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FILED
March 4, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Z.P., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 18JA47
v.	)	
Renee D. and Shawn P.,	)	Honorable
Respondents-Appellants).	)	Adam M. Dill,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Cavanagh and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding that the trial court's finding of unfitness and termination of respondents' parental rights were not against the manifest weight of the evidence.

¶ 2 In June 2018, the State filed a petition for adjudication of neglect with respect to 10-year-old Z.P., the minor child of respondents, Renee D. and Shawn P., based on exposure to domestic violence (count I) and substance abuse (count II). At the shelter care hearing, respondents stipulated to the State's evidence, and temporary custody and guardianship was placed with the Illinois Department of Children and Family Services (DCFS). At the adjudication hearing in August 2018, both parents stipulated to one count of neglect alleging exposure of Z.P. to domestic violence, and count II was dismissed. At the dispositional hearing later that month, both parents were found unfit, and the minor was made a ward of the court with custody and guardianship to remain with DCFS. Following a series of permanency review hearings, in

January 2020, the State filed a motion seeking a finding of unfitness and termination of parental rights.

¶ 3 In August 2020, after several nonconsecutive termination hearings, the trial court found respondents unfit, concluding respondents failed to make reasonable efforts to correct the conditions that were the basis for removal and failed to make reasonable progress toward the return of the minor during the specified time frame of April 1, 2019, to January 1, 2020. The court then proceeded to a best-interests hearing, where it found it was in Z.P.'s best interests that respondents' parental rights be terminated.

¶ 4 On appeal, respondents argue (1) the trial court improperly considered evidence outside the timeframe of the termination petition and (2) the unfitness finding and the decision to terminate their parental rights were against the manifest weight of the evidence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In June 2018, the State filed a two-count petition for adjudication of neglect against respondents. Count I alleged Z.P., born October 26, 2007, was neglected due to respondents having placed the minor in an injurious environment by exposing him to domestic violence. 705 ILCS 405/2-3(1)(b) (West 2018). Count II alleged Z.P. was neglected because respondents placed the minor in an injurious environment by exposing him to substance abuse. (705 ILCS 405/2-3(1)(b) (West 2018). At the shelter care hearing, respondents stipulated to placement of Z.P. in the temporary custody of DCFS.

¶ 7 At the dispositional hearing in August 2018, the trial court found both parents unfit and found it was in the best interests of the minor to be made a ward of the court with custody and guardianship to continue with DCFS.

¶ 8 After several permanency review hearings, in January 2020, the State filed a motion seeking a finding of unfitness and termination of the parental rights of both parents. Count I of the petition alleged both respondents failed to make reasonable efforts from April 1, 2019, through January 1, 2020, to correct the conditions that were the basis for removal of the minor. 750 ILCS 50/1(D)(m)(i) (West 2018). Count II alleged respondents failed to make reasonable progress toward the return of the minor during the same time period. 750 ILCS 50/1(D)(m)(ii) (West 2018).

¶ 9 Starting in June 2020 and concluding in August, the trial court heard evidence on the termination motion on three nonconsecutive dates. Jacque Chase, a group facilitator at Cognition Works, testified respondent mother (Renee) never completed her domestic violence classes. The State then called Stacy Ehrat, Z.P.'s case manager at Camelot Care Center in Peoria, who testified she had been Z.P.'s case manager since April 2019. She confirmed Renee was not participating in services when Ehrat became case manager, and although Renee had several previous referrals for substance abuse treatment, domestic violence, and parenting classes, Ehrat had to renew these referrals when she became Z.P.'s case manager. Renee eventually obtained a substance abuse assessment in March 2018, but she never underwent the recommended treatment. In addition to failing to complete substance abuse treatment, Renee failed to provide Ehrat verification of completing any domestic violence or parenting classes during the nine-month time period alleged in the termination petition.

