

NOTICE
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2019 IL App (5th) 190331-U
NO. 5-19-0331, 5-19-0332 cons.
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

<i>In re</i> J.W. and R.W., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	No. 15-JA-6
)	No. 16-JA-62
v.)	
)	
Christopher W.,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Boie and Wharton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s determinations that Father was unfit and that termination of his parental rights was in the minors’ best interests were not contrary to the manifest weight of the evidence.

¶ 2 Respondent, Christopher W. (Father), appeals the judgment of the circuit court of Madison County terminating his parental rights to his two minor children, J.W. and R.W. For the following reasons, we affirm.

¶ 3 J.W. and R.W. are the biological children of Father and Mariah B. (Mother), who is not a party to this appeal. J.W. was born on January 20, 2013. In December 2014, police

arrived at the family's home to investigate Father's involvement in a crime. During the encounter, police observed heroin capsules and exposed needles containing liquid within access of J.W. Although Mother appeared to be under the influence, she was not arrested. Father was arrested, and J.W. remained with Mother under a safety plan. Mother was not compliant with the safety plan and, on January 5, 2015, J.W. was taken into protective custody.

¶ 4 On January 6, 2015, the State filed a petition for adjudication of wardship for J.W., alleging she was neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(a) (West 2014)) because her parents did not provide her with necessary care and support. A shelter care hearing was held the same day. Following the hearing, the trial court found there was probable cause to believe J.W. was neglected as defined by the Act. J.W. was removed from the custody of her parents, and temporary custody was given to the Illinois Department of Children and Family Services (DCFS). On April 23, 2015, the court adjudicated J.W. neglected, and made her a ward of the court.

¶ 5 On April 12, 2016, Mother gave birth to R.W., who tested positive for opiates. Both parents, at that time, admitted to continued heroin use. The State took protective custody of R.W. upon her release from the hospital on April 18, 2016, and placed her in a traditional foster home. On April 19, 2016, the State filed a petition for adjudication of wardship of R.W. under the Act. In the petition, the State alleged R.W. was neglected because she had opiates in her system at birth (705 ILCS 405/2-3(1)(c) (West 2016)), and her environment was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2016)). In May 2016, J.W.

was moved from her family placement into the foster home with R.W. On September 22, 2016, the court adjudicated R.W. neglected and made her a ward of the court.

¶ 6 On January 8, 2019, the State filed petitions to terminate Father's parental rights to the children. On April 18, 2019, the court held a fitness hearing, and found by clear and convincing evidence that Father was an unfit person for failing to make reasonable efforts to correct the conditions that were the basis for removal of the minors during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2018)), and for failing to make reasonable progress toward the return of the minors in any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2018)). The court then proceeded to the best interest hearing, after which the court entered an order finding that it was in the children's best interests that Father's parental rights be terminated.

¶ 7 On appeal, Father argues the trial court's determinations that he was unfit and that the termination of his parental rights was in the best interests of the children, were against the manifest weight of the evidence. We disagree.

¶ 8 Section 2-29 of the Act sets forth a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2018). First, the State must prove by clear and convincing evidence that the parent is an unfit person as defined by the Adoption Act (750 ILCS 50/1(D) (West 2018)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). If the trial court finds the parent to be unfit, the court must then determine whether the State has proven, by a preponderance of the evidence, that it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2018). *In re D.T.*, 212 Ill. 2d 347, 367 (2004).

During the second stage of the proceedings, the focus of the court’s scrutiny shifts from the rights of the parents to the best interests of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008).

¶ 9 The trial court’s decision to terminate parental rights involves factual findings and credibility assessments which, on review, are accorded great deference. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). On appeal, the trial court’s findings of parental unfitness and that termination of parental rights was in the child’s best interests will not be disturbed unless they are contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 998, 1001 (2004).

¶ 10 Determination of Unfitness

¶ 11 Here, the trial court concluded that the State had successfully proven two grounds of unfitness against Father. The court found that Father failed to make reasonable efforts to correct the conditions that were the basis for removal of the minors during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2018)), and that he failed to make reasonable progress toward the return of the minors in any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2018)).

¶ 12 “Reasonable effort” is a subjective standard, and refers to the amount of effort reasonable for the particular parent. *In re R.L.*, 352 Ill. App. 3d at 998. The court must determine whether the parent has made earnest and conscientious strides toward correcting the conditions that led to the removal of the minor from the home. *In re L.J.S.*, 2018 IL App (3d) 180218, ¶ 24.

