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2020 IL App (4th) 190848-U

NO. 4-19-0848

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

April 28, 2020

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

<i>In re</i> E.W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 18JA15
v.	)	
Lisa J.,	)	Honorable
Respondent-Appellant).	)	Brett N. Olmstead,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Harris and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s finding respondent was an unfit parent was not against the manifest weight of the evidence.

¶ 2 Respondent mother, Lisa J., appeals from the trial court’s order terminating her parental rights to E.W. (born December 29, 2013). Respondent argues the trial court’s finding she was an unfit parent was against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Adjudication of Neglected

¶ 5 In January 2018, the State filed a petition for wardship, alleging, in part, the minor was neglected in that (1) the environment in which the minor resided was injurious to his welfare due to the exposure to respondent’s substance abuse (705 ILCS 405/2-3(1)(b) (West 2016)) and (2) respondent leaves the minor, who was under 14 years of age, without supervision for

unreasonable amounts of time (705 ILCS 405/2-3(1)(d) (West 2016)). That same month, the trial court entered an order granting temporary custody to the Department of Children and Family Services (DCFS).

¶ 6 On April 3, 2018, the trial court entered an adjudicatory order finding the minor to be neglected based on the allegations in the State’s petition for wardship. As a factual basis for its finding, the court provided, in part, the following:

“[Respondent] has a serious alcohol abuse problem and has established a pattern of leaving [the minor], age 4, alone in the home while she leaves, after which she often returns smelling of alcohol and at least on one occasion of which she returned extremely intoxicated and passed out in the hallway, [the minor] found her and thought she was dead. [Respondent] does not understand the seriousness of the problem and has not taken appropriate action to address it.”

¶ 7 In May 2018, the trial court entered a dispositional order adjudicating the minor a ward of the court and placing guardianship and custody with DCFS.

¶ 8 B. Motion to Terminate Parental Rights

¶ 9 In February 2019, the State filed a motion to terminate respondent’s parental rights. The State alleged respondent was an unfit parent as she failed to (1) make reasonable progress toward the return of the minor to her care within a nine-month period following the adjudication of neglected, namely May 4, 2018, to February 4, 2019 (750 ILCS 50/1(D)(m)(ii) (West 2018)) (count I); and (2) maintain a reasonable degree of interest, concern, or responsibility as to the

minor's welfare (750 ILCS 50/1(D)(b) (West 2018)) (count II). The State further alleged it was in the minor's best interest to terminate respondent's parental rights and appoint DCFS as guardian with the power to consent to adoption.

¶ 10 C. Fitness Hearing

¶ 11 Over a three-day period, the trial court held a fitness hearing. On June 4, 2019, the State called five witnesses, Sofia Dumlao, Charlene Meister, Kelly Cooper, Grace Mitchell, and Katrina Kindle. On June 17, 2019, the State called one witness, Melissa Simmons, and requested the court to take judicial notice of its prior orders in the case, which, over no objection, the court did and indicated it would also consider the petitions and motions upon which those orders were based. On September 4, 2019, the guardian *ad litem* called one witness, Karen Kietzmann, and respondent called one witness, Nicholas Birch.

¶ 12 1. *Sofia Dumlao*

¶ 13 Sofia Dumlao testified she served as the minor's caseworker from March to September 2018. During that time, respondent was recommended to attend a "substance abuse referral, \*\*\* individual psychotherapy, [a] parenting class and visitation."

¶ 14 Dumlao referred respondent to Rosecrance for a substance-abuse assessment in March 2018, which respondent completed. Dumlao also referred respondent to weekly drug screens. On cross-examination, Dumlao testified visitation never increased in frequency or length because respondent "wasn't attending \*\*\* Rosecrance frequently, and she was failing to appear on her drug screening, and she tested positive on some of the drugs, too." Dumlao further testified she spoke with respondent about missing drug screens and respondent would "have like an excuse why she didn't—she can't go, or she wouldn't be able to do it, or why she missed it." Dumlao

could not recall if she emphasized to respondent the importance of attending drug screens.

¶ 15 Dumlao acknowledged making a referral to Cognition Works and, when asked if that referral was for domestic violence, she testified, “I think it was part of the—like the counseling.” On cross-examination, Dumlao testified she believed she made a referral to Cognition Works and the referral was for individual psychotherapy. She further testified she was “not sure” if the referral included domestic violence treatment but “guess[ed]” it was part of it. Dumlao did not recall when she submitted the referral for Cognition Works. When asked if she followed up to see if the referral was accepted, Dumlao testified, “No, because at that time I was leaving [employment with Lutheran Social Services].”

¶ 16 Dumlao initially testified she referred respondent to a parenting class after she observed visitations where respondent would give the minor food with no nutritional value. Dumlao later testified she referred respondent to a parenting class before her observations during the visitations.

