

NOTICE
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2024 IL App (5th) 240591-U

NO. 5-24-0591

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> CAMDEN S., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 22-JA-50
)	
Katherine S.,)	Honorable
)	Robert M. Jacobson,
Respondent-Appellant).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Cates and Sholar concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court terminating the respondent’s parental rights is affirmed where the circuit court’s findings that the respondent was unfit for failure to make reasonable progress towards the goal of the child returning home within the relevant nine-month period was not against the manifest weight of the evidence.

¶ 2 I. BACKGROUND

¶ 3 Respondent, Katherine S., is the mother of Camden S., born February 23, 2021. This case began in May 2022, when respondent failed to pick up Camden S. from daycare. The respondent also presented to the police and the Department of Children and Family Services (DCFS) unkept and with sores on her face that were consistent with substance abuse. Following an investigation, DCFS took temporary custody of Camden S. On June 20, 2022, the State filed a petition for

adjudication of wardship alleging Camden S. to be neglected while with his mother because the environment exposed Camden S. to substance abuse.

¶ 4 At a shelter care hearing that same day, the Champaign County circuit court indicated the following:

“Respondent indicated she abused substances in the past, but her last use was three years prior. Respondent agreed to take a drug test on May 31, 2022 *** and DCFS obtained positive results for methamphetamine on June 16, 2022. When confronted with test results that day, [respondent] first did not answer the door, then denied substance abuse, then admitted use but refused to acknowledge any adverse impact on [Camden S.]. DCFS offered open case services, but [respondent] would not cooperate ***.”

¶ 5 At an adjudicatory hearing on October 25, 2022, the court made the following findings:

“DCFS initiated an investigation into drug use by [respondent], who initially denied using drugs but after being confronted with a positive drug screen for [methamphetamine] acknowledged using [methamphetamine]. [Respondent] also admitted to using [methamphetamine] again after protective custody of [Camden S.] was taken, in spite of checking herself into drug treatment for outpatient services. [Respondent] also tested positive for [methamphetamine] *** pursuant to a court[-]ordered drug screen on September 13th, 2022. *** [Respondent’s] substance abuse problem is pervasive and creates a dangerous environment for [Camden S.] while he is in her care.”

¶ 6 At a dispositional hearing on November 23, 2022, the circuit court adjudicated Camden S. a ward of the court and placed guardianship in DCFS. Camden S. was subsequently placed in foster care with a relative of his father, who ultimately surrendered his parental rights on or about March 11, 2024.

¶ 7 Between the period of November 23, 2022, and January 30, 2024, it was reported by DCFS that respondent was unemployed and looking for employment while participating in an independent living program through a residential treatment facility. The respondent was referred for drug screenings, for which 12 of the 16 scheduled screenings the respondent either failed to appear or screened positively. In early December of 2023, mental health professionals treating respondent indicated, in a report to DCFS, that the respondent was last seen engaging in treatment services on or about December 12, 2023. On January 4, 2024, the respondent underwent a random drug screening during a visit with Camden S. by her supervising DCFS caseworker. The respondent disclosed to DCFS that she would test positive for substances, without knowing specifically which ones. The respondent tested positive for methamphetamine. Shortly after, on January 8, 2024, DCFS reached out to the respondent's addiction counselor, who then informed DCFS of the respondent's unsuccessful discharge. On January 16, 2024, the appointed guardian *ad litem* recommended a review of Camden S.'s permanency goals. Further, the appointed guardian *ad litem* recommended custody and guardianship remain with DCFS.

¶ 8 On January 30, 2024, the State filed a motion to find the respondent unfit and to terminate the respondent's parental rights. The State's motion alleged respondent to be an unfit parent because she failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of Camden S. pursuant to statute. 750 ILCS 50/1(D)(b) (West 2020). Moreover, the State alleged that respondent was also unfit for failing to make reasonable efforts and progress during the nine months following the adjudication of neglect, specifically that of April 30, 2023, through January 30, 2024, as provided by section 1(D)(m) of the Adoption Act (*id.* § 1(D)(m)).

