶ 47 Section 1(D)(b) of the Adoption Act—under which the trial court found respondent unfit—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:

* * *

(b) Failure to maintain a reasonable degree of interest, concern[,] or responsibility as to the

child's welfare." 750 ILCS 50/1(D)(b) (West 2012).

¶ 48 "Because the language of section 1(D)(b) is in the disjunctive, any of the three elements may be considered on its own as a ground for unfitness." *In re T.A.*, 359 Ill. App. 3d 953, 961, 835 N.E.2d 908, 914 (2005). "In determining whether a parent has failed to maintain a reasonable degree of interest, concern, or responsibility as to a child's welfare, the court must 'examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred.' " *In re Adoption of H.B.*, 2012 IL App (4th) 120459, ¶ 42, 976 N.E.2d 1193 (quoting *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990)).

¶ 49 "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." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). 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.*

¶ 50 B. The Trial Court's Fitness Findings

¶ 51 Respondent argues that the trial court's fitness findings were against the manifest weight of the evidence. We disagree.

¶ 52 In this case, the trial court found, in pertinent part, that respondent was an unfit parent under section 1(D)(b) of the Adoption Act in that respondent failed to maintain a reasonable degree of responsibility as to H.C.'s welfare. Specifically, that respondent failed to comply with the important task of terminating her abusive relationship with Curtis, which placed H.C.'s future welfare in jeopardy.

¶ 53 Respondent contends that her effort to complete the SECURE program curricu-

lum militates against the trial court's finding of a lack of responsibility because she "not only participated in the services recommended to her, but also went above and beyond what was expected of her." Based on the record before us, we reject respondent's contention.

¶ 54 Here, the record clearly showed that, despite respondent's domestic-violence counseling and her acknowledgement that domestic-violence victims need to "cut ties" with their abusers to end the cycle of violence, respondent consciously chose to disregard that overarching principle, rationalizing that contact with a volatile, dangerous abuser was appropriate as long as a "relationship" did not develop. Despite respondent's contention, she failed to maintain a reasonable degree of responsibility as to H.C.'s welfare. Simply put, respondent's unwillingness to permanently terminate her relationship with Curtis prevented her from taking responsibility for H.C.'s care, custody, and control. Accordingly, we reject respondent's argument that the trial court's fitness findings were against the manifest weight of the evidence. See *In re C.E.*, 406 Ill. App. 3d 97, 107, 940 N.E.2d 125, 135 (2010) ("Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness.").

¶ 55 Because respondent does not contest the best-interest portion of the trial court's decision, we conclude the court's order terminating respondent's parental rights was appropriate.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court's fitness and best-interest determinations.

¶ 58 Affirmed.