

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (4th) 150862-U

NOS. 4-15-0862, 4-15-0863, 4-15-0864, 4-15-0865 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 26, 2016

Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: C.S., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-15-0862)	)	Nos. 13JA60
DESTINY ANNA ASHBY,	)	13JA61
Respondent-Appellant.	)	
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In re: T.S., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0863)	)	
DESTINY ANNA ASHBY,	)	
Respondent-Appellant.	)	
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In re: C.S., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0864)	)	
JAMES SAMPSON,	)	
Respondent-Appellant.	)	
<hr/>		
In re: T.S., a Minor	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0865)	)	Honorable
JAMES SAMPSON,	)	Thomas E. Little,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Turner and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which terminated respond-

ents' parental rights.

¶ 2 In June 2015, the State filed motions to terminate the parental rights of respondents, Destiny Anna Ashby and James Sampson, as to their minor daughters, C.S. (born June 10, 2010) and T.S. (born February 29, 2012). In September 2015, following a fitness hearing, the trial court found respondents unfit within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). In October 2015, following a best-interest hearing, the court terminated respondents' parental rights.

¶ 3 Respondents appeal, arguing that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Events Preceding the State's Motions To Terminate Respondents' Parental Rights

¶ 6 On May 10, 2013, the State filed petitions of wardship alleging that C.S. and T.S. were neglected, abused, and dependent minors under numerous sections of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(a), 2-3(1)(b), 2-3(2)(ii), 2-4(1)(b), 2-4(1)(d) (West 2012)). The petitions alleged that Destiny admitted she was unable to care for C.S. and T.S. and that James was not involved with the children. According to the petitions, Destiny, C.S., and T.S. were living in a house "in deplorable condition with human and animal feces all over, non-working toilets and sinks, garbage and rotten food all over with cockroach and fly infestation." After a shelter-care hearing held that same day, the trial court entered custody orders, granting the Department of Children and Family Services (DCFS) temporary custody of C.S. and T.S.

¶ 7 Following a June 2013 adjudicatory hearing, the trial court adjudicated C.S. and T.S. neglected. In reaching that decision, the court found that (1) Destiny was unable to care for

the children; (2) the house the children were staying in was unfit for human habitation; (3) Destiny had a history of substance abuse; (4) Destiny had prior involvement with child-protective services in four different states; and (5) James lived out of state and was not involved with the children.

¶ 8           Following a July 2013 dispositional hearing, the trial court made C.S. and T.S. wards of the court and maintained DCFS as their guardian.

¶ 9           B. The State's Motions To Terminate Parental Rights

¶ 10           In June 2015, the State filed motions to terminate respondents' parental rights as to both C.S. and T.S., alleging that respondents were unfit under section 1(D) of the Adoption Act. Specifically, the motions alleged that respondents had (1) abandoned C.S. and T.S. (750 ILCS 50/1(D)(a) (West 2014)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of C.S. and T.S. (750 ILCS 50/1(D)(b) (West 2014)); (3) deserted C.S. and T.S. for more than three months prior to the unfitness proceeding (750 ILCS 50/1(D)(c) (West 2014)); (4) failed to make reasonable efforts to correct the conditions that were the basis for the removal of C.S. and T.S. from Destiny during a nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); and (5) failed to make reasonable progress toward the return of C.S. and T.S. during three separate nine-month periods following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)). The alleged nine-month periods were (1) July 12, 2013, to April 12, 2014; (2) April 13, 2014, to January 13, 2015; and (3) September 22, 2014, to June 22, 2015.

¶ 11           1. *The September 2015 Fitness Hearing*

¶ 12           The parties presented the following pertinent evidence at the September 2015 fitness hearing on the State's motions to terminate respondents' parental rights.

¶ 13

a. The State's Evidence

¶ 14

Virginia Cooper, a child-welfare specialist with DCFS, testified that she was the caseworker for C.S. and T.S. beginning in May 2013. At that time, C.S., T.S., and Destiny were staying at the home of an acquaintance. Five dogs lived in the home, the inside of which was covered in dog feces. The children were taken into DCFS custody. Cooper developed a service plan for Destiny, which set goals relating to (1) substance-abuse treatment, (2) parent education, (3) individual psychotherapy, (4) visitation, (5) general education diploma classes, and (6) support systems within the community. According to Cooper, Destiny did well with visiting the children. As to the other goals, Cooper testified that Destiny did well immediately before her appearances in court every six months, but she "would slack" in the months thereafter. For example, Destiny would stop taking her medication to treat depression. The only goals that Destiny had successfully completed were maintaining housing and visitation. She had temporary success in other areas, but not over a long-term period.

¶ 15

Cooper testified further that James was living in Indiana in May 2013. In November 2013, Destiny moved to Indiana to live with James. She moved back to Illinois in January 2014. Sometime thereafter, James moved to Illinois, planning to reestablish his relationship with Destiny. Things between James and Destiny did not work out, and James ended up homeless and unemployed. James's service plan goals included the following: (1) maintain housing, (2) attend counseling for obsessive-compulsive disorder, (3) attend domestic-violence counseling, and (4) conduct visitation with C.S. and T.S. Cooper described James's progress as "up and down." James successfully maintained housing and secured employment but did not show an interest in regaining custody of C.S. and T.S.