¶ 9 On March 18, 2024, the circuit court held a hearing on the State's motion. After taking judicial notice of the October 25, 2022, and November 23, 2022, findings, Tori Zook, DCFS

caseworker, testified that she worked with respondent until October 2023. Zook testified that Camden S. came into care due to neglect and concerns about substance abuse. As respondent's caseworker, Zook's testimony indicated that Zook established a service plan. Moreover, while Zook was the caseworker, Zook testified that respondent failed to appear for approximately 27 random drug screenings. Over respondent's objection to the lack of foundation as to any drug screening results, Zook further told the court that respondent tested negative for controlled substances less than five times. Specifically, Zook testified that respondent tested positive for cocaine on September 17, 2023, and positive for methamphetamine on September 27, 2023. As such, Zook testified that the return of Camden S. was not considered.

¶ 10 Mya Guice, DCFS caseworker trainee, testified that she acted as the caseworker for Camden S. since October 2023. At the time of Guice's assignment to respondent's case, respondent was engaged in substance abuse treatment and was required to participate in weekly drug screenings, per the above-mentioned service plan. Guice further testified that respondent was unsuccessfully discharged from drug treatment in December 2023. Guice then testified, over respondent's objection to any drug screening results for lack of foundation, that the respondent tested positive for methamphetamine on November 7, 2023.

¶ 11 Additionally, Guice offered the following testimony regarding a scheduled visit with Camden S. on or about January 4, 2024. During the scheduled visit, Guice personally administered a drug screening because respondent appeared very jittery, and something was wrong with her nostril area. After personally administering the drug screening, respondent admitted to Guice that she had used drugs on January 1, 2024. Guice testified that following the respondent's disclosure, she encouraged her to attend a substance abuse treatment program, but the respondent chose not to do so. Subsequently, respondent stopped participating in drug screenings, and canceled several

appointments. Moreover, Guice testified that she was unable to maintain contact with respondent, and eventually, the respondent's phone had been disconnected. As such, Guice testified that the return of Camden S. was not considered.

¶ 12 Addiction counselor Mechelle Moore testified that the respondent was her client from November 2022 through late December 2023, at which point respondent was unsuccessfully discharged from substance abuse treatment for lack of participation. Moore testified as to the basis of respondent's substance misuse and abuse. Moore opined that respondent had not demonstrated an ability to overcome barriers barring reunification with Camden S. Specifically, respondent was continuing to engage in interpersonal relationships enabling substance abuse.

¶ 13 While Moore's testimony acknowledged that relapse was a normal part of recovery, Moore testified that in December 2023, respondent was asked and agreed to take a drug screening, and the results were positive for methamphetamine. It was on this date that Moore advised respondent to reenter substance abuse treatment and receive therapy for unresolved trauma. Moore testified that respondent resumed substance abuse treatment and therapy in February 2024.

¶ 14 The respondent testified on her own behalf. She testified that she regularly saw a psychiatrist, took her prescribed medications, and had been participating in therapy for over a month. The respondent acknowledged that she was unsuccessfully discharged from substance abuse treatment due to lack of participation. Additionally, respondent testified that except for "a couple months here and there," she was either engaged in substance abuse treatment or had tried to engage in treatment, since the removal of Camden S. Respondent testified that she entered inpatient substance abuse treatment in July 2023 and was successfully discharged in August of 2023, which preceded relapse.

¶ 15 In specific regard to the drug screening administered by Guice on January 4, 2024, the respondent testified that she felt as though she was forced to admit she had used drugs on January 1, 2024. The respondent suggested that the positive drug results, and those that she missed, had occurred at the onset of her case. The respondent testified that she was presently participating in drug screening and had not used or abused substances in over a month.

¶ 16 Following the presentation of evidence and argument, the circuit court determined that the State had sufficiently proven that respondent was unfit for failing to make reasonable progress during the nine-month period of April 30, 2023, through January 30, 2024. While the circuit court acknowledged the respondent had reengaged in treatment, the circuit court emphasized that it is to consider only events occurring during the nine-month period of April 30, 2023, through January 30, 2024. While specifically referencing Guice's testimony, and weighing the credibility of witnesses, the court concluded that respondent had, in fact, acknowledged using drugs on January 1, 2024. Additionally, such acknowledgment was corroborated with the positive screening result. Although the circuit court noted that respondent had made numerous efforts throughout the course of the case, it was indicated that Camden S. was removed on the account of the respondent's drug use, which was likely related to several issues, such as mental health.

¶ 17 On April 22, 2024, the circuit court entered a written order finding that it was in the best interest of Camden S. that the respondent's parental rights be terminated. This timely appeal follows.