¶ 10 Ehrat said respondent father (Shawn) was previously referred for services by the time she was assigned the case in April 2019 and was referred to the same services and treatment providers as Renee. He successfully completed domestic violence classes in August 2019, but he was unsuccessfully discharged from outpatient substance abuse treatment in May 2020 and never

provided verification of successful completion of parenting classes. While Shawn maintained appropriate supervised visits with Z.P., his supervised visitation time never increased due to his lack of progress in services. The guardian *ad litem* (GAL) cross-examined Ehrat about Shawn's unsupervised and unauthorized contact with Z.P., which elicited the following response: "Before I came on the case, there was an issue with [Z.P.] having contact with his dad through the Play Station [*sic*], and most recently there had been an issue where [Z.P.] contacted his dad ***." Before she could finish, Shawn's counsel objected, contending this incident was outside the relevant nine-month period alleged in the petition. The trial court overruled the objection, and Ehrat testified Shawn and Z.P. had unauthorized and unsupervised contact through a PlayStation gaming system. Ehrat learned of this ongoing unauthorized contact in May 2020.

¶ 11 Ehrat also testified about additional incidents of unauthorized contact between Shawn and Z.P. through the cellular phone provided to Z.P. by his foster parent. The cell phone had been provided solely for access to games and was not supposed to have an internet connection. Ehart testified Z.P.'s cellular phone confirmed unsupervised communication between the two beginning in late April 2020.

¶ 12 The GAL's cross-examination also revealed Shawn claimed to miss scheduled drug drops due to lack of transportation, and Renee failed to attend due to lack of transportation or health conditions. Both parents were to participate in drug testing four times a month, and Ehrat "kept them on the same schedule to make it easier for them." From April 2019 to March 2020, a total of 50 drug drops were scheduled for each parent. Shawn attended nine, and from April 2019 to January 2020, Renee also attended nine. Although Shawn's counsel objected to Ehrat's testimony falling outside the termination petition's nine-month timeframe, the trial court overruled the objection.

¶ 13 Heidi Reible, a group facilitator at Cognition Works, testified she was familiar with Renee through the parenting program. Renee enrolled in the program in July 2019 and was terminated for lack of attendance. The State introduced Renee's parenting class termination report confirming her termination from the program after accruing three unexcused absences. This was admitted without objection. The last time Renee had any contact with the agency was over one month prior to the hearing.

¶ 14 Also admitted without objection were records outlining Shawn's substance abuse history and recommendation for treatment. The assessment found inconsistencies with his drug drops and expressed concern he was "withholding information" from DCFS and treatment providers.

¶ 15 Renee provided several reasons for her noncompliance with services. She stated she did not live in Urbana, where her various service appointments were scheduled, during most of the first year of the case and had no transportation to appointments. Even after moving to Urbana and being provided free bus passes, she said her anxiety prevented her from taking the bus. Renee also said she could not walk to appointments because she suffered from fibromyalgia and was a cancer survivor. She explained her failure to obtain substance abuse treatment by saying each time she attended an assessment she was informed no treatment was recommended. Arguments and recommendations of counsel for the fitness portion of termination proceedings were heard in August 2020. The trial court indicated it considered the testimony and exhibits presented during the previous hearings on termination and took judicial notice of the court file and all previous orders contained therein. The court noted the incident of domestic violence between the respondent parents, live-streamed online, which caused the minor to come into care. The court referenced the fact 10-year-old Z.P. was present and witnessed a violent physical

altercation between his parents, where Shawn eventually hit Renee hard enough to render her unconscious. The court found neither parent made any progress toward return home of the minor since the dispositional hearing in August 2018 and, although respondent mother made some efforts, respondent father made none. The court recognized the father ultimately began to make efforts by completing a domestic violence class; however, he failed to engage in other recommended services. The trial court found by December 2019, neither Shawn nor Renee made reasonable efforts or progress, and it observed, after 18 months, they were no closer. Even after the filing of the State's motion seeking termination of their rights, the court found neither parent appeared to make progress or become reengaged in services.

¶ 16 The trial court found the State proved both counts of the motion for termination by clear and convincing evidence. Explaining its finding on count I, alleging lack of reasonable efforts, was a "closer call" because of the efforts made at various time during the pendency of the case, the trial court chronicled the length of time the case had been pending and the number of opportunities provided to respondent parents to participate in services with no measurable progress. The court found both parents unfit, and after finalizing that stage of the proceedings, it heard evidence on the best interests of the minor.

