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2017 IL App (3d) 170056-U

Order filed May 17, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

<i>In re</i> L.M., J.M., and G.M.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minors,	)	Rock Island County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal Nos. 3-17-0056, 3-17-0057, and
Petitioner-Appellee,	)	3-17-0058 (Consolidated).
	)	Circuit Nos. 14-JA-48, 15-JA-32, and
v.	)	16-JA-36 (Consolidated).
	)	
LaDonna W.,	)	Honorable
	)	Theodore G. Kutsunis,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices McDade and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court's finding that mother was an unfit parent because she failed to maintain a reasonable degree of interest, concern or responsibility concerning G.M.'s welfare was against the manifest weight of the evidence.
- ¶ 2 On January 19, 2017, the trial court terminated mother's parental rights to three children in consolidated proceedings. Mother filed a timely notice of appeal in all three cases on

January 20, 2017, and now challenges the court's finding of unfitness with respect to only her youngest child, G.M.

¶ 3

### FACTS

¶ 4

This appeal challenges the trial court's finding of parental unfitness based on the State's supplemental petition to terminate parental rights of G.M., born April 11, 2016, in case No. 16-JA-36. Mother does not challenge the trial court's best interest findings related to G.M. or any of the trial court's findings concerning mother's older children, L.M., born September 11, 2012, and J.M., born September 22, 2014.

¶ 5

Two days after G.M.'s birth, on April 13, 2016, the State filed a petition for adjudication of wardship (the petition) alleging mother recently gave birth to a neglected newborn, G.M. The petition filed in case No. 16-JA-36 alleged that prior to the birth of G.M., one of mother's previous children had a sudden unexplained death, with co-sleeping as a factor. The deceased child was underweight at the time of his death and had not received medical care for approximately seven months prior to his death.

¶ 6

Further, the petition stated that mother previously lost custody of G.M.'s two older siblings, L.M. and J.M., in case Nos. 14-JA-48 and 15-JA-32. The petition also alleged mother had not successfully completed court-ordered services in case Nos. 14-JA-48 and 15-JA-32.

¶ 7

On May 12, 2016, mother stipulated to the allegations in the petition. On June 23, 2016, the trial court adjudicated G.M. to be a neglected child and ordered mother to complete the same services as previously ordered in L.M. and J.M.s' juvenile cases. Those services included a substance abuse evaluation and periodic drug tests. The court also ordered mother to complete a mental health evaluation, attend counseling, obtain and maintain appropriate housing and

income, and complete domestic violence screening. After several permanency review hearings in consolidated proceedings related to all three children, on August 18, 2016, the court changed the permanency goal for the three children from return home to substitute care pending a determination of termination of parental rights.

¶ 8            Shortly thereafter, on September 30, 2016, the State filed a supplemental petition to terminate mother's parental rights pertaining to G.M. in case No. 16-JA-36.<sup>1</sup> The supplemental petition relied on 750 ILCS 50/1(D)(b) (West 2016) as the statutory basis of mother's unfitness because mother failed to maintain a reasonable degree of interest, concern or responsibility pertaining to G.M.'s welfare.

¶ 9            On December 16, 2016, the parties appeared before the trial court for a hearing on the State's supplemental petition to terminate mother's parental rights with respect to G.M. and the two other children.<sup>2</sup> The State called Catherine Madden, a caseworker employed by Bethany for Children and Families. Madden testified that she was assigned in June of 2015, as the caseworker for L.M. and J.M., and later became G.M.s' caseworker following G.M.'s birth.

¶ 10            Madden indicated that mother's parenting skills became an issue due to a hotline report claiming mother was not providing proper medical care for J.M. and L.M. After G.M.'s birth, Madden testified that mother failed to complete urine analysis requests, domestic violence and mental health assessments, and domestic violence classes as ordered by the court. Madden stated mother did obtain a substance abuse evaluation but only attended one class. The substance abuse classes were scheduled for three hours per week for eight weeks. Madden testified mother also failed to maintain employment and proper housing.

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<sup>1</sup>The record fails to provide whether a petition to terminate parental rights was filed before the supplemental petition.

<sup>2</sup>The trial court conducted a consolidated hearing regarding the two separate petitions to terminate.

¶ 11 According to Madden, mother was currently employed at Motel 6 and had her own apartment. Madden visited the one bedroom apartment where mother resided. Madden stated that mother's one bedroom apartment did not present any safety concerns. However, Madden explained mother gave conflicting information to Madden by telling Madden mother stopped residing in this apartment because of problems with the neighbors.