¶ 18

II. ANALYSIS

¶ 19 Respondent appeals the circuit court's determination that the respondent was unfit for failing to make reasonable progress, raising (1) the circuit court erred in overruling her objection to the testimony regarding any drug screening results, specifically asserting that the State did not

establish a proper foundation for the introduction of such testimony; and (2) in the alternative, the State's evidence was insufficient to prove that respondent was unfit for failing to make reasonable progress during the nine-month period of April 30, 2023, through January 30, 2024, warranting plain error and directing the court to remand for a new adjudicatory hearing. The State concedes in its brief on appeal that, "the results of the September 2023, November 2023, and December 2023 tests should not have been considered." As the State has conceded the results of the September 2023, November 2023, and December 2023 drug screenings should not have been considered, we turn to whether in the absence of the foregoing, was the determination that the respondent was unfit against the manifest weight of the evidence.

¶ 20 Termination of parental rights proceedings are governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2020)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2020)); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). A petition to terminate parental rights is filed under section 2-29 of the Juvenile Court Act, which delineates a two-step process to terminate parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2020). The State must first establish, by clear and convincing evidence, that the parent is an unfit person under one or more of the grounds enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2020)). 705 ILCS 405/2-29(2), (4) (West 2020); *In re J.L.*, 236 Ill. 2d 329, 337 (2010).

¶ 21 The finding of unfitness in this appeal was based upon section 1(D)(m)(ii):

“(m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act to correct the conditions that

were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, ‘failure to make reasonable progress toward the return of the child to the parent’ includes the parent’s failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987. Notwithstanding any other provision, when a petition or motion seeks to terminate parental rights on the basis of item (ii) of this subsection (m), the petitioner shall file with the court and serve on the parties a pleading that specifies the 9-month period or periods relied on. The pleading shall be filed and served on the parties no later than 3 weeks before the date set by the court for closure of discovery, and the allegations in the pleading shall be treated as incorporated into the petition or motion. Failure of a respondent to file a written denial of the allegations in the pleading shall not be treated as an admission that the allegations are true.” 750 ILCS 50/1(D)(m)(ii) (West 2020).

¶ 22 “ ‘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 P.S.*, 2021 IL App (5th) 210027, ¶ 37. The circuit court may conclude that a parent has made reasonable progress when it can conclude that the minor child will be able to return to parental custody in the near future. *Id.* Additionally, only evidence occurring during the relevant nine-month period specified in the petition or motion to terminate parental rights pursuant to section 1(D)(m)(ii) may be considered by the circuit court when determining whether reasonable progress was made. *In re J.L.*, 236 Ill. 2d at 341.

¶ 23 A finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.* The circuit court’s finding of unfitness is given great deference because it has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). This court, therefore, does not reweigh the evidence or reassess the credibility of the witnesses. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). Each case concerning parental fitness is unique and must be decided on the particular facts and circumstances presented. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 24 “A reviewing court *** must not substitute its judgment for that of the [circuit] court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.” *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008). For that reason, this court will not reweigh the evidence or reassess the credibility of the witnesses. With regard to all of its findings and conclusions, the circuit court was in the best position to make a credibility assessment of the testimony of the witnesses in this case.

¶ 25 Equally important and relevant here, the Illinois Supreme Court has indicated that
“ [i]f a service plan has been established *** to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of [the Adoption] Act, “failure to make reasonable progress toward the return of the child to the parent” includes *** the parent’s failure to *** fulfill *** her obligations under the service plan and correct the conditions that brought the child into care.’ ” *In re C.N.*, 196 Ill. 2d at 217 (quoting 750 ILCS 50/1(D)(m) (West Supp. 1999)).

Put otherwise,

“[when] compliance with DCFS service plans is [intertwined with] a parent’s progress toward the return of the child, so much so, that where a service plan has been established to correct the conditions that were the basis for the removal of the child from the parent, the failure to make reasonable progress now includes the failure to *** fulfill the terms of that service plan.” *Id.*

¶ 26 In the DCFS family service plan submitted around July 10, 2023, it was noted that Camden S. experienced an unstable living situation due to the respondent’s substance abuse. Additionally, respondent struggled with mental health which likely contributed to substance abuse. Camden S. was removed from respondent’s home due to respondent’s ongoing use of methamphetamines. Thus, it was “very important that [respondent] attend all of her [screenings] and provide clean [screening results].” With this in mind, we believe the service plan, which required the respondent to (1) maintain contact and cooperate with DCFS, (2) attend individual therapy, (3) participate in substance abuse treatment, (4) participate in random drug screens, and (5) maintain a drug-free lifestyle, was reasonably related to remedying the conditions which led to the removal of Camden S.