¶ 17 All parties stipulated to the best-interests reports from the social service agencies (CASA and Camelot Care Center). Shawn's counsel called Ehrat, who testified she met with Z.P. three times a month since becoming his caseworker in April 2019. She described some behavioral issues while residing in his current foster care placement: fighting with his foster brothers, stealing, dishonesty, and declining grades during his time in foster care. The caseworker had only recently learned Z.P. had pulled out several of his own teeth, and they were unsure whether that was indicative of greater psychological issues. He had since been to a

dentist. According to Ehrat, Z.P. loved his parents and wanted to return to them, but if he could not, he wanted to be adopted by his foster mother.

¶ 18 After direct examination, the trial court continued the matter on its own motion, finding the Camelot Care Center report did not adequately break down the facts and opinions relating to the relevant statutory factors to be considered in best-interest proceedings. The court requested additional information before proceeding further, expressing its concern for the lack of information concerning the tooth-pulling incidents. It ordered CASA and Camelot Care Center to provide updated best-interests hearing reports with more details regarding the relevant statutory factors and an update on Z.P.'s mental health and continued the matter to September 2020.

¶ 19 At the continuation of the best-interests hearing in September, the trial court received an updated report from CASA and an updated Camelot Care Center progress report. Through cross-examination, Ehrat explained it was learned Z.P. had been pulling out "baby teeth" and there were no other issues involved.

¶ 20 The trial court found, after considering all the evidence from the best-interests and previous hearing, as well as the arguments and recommendations of counsel, that Z.P. had established a sense of identity and attachment with his foster mother, he was safe with her, and his needs were being met. Further, the court found he had developed a strong relationship with his foster brothers, and he had resided with his foster family for approximately two years. The trial court recognized the length of time in foster care should not always be considered against the parents; however, in this instance, the court said, "I believe the length of time that he has been with the foster family is the fault of the parents for not doing what they needed to do to end this situation." Acknowledging how both parents had made some amount of progress at various times during the pendency of the case, the court found neither parent had shown enough progress

for the court to feel confident Z.P. would be safe with either one. The court further concluded that "it would be extremely disruptive to [Z.P.] if he were to be removed from the [foster family]." The court noted the best-interests hearing focuses on the needs of the child and not the parents and the foster parent was willing to provide permanency. The trial court listed each of the statutory factors and the weight it prescribed to each one, ultimately concluding the State had proved by a preponderance of the evidence that terminating respondents' parental rights served Z.P.'s best interests.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Respondents argue the trial court (1) erred in considering evidence irrelevant to an unfitness finding and (2) erroneously terminated their parental rights because the court's unfitness and best-interests determinations stand against the manifest weight of the evidence. We disagree and affirm the trial court's judgment.

¶ 24 A. Evidence Outside the Nine-Month Time Frame

¶ 25 First, respondents argue the trial court erred by considering evidence outside the nine-month period at the fitness hearing. We disagree.

¶ 26 Defendant cannot pursue one course of action before the trial court and then claim error for having done so once he appeals. "It is well settled that a party cannot acquiesce to the manner in which the trial court proceeds and later claim on appeal that the trial court's actions constituted error." *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 60, 129 N.E.3d 755; see also *People v. Hughes*, 2015 IL 117242, ¶ 33, 69 N.E.3d 791 ("[A] party cannot complain of error that it brought about or participated in.").

¶ 27 Respondents' first claim the trial court erred by taking "judicial notice of the prior orders entered in this case," as these orders contained events and information outside the statutory nine-month period alleged in the State's termination petition. After the State requested the court take judicial notice of the prior orders, the court asked each of respondents' counsel if they had an objection. Both indicated they had no objection. Therefore, respondents' acquiescence waived this claim, and we decline to consider this issue on appeal. *Hibbler*, 2019 IL App (4th) 160897, ¶ 60.