¶ 16

Cooper testified further that respondents both engaged in "self-sabotage." At

times, respondents would make progress "to the point of we would be talking about returning home, and something major would come up." For instance, Cooper testified that C.S. and T.S. were scheduled to return to Destiny in March 2015 until she attempted suicide in February 2015. Destiny had also been living with a boyfriend whom Cooper did not consider appropriate to be around the children. Likewise, James had been in relationships with women whom Cooper did not think would be good for the children. James was involved with a woman who had an open case with DCFS and had lost the care of her children. Cooper agreed that "the problem all throughout, is they're focused on themselves and not their children."

¶ 17 Christina Walter, a counselor with DCFS, testified that she had been working with James since June 2014. She worked with him on self-control, communication skills, understanding his role as a father, and the impact of his relationships on his children. Walter stated that James participated in counseling but that his progress toward making necessary changes was limited. Walter testified further that James entered into relationships with women without knowing their background and whether they would be safe to have around the children.

¶ 18 Crystal Madrigal, a visitation specialist, stated that she oversaw respondents' visits with C.S. and T.S. from May 2013 to November 2013 and from April or May 2014 to June 2015. She said that both parents did well when visiting their children. James cancelled some visits in December 2014, January 2015, and February 2015, but overall he did well during visits.

¶ 19 Tea Sarver testified that she was Destiny's primary counselor from January 2014 through June 2014. She treated Destiny for alcohol dependence. She worked with Destiny to understand how to have healthy relationships. Destiny successfully completed counseling in June 2014.

¶ 20

b. Destiny's Evidence

¶ 21

Tonya Ashby, Destiny's cousin, testified that in February 2015, Destiny told her that she was having bad thoughts and thought her medication was not working properly. Tonya advised Destiny to call her doctor. Destiny called her doctor and received word that the doctor was out of the office and could not talk with Destiny until the following week.

¶ 22

Destiny testified that when her case first opened in May 2013, she was not comfortable staying at a shelter because someone had attempted to rape her at a shelter in Tulsa, Oklahoma, in 2005. She testified further that she always wanted to have her children returned to her and never relinquished her rights to them. Destiny also stated that in October or November 2014, she met with her doctors and explained that her medication was not working because she was having suicidal thoughts. Destiny was taking Prozac, Geodon, and Seroquel.

¶ 23

c. James' Evidence

¶ 24

James testified that when he moved from Indiana to Illinois in January 2014, he was homeless and unemployed. He moved back to Illinois to be involved in his children's lives. James testified that he currently had housing and was employed through an employment agency. He had been in a romantic relationship since June 2015 with a woman who was not the person that Cooper described as being involved with DCFS. James testified further that he would choose having custody of his children even if it meant ending his current romantic relationship.

¶ 25

The trial court found that the State had proved by clear and convincing evidence that respondents were unfit parents.

¶ 26

*2. The October 2015 Best-Interest Hearing*

¶ 27

At the October 2015 best-interest hearing, Cooper testified that the foster home of C.S. and T.S. was a prospective adoptive home and that C.S. and T.S. were "very bonded" to



relinquished a child in accordance with the Abandoned Newborn  
Infant Protection Act:

\* \* \*

(m) Failure by a parent \*\*\* (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under section 2-3 of the [Juvenile Act]." 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 36 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."

¶ 37 "[R]easonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to



parental custody in the near future." *Id.*

¶ 38 "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, 1068, 808 N.E.2d 596, 605 (2004).

¶ 39 *2. The Trial Court's Findings in This Case*

¶ 40 In this case, the trial court found respondents unfit on multiple grounds, including that respondents failed to make reasonable progress toward the return of C.S. and T.S. during the nine-month period from September 22, 2014, to June 22, 2015. We conclude that the trial court's finding on that particular ground was supported by clear and convincing evidence.

¶ 41 Cooper testified that respondents' progress toward returning the children was inconsistent. Prior to court hearings, Destiny would comply with her plans and make progress, only for that compliance to "slack" after the hearings. Similarly, James's progress was "up and down." Cooper testified that Destiny was not consistent in taking her medication to treat her depression. Indeed, the children were scheduled to be returned to Destiny when, in February 2015, she attempted suicide. That attempt occurred nearly two years after the children were first taken in to DCFS custody. Cooper testified that Destiny's progress with substance abuse and taking her medication was also up and down. The only goals Destiny had successfully completed as of June 22, 2015, were maintaining housing and visiting C.S. and T.S. Cooper described respondents' behavior as "sabotage" toward the possibility of the children coming home. Cooper testified further that she would require nine additional months of stability from Destiny and six additional months from James before she would recommend that the children be returned to respondents.

¶ 42 The evidence presented did not establish that either respondent had made reasonable progress toward the return of their children. Reasonable progress requires evidence that the children could be returned to their parents in the near future. However, Cooper testified that respondents' failure to consistently comply with their service goals, along with their penchant for self-sabotage, meant that the children could not be returned to respondents for at least six months. Based on Cooper's testimony that respondents had failed to make reasonable, consistent progress toward their goals, the evidence supported the trial court's finding of unfitness by clear and convincing evidence.

¶ 43 B. The Trial Court's Best-Interest Determinations

¶ 44 1. *Applicable Law and Standard of Review*

¶ 45 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).

¶ 46 Under section 1-3(4.05) of the Juvenile Act, a trial court shall consider the following factors when determining a child's best interest, "in the context of the child's age and developmental needs":

- "(a) the physical safety and welfare of the child, including food, shelter, health and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cul-

tural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2014).



¶ 53

Affirmed.