¶ 27 Turning to the evidence of respondent’s conduct during the relevant period, and omitting the September 2023, November 2023, and December 2023 drug screening results, the record evinces a failure by respondent during the nine-month period to comply with the terms of the service plan and participate in available services. Such a failure, therefore, establishes a basis for removal for failure to make reasonable progress because the respondent’s service plan was established to correct the conditions.

¶ 28 In the present case, Camden S. was adjudged neglected on October 25, 2022. Such adjudication related to the allegations of substance abuse contained in the State’s original petition

for adjudication of wardship filed on or about June 20, 2022. The State filed a second petition, but amendments were limited to identifying the putative father of Camden S.

¶ 29 At the time the State filed its first petition, DCFS had concluded respondent was using methamphetamine. Shortly thereafter, on October 25, 2022, the circuit court found that “[respondent] admitted to using [methamphetamine] again after protective custody of [Camden S.] was taken, in spite of checking herself into drug treatment for outpatient services. *** [Respondent’s] substance abuse problem is pervasive and creates a dangerous environment for [Camden S.] while he is in her care.” The circuit court took judicial notice of the October 25, 2022, findings during the termination hearing held on March 18, 2024. While the circuit court allowed evidence of respondent’s conduct during the entire period of which respondent has been involved with DCFS to be introduced at the termination hearing, this court is to only consider evidence of respondent’s conduct during the nine months following the relevant adjudication of neglect, specifically that of April 30, 2023, through January 30, 2024.

¶ 30 Indicated within the DCFS family service plan filed on or about July 10, 2023, is respondent’s reported use of methamphetamines on or about May 3, 2023. On October 6, 2023, a permanency hearing report was filed that indicated respondent failed to appear to a drug screening on or about September 6, 2023. The permanency hearing report filed on or about January 12, 2024, concluded that respondent failed to appear for the screenings dated October 13, 2023, October 20, 2023, November 16, 2023, November 20, 2024, November 28, 2023, December 8, 2023, January 4, 2024, and January 9, 2024. Of equal importance, it is noted that on or about January 4, 2024, a caseworker told respondent to still attend her drug screening appointments, which respondent did not. This notation is corroborated by Guice’s testimony. Moreover, upon weighing the credibility of respondent, the circuit court concluded the respondent’s testimony acknowledged she had

missed drug screenings. And of greater importance, acknowledged respondent relapsing on or about January 4, 2024.

¶ 31 Also corroborated by witness testimony, specifically that of Moore and more importantly respondent, is the report statement that she stopped attending substance abuse treatment sessions, at which point respondent was unsuccessfully discharged. Notably, respondent testified “except for *** a couple months,” respondent was engaged in substance abuse treatment services or had tried to engage in substance abuse treatment services. Respondent testified that she reengaged in services to address mental health and substance abuse concerns, as demanded by the service plan. However, respondent’s attendance commenced before the amended motion to terminate her parental rights was filed on or about March 11, 2024,¹ but after January 30, 2024, as inferred by the testimony of both Moore and respondent. Further, respondent’s testimony implicitly acknowledged that respondent had not reengaged with Moore until sometime in February 2024. Accordingly, we find that the State did present sufficient evidence to establish a finding of unfitness. By extension, any error in the admission of evidence in this case is subject to harmless error analysis. *In re Brandon P.*, 2014 IL 116653.

¶ 32 Harmless error analysis requires

“beyond a reasonable doubt that the error at issue did not contribute to the [judgment] obtained at trial. [Citation.] When determining whether an error is harmless, a reviewing court may, (1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the [finding]; or (3) determine whether the improperly admitted

¹The State’s motion was amended to indicate Richard Tubulee’s volunteered termination of parental rights.

evidence is merely cumulative or duplicates properly admitted evidence.” (Internal quotation marks omitted.) *Id.* ¶ 50.

¶ 33 As set forth above, there was sufficient evidence to determine the respondent was unfit and the improperly admitted evidence of three failed drug screenings is merely cumulative. Lastly, we again note that respondent does not challenge the circuit court’s finding that it was in the best interest of Camden S. to terminate respondent’s parental rights, and so that finding is also affirmed.

¶ 34 III. CONCLUSION

¶ 35 Based on the foregoing, we affirm the judgment of the circuit court of Champaign County.

¶ 36 Affirmed.