¶ 13 In this case, the conditions that were the basis for the removal of J.W. from the home were that her parents were not providing her with the necessary care and support because they had substance addictions that impaired their ability to provide adequate care for her, Mother was unwilling to follow through with substance abuse treatment, and Father was incarcerated. In addition to being born opiate positive, R.W. was removed from her parents' custody because their substance addictions impaired their ability to adequately care for her.

¶ 14 On appeal, Father argues he made earnest and conscientious strides toward correcting the conditions which led the children's removal because he engaged in parenting classes, obtained counseling, and attended several substance abuse treatment programs. At the termination hearing, Father testified that he was currently sober. Father's sobriety, however, was directly due to the fact that he was currently incarcerated, which he will continue to be for at least another year. Since the inception of the case, Father acquired four new criminal charges for drug possession. Father violated his probation and was unsuccessfully discharged from the Madison County Drug Court program. Although Father successfully completed one in-patient treatment program in October 2016, the evidence in the record overwhelmingly establishes that Father did not maintain his sobriety. The progress reports filed by the caseworkers established a lengthy list of positive drug tests, unsuccessful discharges from substance abuse treatment programs, and repeated admissions to relapses. The impetus for removing the children from their home was Mother and Father's substance addictions which affected their ability to provide the children with adequate care. Here, the State presented overwhelming evidence that Father had failed to maintain sobriety, despite repeatedly being provided with services to assist him over the

course of several years. Based on the evidence, the trial court's determination that Father was unfit for failing to make reasonable efforts to correct the conditions that were the basis for removal of the minors during any nine-month period following the adjudication of neglect was not against the manifest weight of the evidence.

¶ 15 The trial court also did not err in finding that Father was unfit for failing to make reasonable progress toward the return of the minors in any nine-month period following the adjudication of neglect. "Reasonable progress" is an objective standard, and is based upon the amount of progress as measured from the conditions existing at the time of removal. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. Reasonable progress requires a measurable or demonstrable movement toward the goal of reunification. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. A parent has made "reasonable progress" when the trial court can conclude that it will be able to return the child to parental custody in the near future. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. If a service plan has been established to correct the conditions that were the basis for the removal of the child from the parent, a "failure to make reasonable progress" includes a parent's failure to substantially fulfill his obligations under the service plan. 750 ILCS 50/1(D)(m) (West 2018).

¶ 16 Father's first service plan was created in January 2015, shortly after J.W. went into the care of DCFS. Father's service plan was revisited 10 times over the course of the case, with the goals remaining substantially the same. Father's last service plan, dated January 3, 2019, included the following tasks: (1) cooperate with DCFS; (2) obtain and maintain sobriety; (3) participate in parenting classes; (4) participate in individual counseling;

(5) maintain stable housing and employment; (6) cooperate with psychiatric services; and (7) maintain a lifestyle free of criminal activity. Throughout the course of the case, the court held seven permanency hearings pursuant to section 2-28 of the Act (705 ILCS 405/2-28 (West 2018)). Although Father occasionally participated in some of the services offered him, his overall progress was rated as “unsatisfactory” upon every review by the court.

¶ 17 The caseworker testified at the termination hearing that Father had only successfully completed one task, cooperating with psychiatric services. Notably, this task only required Father to obtain a psychological assessment, a task that required no continuing involvement. At the time of the termination hearing, it had been four years since J.W. had been adjudicated neglected, and more than two years since R.W. had been adjudicated neglected. Despite this extended passage of time, Father had failed to make any measurable movement toward reunification. Based upon the evidence presented, the trial court’s finding that Father was unfit for failing to make reasonable progress toward the return of the minors was not against the manifest weight of the evidence.

¶ 18 Determination of Children’s Best Interests

¶ 19 Once a parent has been found to be unfit, the parent’s rights yield to the child’s best interest. *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). Again, this court will not reverse the trial court’s determination as to the child’s best interests unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d at 1001.

¶ 20 The record clearly reveals Father’s lack of effort and progress to complete the objectives of his service plan, in particular his failure to maintain sobriety and a lifestyle free from criminal activity. While Father exercised his visitation with the children, he was

not always consistent, occasionally going through periods where he missed several of his scheduled visits. By contrast, the children's needs were being met in their foster home, where they have been for the last three years. The children are strongly bonded to their foster family, and the foster parents wish to adopt the children. Based on the circumstances presented, the trial court's determination that termination of Father's parental rights was in the best interests of the children was not contrary to the manifest weight of the evidence.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 23 Affirmed.