

2019 IL App (4th) 190186-U

NOS. 4-19-0186 & 4-19-0187

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 19, 2019

Carla Bender

4th District Appellate

Court, IL

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> K.M., a Minor)	Appeal from the
)	Macon County
)	Circuit Court
(The People of the State of Illinois,)	No. 15JA147
Petitioner-Appellee,)	
v.)	Honorable
Wilbur M. and Dawn M.,)	Thomas E. Little,
Respondents-Appellants).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In March 2019, the trial court terminated the parental rights of respondents, Wilbur and Dawn M., as to their minor child, K.M. (born June 4, 2009). On appeal, respondents argue the trial court’s fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

¶ 3 **BACKGROUND**

¶ 4 In November 2015, K.M. was removed from respondents’ care following reports of environmental neglect due to unsanitary conditions in the home. K.M., a special-needs child, had also not been receiving proper feedings through her gastronomy tube.

¶ 5 In November 2015, the State filed a petition seeking an adjudication of wardship, alleging K.M. was a neglected and abused minor because (1) she was not receiving proper or necessary care (count I) (705 ILCS 405/2-3(1)(a) (West 2014)); (2) she was living in an environment injurious to her welfare (count II) (705 ILCS 405/2-3(1)(b) (West 2014)); and (3) there was a substantial risk of physical injury to K.M. in that the conditions in her home included “cockroaches, fleas, and other bugs” and K.M., who required supplemental feedings through a “G-tube,” had not been properly fed with the G-tube in two weeks (count III) (705 ILCS 405/2-3(2)(ii) (West 2014)). At the adjudicatory hearing on January 13, 2016, the parties stipulated to count II. The trial court dismissed counts I and III. That same day, the court entered an adjudicatory order finding K.M. was neglected based on the factual basis presented and the parties’ stipulation. On February 3, 2016, the trial court entered a dispositional order adjudicating K.M. a neglected minor, making her a ward of the court, placing custody and guardianship with the Department of Children and Family Services (DCFS), and assigning the case to Lutheran Child and Family Services (LCFS).

¶ 6 On October 5, 2018, the State filed a motion seeking a finding of unfitness and termination of respondents’ parental rights. The State alleged respondents were unfit because they (1) abandoned K.M. (750 ILCS 50/1(D)(a) (West 2014)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to K.M.’s welfare (750 ILCS 50/1(D)(b) (West 2014)); (3) deserted K.M. 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 K.M. during any 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 K.M. during the following nine-month periods: January 14, 2016, through October 14, 2016; October 14, 2016, through July 14, 2017; July 14, 2017, through April 14, 2018; and January 5, 2018, through October 5, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2014)). The State further alleged that termination of parental rights was in K.M.'s best interest.

¶ 7 In January 2019, the trial court conducted a fitness hearing. The State presented the testimony of Tori Canary, an LCFS foster care supervisor who was involved with K.M.'s case from November 2015 until October 2017. Canary testified that K.M. was removed from respondents' care because their home was unsanitary with cockroaches, numerous pets, and five adults living in a three-bedroom home with K.M. According to Canary, Dawn stated it had been "a while" since Dawn had fed K.M. through her supplemental gastronomy tube and dead cockroaches were found inside the box containing K.M.'s PediaSure.

¶ 8 Canary testified it was recommended that respondents complete service plans, which included maintaining a clean home and stable housing for at least six months, providing rent and utility receipts to LCFS, and working with community resources to meet acceptable standards of living. Further, Dawn was required to undergo a psychiatric evaluation.

¶ 9 In May 2016, according to Canary, respondents' performance under the first service plan was rated unsatisfactory overall because the home where respondents lived was still in disrepair, animals in the home had fleas, visitations could not take place there, and respondents had not obtained a legal source of income. Canary acknowledged that respondents were making efforts to clean their home and they also attended visitations with K.M.

¶ 10 In November 2016, respondents' performance under the service plan was again rated unsatisfactory. According to Canary, respondents moved to a new home but subsequently

fell behind in their rent payments. Further, Canary stated that she received a phone call about Wilbur inappropriately touching K.M. She testified that K.M. “demonstrated how daddy would touch her.” Canary acknowledged there were departmental delays in securing sex offender treatment for Wilbur following the allegations. Wilbur’s sex offender evaluation did not take place until February 2017.