¶ 28 Next, respondents argue the trial court erred by overruling two of respondents' objections, thereby allowing evidence outside of the nine-month period, which prejudiced respondents.

¶ 29 Although it is error for a trial court to consider evidence outside the nine-month time frame in a termination petition, the respondent is required to demonstrate how he or she was prejudiced by such an error. See *In re J.G.*, 298 Ill. App. 3d 617, 629, 699 N.E.2d 167, 175-76 (1998) (stating regardless of the trial court taking judicial notice of entire court file, respondent was not prejudiced because the State provided more than sufficient evidence of unfitness properly admitted at the hearing); *In re A.B.*, 308 Ill. App. 3d 227, 239, 719 N.E.2d 348, 358 (1999) (holding the trial court erred by taking judicial notice of the court file at the fitness hearing, but respondent failed to establish prejudice, because other evidence was sufficient to prove unfitness). As we will discuss below, respondents fail to demonstrate how they were prejudiced by the evidence permitted over their two specified objections since the State provided more than sufficient admissible evidence of respondents' unfitness at the hearing.

¶ 30 B. Termination Proceedings

¶ 31 The Juvenile Court Act of 1987 (705 ILCS 405/1 *et seq.* (West 2018)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2018)) govern how the State may terminate parental rights. *In re D.F.*, 201 Ill. 2d 476, 494, 777 N.E.2d 930, 940 (2002). Together, the statutes outline two necessary steps the State must take before terminating a person's parental rights—the State must first show the parent is an "unfit person," and then the State must show terminating parental rights serves the best interests of the child. *D.F.*, 201 Ill. 2d at 494-95 (citing 750 ILCS 50/1(D) (West 1998); 705 ILCS 405/2-29(2) (West 1998)). Here, respondents challenge the trial court's determinations at each of these steps. We take their challenges in turn.

¶ 32 1. *Unfitness Finding*

¶ 33 " 'The State must prove parental unfitness by clear and convincing evidence ***.' " *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011) (quoting *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004)). The Adoption Act provides several grounds on which a court may find a parent "unfit." One is a parent's failure to make *reasonable efforts* to correct the conditions that were the basis for the removal of the minor during any nine-month period following the adjudication of neglect or abuse or dependency under the Juvenile Court Act of 1987 (750 ILCS 50/1(D)(m)(i) (West 2018)). Another involves a parent's failure to make *reasonable progress* toward the return of the child to the parent during any nine-month period following the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2018)). Despite various potential bases for unfitness, "only one statutory ground [is] enough to support a [court's] finding that someone [is] an 'unfit person.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 83, 19 N.E.3d 227; see also *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064, 859 N.E.2d 123, 135 (2006) ("A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act." (citing *In re D.D.*, 196 Ill. 2d

405, 422, 752 N.E.2d 1112, 1122 (2001))). Reasonable progress includes a parent's compliance with service plans and court 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. *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

¶ 34 "This court pays great deference to a trial court's fitness finding because of that court's superior opportunity to observe the witnesses and evaluate their credibility." (Internal quotation marks omitted.) *A.L.*, 409 Ill. App. 3d at 500. We "will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *A.L.*, 409 Ill. App. 3d at 500. "Each case concerning parental unfitness is *sui generis*, requiring a close analysis of its facts ***." (Internal quotation marks omitted.) *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19, 980 N.E.2d 91.

¶ 35 The evidence at the fitness proceeding revealed that from April 1, 2019, to January 1, 2020, respondents were ordered to successfully complete services for substance abuse treatment, domestic violence classes, and parenting classes. The referrals were already in place by the time Z.P.'s current case manager took the case in April 2019. Regarding Renee, it is uncontroverted she failed to complete any of these services either during the nine-month period or by the date of the fitness hearing. Although she enrolled in the parenting program in July 2019, she was unsuccessfully terminated for lack of attendance, and she did not reenroll in the program until January 2020, beyond the nine-month period alleged in the State's termination petition. The referrals for substance abuse treatment were completed in March 2018, and she completed the assessment in 2019, but she never went back to complete the recommended

treatment. From April 2019 to March 2020, there were 50 scheduled drug screenings for Renee. During the nine-month period alleged in the petition, she only attended nine of them.