¶ 17 Dumlao testified respondent attended supervised visitation with the minor, which was weekly and lasted one hour. Visitation never increased in frequency or length. Dumlao could not recall how many visits she personally supervised but believed it to be between 5 and 10. Dumlao testified the first visit, which occurred at Lutheran Social Services, went “really well” and the minor was excited to see respondent and respondent was “really engaging to [the minor].” Later, respondent began having transportation issues, which resulted in her missing visitations or ending visitations early. In order to accommodate respondent, visitation moved to respondent’s home rather than at Lutheran Social Services. During the visitations at respondent’s home, respondent was observed giving the minor candies if he did not want to eat his lunch. Dumlao

believed she spoke with respondent about feeding the minor food with nutritional value. During one visit, respondent “was acting strange in terms of she was just loud and very—like playing really rough with [the minor].” Based on that behavior, Dumlao asked respondent to take a drug test, which respondent refused. On cross-examination, Dumlao acknowledged visitations overall went well, respondent and the minor appeared to be bonded, and respondent was able to safely care for the minor during visits.

¶ 18

### *2. Charlene Meister*

¶ 19 Charlene Meister testified she served as the minor’s caseworker for about a month between September and October 2018. During that time, Meister spoke with respondent two times by telephone. Respondent’s visitation schedule did not change.

¶ 20

### *3. Kelly Cooper*

¶ 21 Kelly Cooper testified she served as a supervisor on the minor’s case from May to October 2018. During that time, Cooper spoke with respondent once. Cooper testified visitation never increased in frequency or length because “Ms. Dumlao had been referring her for drug drops and she didn’t attend all of them and it had—we received reports that she had inconsistent attendance to Rosecrance for her substance abuse.”

¶ 22

### *4. Grace Mitchell*

¶ 23 Grace Mitchell, the director of the Family Advocacy Center in Champaign County, testified respondent was referred to the Family Advocacy Center for “parenting, advocacy, outreach services” in May 2018. Respondent enrolled in a parenting class that went from May through July 2018. Respondent did not attend the first session in May and missed most of the sessions in June. Mitchell testified respondent reported she missed sessions because she had

“previous appointments and other services that she needed to be engaged with.” Respondent did not complete the class. In September 2018, respondent re-enrolled in a parenting class. To accommodate respondent’s schedule, the class was done individually as opposed to in a group. A focus for respondent during the class was learning about nutrition. Respondent attended sessions, actively participated, and completed the class. After completing the parenting class, respondent continued to visit the Family Advocacy Center until November 2019. Mitchell called respondent and sent her letters after that date but received no response. The Family Advocacy Center closed respondent’s case in February 2019.

¶ 24 Mitchell testified she still had concerns with respondent’s ability to focus on the minor’s health and believed respondent needed to continue to work on her substance-abuse issues. Mitchell testified respondent initially reported she could handle her substance-abuse issues on her own but later indicated she was going to seek substance-abuse treatment. On cross-examination, Mitchell acknowledged respondent was not referred to the Family Advocacy Center to address her substance-abuse issues. Mitchell also acknowledged there was nothing about her interactions with respondent that led her to have concerns about substance abuse.

¶ 25 *5. Katrina Kindle*

¶ 26 Katrina Kindle testified she had served as a supervisor on the minor’s case since October 2018. During that time, she supervised an individual by the name of Abigail Lee, who served as the minor’s caseworker from October 2018 to May 2019. Kindle believed she had a conversation with respondent where she introduced herself. Kindle testified visitation never increased in frequency or length and, at one point, it was transferred from respondent’s home back to Lutheran Social Services.

¶ 27

*6. Melissa Simmons*

¶ 28 Melissa Simmons, a former addiction counselor at Rosecrance, testified she saw respondent for substance-abuse services between April 2018 and April 2019. During that time, respondent was to attend services in both an individual and a group setting. Simmons testified respondent did not consistently attend services. With respect to the individual setting, respondent was required to meet with Simmons once a month. Simmons testified respondent met with her approximately two times. When respondent attended sessions, she participated. Simmons believed respondent still needed substance-abuse services as of April 2019. On cross-examination, Simmons testified respondent's attendance between May and December 2018 was inconsistent. Simmons also testified respondent never reported any positive results when she spoke about her drug drops in group sessions, which was contrary to information Simmons received from respondent's caseworker.

¶ 29

*7. Karen Kietzmann*

¶ 30 Karen Kietzmann, a child-welfare assistant, testified she supervised visits between the minor and respondent. Kietzmann began supervising visits around May 2018. Most visits occurred at respondent's home. During the visits, respondent would usually make the minor something to eat, and then respondent and the minor would eat and watch a movie. Approximately once every six weeks, respondent would be asleep upon the arrival of Kietzmann and the minor at respondent's home. On at least one occasion, respondent answered the door in her bra and Kietzmann advised respondent to get dressed before the visit would occur. On cross-examination, Kietzmann testified she never had any concerns with respondent's behavior during visitations.