¶ 11 In May 2017, Canary again rated respondents’ performance under the service plan unsatisfactory overall. Because respondents had fallen behind in rent payments, they moved back into the mobile home from which K.M. had initially been removed. Canary noted concerns regarding Dawn’s ability to safely parent K.M. independently and “understand the seriousness of [en]suring that [K.M.] receive[d] her feedings ***.” With respect to employment, Canary testified that Dawn was never employed during the pendency of the case and she was awaiting disability benefits related to her diabetes. Canary also noted Dawn’s shortcomings with attending K.M.’s doctor appointments and individualized education plan (IEP) meetings.

¶ 12 In November 2017, respondents’ performance under the service plan was again rated unsatisfactory overall. Canary testified that although respondents had completed parental and mental health assessments, they were deemed unsatisfactory because they failed to secure appropriate housing, participate in the IEP meetings for K.M., attend medical appointments, and obtain employment.

¶ 13 In May 2018, respondents were rated unsatisfactory because of their failure to secure appropriate housing or attend K.M.’s IEP meetings. Canary acknowledged that from November 2017 through May 2018, Wilbur completed a psychological assessment and had worked at a gas station for a period of time. Although Wilbur began sex offender treatment, he

was subsequently discharged due to poor attendance.

¶ 14 In July 2018, according to Canary, Wilbur had a stroke and was hospitalized for two days. Wilbur missed some of his sex offender treatment sessions. He failed to inform Canary of his stroke and missed treatment sessions until August 20, 2018.

¶ 15 Canary testified she “honestly [and] truthfully believe[d] [respondents] [had] done the best that they [could]. But [Canary] honestly and truthfully believe[d] that [respondents] just cannot meet minimum parenting standards.” She testified that between January 2016 and October 2018, respondents had not progressed to a point where they could have visitations with K.M. at their residence. Canary explained, with respect to keeping a clean home, respondents “weren’t able to even maintain [it] for a six-month period.” Canary testified that there was also a lack of “stability” because respondents had generally been rated unsatisfactory in securing legal employment and for lack of finances sufficient to maintain their housing and bills. In addition, Canary expressed concern that, based on Dawn’s psychological assessment, Dawn could not “cognitively” “understand and meet minimum [parenting] standards” without assistance. Canary stated that she did not think respondents would be capable of meeting minimum parenting standards within the next six to nine months.

¶ 16 Tachauna Parsons, a caseworker from LCFS, testified that she had been involved in K.M.’s case since October 2017 through the date of the fitness hearing. She explained that most of her interactions with respondents concerned updates regarding Wilbur’s sex offender class and Dawn’s social security disability benefits.

¶ 17 Dawn testified next. She testified there was nothing in her service plans that she failed to do. Dawn testified that, except for when K.M. went on vacation with her foster parents

and when Dawn was sick with the flu, she regularly attended visitations with K.M. Following K.M.'s removal from her care, Dawn hired an exterminator to correct the insect problems in her home. She also moved into a new residence with Wilbur. However, they were unable to remain there because of financial circumstances. Since October 2017, Dawn has lived with her parents, her father's brother, and Wilbur in a three-bedroom trailer with a room for K.M.

¶ 18 Dawn testified that she did not believe the allegations concerning Wilbur inappropriately touching K.M. because Wilbur's two older daughters never made similar allegations. Dawn also testified that she had never known Wilbur to act inappropriately with K.M.

¶ 19 Amy M., Wilbur's 24-year-old daughter, testified that when she was growing up she lived with respondents for approximately six months to a year and Wilbur never made inappropriate contact with her. She testified that, apart from the conditions of the home, she did not see any problems with respect to Wilbur's parenting. She further testified she never observed Wilbur make inappropriate contact with K.M.

¶ 20 Brittany T., Wilbur's 26-year-old daughter, testified that she lived with Wilbur for "a couple months" and he never engaged in inappropriate behavior with her. She also never saw Wilbur engage in inappropriate behavior with K.M.