¶ 36 To his credit, Shawn successfully completed his domestic violence classes as directed by DCFS. However, he was unsuccessfully discharged from outpatient substance abuse treatment in May 2020, and he never provided proof of completing parenting classes. According to Ehrat, his visitation with Z.P. was never increased due to his lack of progress in services. From April 2019 to March 2020, he attended 9 of his 50 scheduled drug screenings. The report admitted as the State's exhibit No. 2 (his substance abuse evaluation) reported inconsistencies between his screenings and what he was reporting, and the treatment providers were concerned he was "withholding information" from DCFS.

¶ 37 Based on this evidence, it was rational for the trial court to conclude respondents failed to make reasonable efforts or progress during the nine-month timeframe alleged in the termination petition because both failed to comply with services. See *C.N.*, 196 Ill. 2d at 216-17 (stating reasonable progress includes a parent's compliance with service plans and court directives in light of the condition which gave rise to the removal of the child). The record before us reveals the trial court made a reasonable decision based on the evidence presented; consequently, we owe it the deference it deserves. See *A.L.*, 409 Ill. App. 3d at 500 (stating a reviewing court affords great deference to a trial court's fitness findings and will not reverse the court's decision unless it was contrary to the manifest weight of the evidence); *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616 (stating a decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent, or if it is unreasonable, arbitrary, or not based on the evidence). The record is clear—respondents had several

opportunities to engage in and complete recommended services to correct the conditions that precipitated DCFS involvement, and they failed to do so.

¶ 38 2. *Best-Interests Hearing*

¶ 39 Once a trial court finds a parent an "unfit person," it must next consider whether terminating that person's parental rights serves the child's best interests. "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004); see also *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80, 966 N.E.2d 1107 (stating once the trial court finds the parent unfit, "all considerations, including the parent's rights, yield to the best interests of the child"). When considering whether termination of parental rights serves a child's best interests, the trial court must consider several factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2018).

¶ 40 A trial court's finding that termination of parental rights is in a child's best interests, just as in the fitness hearing, will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185.

¶ 41 At the best-interests hearing, the trial court heard the continued testimony of Ehrat, who after speaking with Z.P.'s dentist, clarified the teeth Z.P. pulled were baby teeth, and there was no evidence of self-harming behavior. The court also received updated best-interests reports from CASA and Camelot Care Center. After two years, neither parent had satisfactorily addressed the issues that caused Z.P. to come into care, which was a legitimate concern for the court in determining whether termination of their rights was in Z.P.'s best interests.

¶ 42 In reviewing the best-interest factors, the trial court noted Z.P. continues to do well with the foster family, has developed a sense of attachment and identity with the family, and

has “built a bond” with them over the past two years. After taking Z.P.’s wishes into consideration, the court stated Z.P.’s safety and welfare is “much more protected in the home of [foster mom].” The foster family has been Z.P.’s home for two years, and the foster mother keeps Z.P. up to date on his medical care and mental health counseling, and she ensures he remains safe and healthy. Z.P. “sees himself as part of the family” and gets along with everyone in the household. During the two years, he has built friendships at his school and home, and he wants to remain there if he cannot go back with respondents. His background and cultural ties have not been harmed in the foster home, and although there are certain risks attendant to a minor being in substitute care, the court found it was not an “issue here with the amazing reports [it] received and heard about the [foster] family.” Respondents have not completed much-needed services, and they continue to have issues with substance abuse and domestic violence. The court commented on how the foster family “shows a continuity of affection for [Z.P]. And at this point, it would be extremely disruptive to [Z.P.] if he were to be removed from the [foster family].” Z.P. is in a home where he is getting all of his needs met and surrounded by people who care for him. Therefore, we cannot find that the trial court’s finding at the best-interests hearing was “unreasonable, arbitrary, or not based on the evidence.” *Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court’s judgment.

¶ 45 Affirmed.