¶ 31

*8. Nicholas Birch*

¶ 32 Nicholas Birch testified he had served as the minor’s caseworker since May 2019. For approximately the first two months after he received the case, Birch would supervise visitations. During that time, respondent missed one visit and was late to several visits. Respondent missed the one visit because she failed to confirm the visit the day before. Respondent appeared for the visit and, after learning the minor was not present, became “very angry” and “erratic.” During visits, respondent would bring the minor food and play and watch movies with him. Birch noted the minor sometimes did not want to eat the food respondent brought to the visitations but rather eat candy. Respondent would resist the minor’s request for candy for about 30 minutes but then eventually give the candy to him. Birch also noted the minor would wander during visits and respondent would be “fairly slow” to get him. Birch believed the minor and respondent cared for each other, but they did not have a parent-child relationship.

¶ 33 Birch testified he spoke with respondent weekly and, in the month prior to him testifying in this case, respondent began actively seeking to get back into services. For approximately the two weeks prior to him testifying, respondent attended weekly substance-abuse counseling. Birch acknowledged respondent failed to attend at least one drug drop in the months prior to him testifying.

¶ 34 *9. Trial Court’s Ruling*

¶ 35 The trial court found the State established by clear and convincing evidence respondent was an unfit parent as alleged in count I of its motion to terminate parental rights. The court found the State did not establish unfitness as alleged in count II. In reaching its finding of unfitness on count I, the court acknowledged the State failed to flesh out all the issues. Nevertheless, the court found the evidence showed (1) the minor was taken into DCFS care



because of respondent's substance-abuse issues, (2) respondent failed to consistently attend substance-abuse services and drug drops during the relevant nine-month period, and (3) respondent's failure to consistently attend substance-abuse services and drug drops prevented her from obtaining increased visitation during the nine-month period. Based on this evidence, the court concluded respondent failed to meaningfully address her substance-abuse issues in such a way that she could be found to have made reasonable progress toward the return of the minor to her care within the relevant nine-month period. In reaching its decision, the court noted it had heard testimony about positive drug drops but placed little weight on that testimony as it was not specific and amounted to hearsay.

¶ 36 C. Best-Interest Hearing

¶ 37 Following an October 2019 best-interest hearing, the trial court found it would be in the minor's best interest to terminate respondent's parental rights. The court entered a written order terminating respondent's parental rights.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 On appeal, respondent argues the trial court's finding she was an unfit parent was against the manifest weight of the evidence. The State disagrees.

¶ 41 Under the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2018)), parental rights cannot be terminated absent the parent's consent unless the trial court first determines by clear and convincing evidence the parent is an "unfit person" as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). A trial court's finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence.

*In re N.G.*, 2018 IL 121939, ¶ 29, 115 N.E.3d 102. A finding is against the manifest weight of the evidence “only where the opposite conclusion is clearly apparent.” *Id.*

¶ 42 The trial court found respondent was an unfit parent as defined in section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2018)). Section 1(D)(m)(ii) provides, in part, a parent will be considered an “unfit person” if he or she fails “to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected \*\*\*.” *Id.*

¶ 43 “Reasonable progress” has been defined as “demonstrable movement toward the goal of reunification.” (Internal quotation marks omitted.) *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001). This is an objective standard. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227. The benchmark for measuring a parent’s progress toward reunification “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.” *C.N.*, 196 Ill. 2d at 216-17.

¶ 44 In determining a parent’s fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007). Courts are limited to that period “because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial.” *Id.*

¶ 45 In this case, the relevant time period was May 4, 2018, to February 4, 2019. While we agree with respondent the witnesses’ testimonies were at times vague and not specific, we also

agree with the trial court the evidence showed (1) the minor was taken into DCFS care because of respondent's substance-abuse issues, (2) respondent failed to consistently attend substance-abuse services and drug drops during the relevant nine-month period, and (3) respondent's failure to consistently attend substance-abuse services and drug drops prevented her from obtaining increased visitation during the nine-month period. Respondent's failure to consistently attend substance-abuse services and drug drops during the nine-month period is significant where her substance abuse was an underlying cause for why the minor was taken into DCFS care. Given the evidence presented, we find the trial court's unfitness finding based on respondent's failure to make reasonable progress toward the return of the minor to her custody within the relevant nine-month period was not against the manifest weight of the evidence.

¶ 46

### III. CONCLUSION

¶ 47

We affirm the trial court's judgment.

¶ 48

Affirmed.