¶ 12 Madden indicated that mother and father had a history of domestic violence. In May of 2016, shortly after G.M.'s birth, there was an incident of domestic violence between mother and father.<sup>3</sup> Mother recently filed for an order of protection against father but the order had not been served at the time of the hearing.

¶ 13 Concerning mother's pattern of visitation with G.M., Madden indicated that mother's visits with L.M. and J.M. were sporadic prior to G.M.'s birth and became less frequent after G.M.'s birth. Due to mother's sporadic visitation history, Madden reduced the frequency of the visits with the children to once per month because mother did not show up to the scheduled visits. Throughout the entirety of the case, mother completed 53% of visits with the minors. Madden estimated mother attended 50% of G.M.'s scheduled visits from G.M.'s date of birth in April of 2016 until the termination hearing before the court on December 16, 2016. According to Madden, mother had not visited G.M. since October of 2016.

¶ 14 Mother testified before the court on the issue of parental fitness. Mother explained that she had been working at Motel 6 for approximately three months. Mother stated that she obtained two substance abuse evaluations but only completed one class because she was busy working at the Motel 6. Mother did not submit to drug tests because she was busy or did not have bus fare. Mother explained that she did not complete domestic violence counseling because

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<sup>3</sup>Five reports of domestic violence between mother and father have been reported throughout the entirety of the case.

“work got in the way.” Mother said her work schedule was such that she had to choose between completing services and supporting herself.

¶ 15           Regarding visitation, mother testified that the majority of the visits she missed with G.M. were attributable to Madden’s unreasonable cancellation policy. Mother said Madden often cancelled visits claiming mother was either late or did not bring the proper supplies. Mother testified she could not afford the supplies for each visit. Mother also missed visits due to court dates she had to attend. Mother testified that she had a one bedroom apartment and provided the agency with a copy of the lease. Mother said the three children could sleep in the bedroom while she slept in the living room. Mother also reported she presented the agency with proof of employment by providing pay stubs.

¶ 16           Following mother’s testimony, the State recalled Madden. Madden testified that the agency has a policy that if parents are more than 15 minutes late to a scheduled visitation, the visit is cancelled. Madden claimed this happened on several occasions with respect to G.M. Madden also cancelled some visits because mother did not bring proper supplies, such as diapers, wipes, or food, as required in the visitation plan. However, according to Madden, the agency has since made an accommodation and now provides mother with the supplies at the office. Madden said the majority of the cancelled visits were because mother did not show up, not because of mother’s failure to bring supplies.

¶ 17           After hearing arguments from the parties, the trial court found mother unfit with respect to G.M. and the other children. On December 16, 2016, the trial court entered a written order finding the State proved by clear and convincing evidence that mother is an unfit parent for failing to maintain reasonable interest, concern, or responsibility as to G.M.’s welfare.

¶ 18 On, January 19, 2017, the trial court terminated mother’s parental rights and changed the permanency goal to adoption for all three children. Mother filed a timely notice of appeal on January 20, 2017.

¶ 19 ANALYSIS

¶ 20 In these consolidated appeals related to the termination of parental rights, mother appeals only the trial court’s ruling in Rock Island County case No. 16-JA-36, finding that mother was unfit to parent G.M. because she failed to maintain a reasonable degree of interest, concern or responsibility as to G.M.’s welfare. Mother submits that the trial court’s finding with respect to her parental fitness in Rock Island County case No. 16-JA-36 was against the manifest weight of the evidence. Mother does not challenge the trial court’s best interest findings in Rock Island County case No. 16-JA-36.

¶ 21 As stated above, mother does not challenge the trial court’s findings concerning mother’s older children, L.M., born September 11, 2012, and J.M., born September 22, 2014, pertaining to Rock Island County case Nos. 14-JA-48 and 15-JA-32. Accordingly, the appeals in Rock Island County case Nos. 14-JA-48 and 15-JA-32 are dismissed, *sua sponte*.

¶ 22 The State must prove a parent is unfit for purposes of terminating parental rights pursuant to the grounds set forth in the Adoption Act by clear and convincing evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Clear and convincing evidence requires proof greater than a preponderance of the evidence but less than beyond a reasonable doubt. *In re D.T.*, 212 Ill. 2d 347, 362 (2004).

¶ 23 On appeal, we review the trial court’s finding of parental unfitness based on the manifest weight of the evidence standard. *In re A.S.B.*, 293 Ill. App. 3d 836, 843 (1997). A ruling is

contrary to the manifest weight of the evidence if the opposite conclusion is clearly apparent. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009).