¶ 21 The trial court found respondents unfit based on several of the allegations in the State's motion. The court stated that while respondents completed many of the service plan requirements, "all of the service plans were overall rated as unsatisfactory." The court explained deficiencies in the service plans included "no stable housing, no participation in [K.M.'s] educational IEP program, *** failure to attend and inquire about the child's medical

appointments and, of course, no stable employment.” The court found Canary’s testimony credible, noting her testimony that “the mother just does not have the ability to safely parent this child independently, and although the father could be around to help, in this case, he simply cannot be around the child because of the indicated finding and his failure to complete sex offender treatment.” The court concluded that respondents “could not safely parent this child” even if given an additional six to nine months to comply with the service plan requirements.

¶ 22 On June 14, 2017, the trial court conducted a best-interest hearing. Tachauna Parsons, a child welfare specialist with LCFS assigned to K.M.’s case in October 2018, testified that K.M. had been in her current foster care placement for three years. She further explained that K.M. was in special education classes due to her cognitive issues. According to Parsons, K.M. was progressing in school and her reading abilities had significantly improved since K.M.’s placement with her foster parents. Parsons noted the foster parents had a “very good relationship” with K.M.’s teacher at school and texted with K.M.’s teacher almost every day.

¶ 23 Parsons testified that K.M. was “very bonded to her foster parents and her foster siblings.” She explained the foster parents had two biological children and two foster children who lived in the home with K.M. Parsons explained that she had visited K.M. in her foster care placement and she appeared “very happy.” Parsons explained that K.M. was involved in swimming, gymnastics, art projects, and she “love[d] to be a help” with her younger foster siblings.

¶ 24 Parsons testified that the foster parents were an adoptive resource. Further, Parsons testified that K.M. had difficulty with change and remaining in her foster care placement would be best for K.M.

¶ 25 Parsons acknowledged that Dawn visited K.M. every Sunday for four hours. Parsons did not attend those visitations and she could not compare K.M.'s interactions with Dawn to K.M.'s interactions with her foster parents. With respect to Wilbur, Parsons testified that K.M. had "opened up about [Wilbur] molesting her" but Dawn did not believe K.M. Parsons testified that DCFS investigated the allegation and no further action had been taken.

¶ 26 Lana M., Dawn's mother, testified she was living with Dawn in a mobile home at the time of the best-interest hearing. Lana testified that she had been living there at the time of K.M.'s removal in November 2015. Lana further testified she had seen improvements in Dawn and Wilbur's ability to keep their home clean. She stated Dawn did not need "assistance of any kind" raising K.M. but Lana was "prepared to provide *** support for [Dawn]" if necessary. She explained that K.M. and Dawn had an "excellent" relationship and it was in K.M.'s best interest to remain with her biological family.

¶ 27 Donald M., Dawn's father, testified that he was residing with Dawn at the time of the best-interest hearing. He stated he had no question about Dawn's ability to parent K.M. effectively but he would provide support for Dawn if necessary. He described Dawn's relationship with K.M. as "[v]ery loving and very caring" and he felt it was in K.M.'s best interest to return to her biological family.

¶ 28 Crystal Nance, a family friend, testified next. She stated that she had known Dawn for about four or five years. She characterized Dawn's ability to parent K.M. as "the best," stating that Dawn was a "loving" mother. Nance testified she had never noticed any signs of mistreatment or neglect.

¶ 29 Dawn testified that she loved K.M. and visited her once each week. She stated

that she had always been involved in “everything [K.M.] does” and she felt she was capable of parenting K.M. without assistance. Dawn further testified that K.M. would have a bedroom of her own if returned to her care. She explained that Wilbur had agreed to move out of the home if K.M. was returned to her and Wilbur had “already started that process of moving out[.]”