¶ 24 In Rock Island County case No. 16-JA-36, on December 16, 2016, the trial court found: “[mother], is an unfit parent in that she: 1. Failed to maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare” pursuant to 750 ILCS 50/1(D)(b) (West 2016). When analyzing the grounds for termination of parental rights based on this statutory provision, courts consider the parent’s efforts to visit and maintain contact with the child, and indicia of interest. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 25 Courts examine the parent’s conduct in the context of the parent’s circumstances, like difficulty obtaining transportation, the parent’s poverty, statements made by others to discourage visitation, and whether the parent’s lack of contact with the children can be attributed to a need to cope with personal problems rather than indifference toward them. *In re T.D.*, 268 Ill. App. 3d 239, 246 (1994). When evaluating parental unfitness on failure to maintain a reasonable degree of responsibility in the minor, courts must focus on parental effort not the success of such effort. *In re T.Y. and T.Y.*, 334 Ill. App. 3d 894, 905 (2002). “Completion of service plan objectives can also be considered evidence of a parent’s concern, interest, and responsibility.” *In re Daphnie E.*, 368 Ill. App. 3d at 1065.

¶ 26 First, we note G.M. was born on April 11, 2016, and removed from mother’s care on April 13, 2016. The court adjudicated G.M. neglected in Rock Island County case No. 16-JA-36, on June 23, 2016, after considering mother’s failure to comply with prior service plans approved by the court in L.M. and J.M.’s juvenile cases. At best, when the State filed the supplemental petition to terminate mother’s parental rights to G.M. in Rock Island County case No. 16-JA-36,

on September, 30, 2016, mother had less than six months to bring herself into compliance with respect to her service plan pertaining specifically to G.M.

¶ 27 During the fitness hearing conducted on December 16, 2016, the State called Madden to testify about mother's level of interest pertaining to her newborn, G.M. However, Madden's testimony cannot be described as clear or convincing. While the prosecutor did attempt to elicit testimony which addressed each juvenile case separately, Madden's testimony focused more on the case as a whole and was very vague with respect to mother's specific relationship with G.M. For example, while Madden very specifically testified mother completed 53% of the visits with the children throughout the entirety of the case, Madden could only estimate that mother attended about half of the visits after G.M.'s birth.

¶ 28 To rebut Madden's testimony, mother described how Madden frustrated some of her attempts to visit her children. The record indicates that Madden cancelled several visits because mother was more than 15 minutes late or because mother failed to bring the proper supplies. Mother further explained to the court that she could not attend some of the scheduled visitations with the children due to court dates for her pending criminal case and her work schedule.

¶ 29 It appears mother's financial condition also contributed to absence during several of the scheduled visits because she could not afford supplies or bus fare. Madden claimed she provided mother with bus passes. Mother also reported her employment schedule and mandatory court dates conflicted with the visitation schedule on occasion.

¶ 30 The case law provides that based on the circumstances, a parent's lack of contact with the child can be attributed to a need to cope with personal problems rather than indifference toward the child. *In re C.E.*, 406 Ill. App. 3d 97, 109 (2010). Mother's attendance record attributable to

hardships resulting from gainful employment and attending court sessions was not rebutted by the State. This factual scenario does not favor a finding of unfitness.

¶ 31 We recognize that mother's failure to complete court-ordered objectives can also be considered evidence of mother's lack of concern, interest, and responsibility with respect to G.M. in Rock Island County case No. 16-JA-36. Madden informed the court that mother had not completed drug drops, counseling, urine analysis requests, a mental health assessment, a domestic violence assessment, or domestic violence classes. However, mother appears to have recently obtained a substance abuse evaluation, a job, and stable housing.

¶ 32 The statutory section alleged by the State as the basis for mother's unfitness in Rock Island County case No. 16-JA-36 focuses our inquiry on parental efforts with respect to this petition. The evidence the State presented concerning mother's efforts toward G.M. from G.M.'s birth in April 2016 until the termination hearing in December 2016 did not rise to the level of clear and convincing evidence. During this specific time period, mother did not fail to maintain a reasonable degree of interest, concern or responsibility as to G.M.'s welfare as prescribed in 750 ILCS 50/1(D)(b) (West 2016). Accordingly, we reverse the trial court's finding of unfitness pertaining to G.M. in Rock Island County case No. 16-JA-36 and remand for further proceedings.

¶ 33 **CONCLUSION**

¶ 34 The trial court's finding of unfitness pertaining to G.M. in Rock Island County case No. 16-JA-36 is reversed and remanded for further proceedings. Rock Island County case Nos. 14-JA-48 and 15-JA-32 are dismissed.

¶ 35 Rock Island County case No. 16-JA-36: reversed and remanded.

¶ 36 Rock Island County case No. 14-JA-48: dismissed.

¶ 37

Rock Island County case No. 15-JA-32: dismissed.