¶ 30 Based on the evidence presented, the trial court found it was in K.M.’s best interest that respondents’ parental rights be terminated.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, respondents argue the trial court’s fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 34 A. Fitness

¶ 35 Parental rights may be involuntarily terminated when the trial court finds that a parent is unfit based on grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and termination is in the child’s best interest. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). “A parent’s rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.” *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). “A reviewing court 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.” *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 36 Here, the trial court determined respondents were unfit because they (1) abandoned K.M. (750 ILCS 50/1(D)(a) (West 2014)); (2) failed to maintain a reasonable

degree of interest, concern, or responsibility as to K.M.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (3) deserted K.M. 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 K.M. during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); and (5) failed to make reasonable progress within any nine-month period following the adjudication of neglect from January 14, 2016, through October 5, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 37 An unfit parent includes one who failed “to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the [neglect] adjudication ***.” *Id.* “[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.” (Internal quotation marks omitted.) *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001). This court has described reasonable progress as “an ‘objective standard,’ ” which exists “when ‘the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody.’ ” (Emphasis in original.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 38 On appeal, respondents contend they “completed all of the services that were set

up for them.” The State argues *inter alia* that respondents failed to make reasonable progress toward K.M.’s return home within any nine-month period between January 14, 2016, through October 5, 2018. The State contends respondents failed to satisfactorily complete service plan requirements, including maintaining stable and clean housing, securing employment, and attending K.M.’s IEP and medical appointments. Further, it argues Wilbur failed to complete his sex offender treatment.

¶ 39 We find the evidence presented at the fitness hearing was sufficient to support the trial court’s determination that respondents were unfit because they failed to make reasonable progress within any nine-month period following the adjudication of neglect. Although respondents completed some service plan requirements, their performance under the service plans was consistently rated unsatisfactory overall. As the trial court noted, deficiencies in the service plan requirements included the failure to maintain stable housing, lack of participation in K.M.’s educational programs, failure to attend and inquire into K.M.’s medical appointments, and failure to secure employment. The court also noted “the father *** cannot be around [K.M.] because of *** his failure to complete sex offender treatment.” The court found both respondents were unable to safely parent K.M. even if given an additional six to nine months to comply with the service plan requirements. We find the trial court’s unfitness determination was not against the manifest weight of the evidence.

¶ 40 Because only one ground for a finding of unfitness is necessary to uphold the trial court’s judgment, we need not review the other bases for the court’s unfitness finding. *Gwynne P.*, 215 Ill. 2d at 349 (A parent’s rights may be terminated if even a single alleged ground for unfitness is supported by the evidence.).

¶ 41

B. Best Interest

¶ 42 Next, respondents argue termination of their parental rights was not in K.M.’s best interests. Specifically, respondents argue, “When [Wilbur] moves out, it would leave Dawn and her parents to raise K.M. and no evidence was presented that Dawn’s parents were not appropriate caregivers.” The State contends Wilbur continued to reside with Dawn despite failing to complete his sex offender treatment and, as a result, it would not be in K.M.’s best interest to be placed with respondents. In addition, the State argues K.M. was bonded with her foster family and they were a potential adoptive resource.

¶ 43 “Following a finding of unfitness *** the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child’s needs, parental rights *should* be terminated.” (Emphases in original.) *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). “[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.” *Id.* At this stage of the proceedings, “the State bears the burden of proving by a preponderance of the evidence that termination 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). We will not disturb the trial court’s best-interest determination unless it is against the manifest weight of the evidence. *Id.* “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 44 Under the Juvenile Court Act of 1987, there are several factors a court should consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). These factors, considered in the context of the child’s age and developmental needs include the

following:

“(1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s background and ties, including familial, cultural, and religious; (4) the child’s sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child’s wishes; (6) the child’s community ties; (7) the child’s need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child.” *Jay. H.*, 395 Ill. App. 3d at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 45 Here, sufficient evidence was presented at the best-interest hearing to support the trial court’s determination that terminating respondents’ parental rights was in K.M.’s best interests. Although respondents argue Dawn could successfully parent K.M. with the assistance of her parents, we note that Dawn’s parents were residing with her when K.M. was initially removed in November 2015 due to environmental neglect. Further, K.M. could not be returned to respondents’ care in the foreseeable future while Wilbur continued to live with Dawn without completing his sex offender treatment.

¶ 46 The trial court ultimately found K.M.’s need for permanence was the most important factor favoring termination. The court found Parsons, the caseworker from LCFS, to be credible and noted her testimony that “change [was] difficult for this child” and remaining with her foster parents would be “best” for K.M. The trial court explained K.M. had “developed

