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).

2023 IL App (4th) 230409-U

NO. 4-23-0409

FILED
September 19, 2023
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re N.H., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. Dennis V., Respondent-Appellant).	)	Appeal from the Circuit Court of Adams County No. 21JA83 Honorable John C. Wooleyhan, Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Cavanagh and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to his son's welfare was not against the manifest weight of the evidence.

¶ 2 N.H. is the son of respondent Dennis V. and Wendella H., who is not a party to this appeal. Shortly after N.H.'s birth in November 2021, he was placed with a foster family and adjudged a ward of the state. In April 2023, the trial court found respondent and Wendella H. were unfit parents because they (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to N.H.'s welfare, (2) failed to make reasonable efforts to correct the conditions that were the basis of N.H.'s removal from Wendella H.'s custody, and (3) failed to make reasonable progress towards the return of the child to their custody. The court terminated their parental rights on these grounds, finding that adoption by the foster family was in N.H.'s best

interest. On appeal, respondent argues that the trial court's findings are against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 N.H. was born in November 2021; respondent's name is not listed on N.H.'s birth certificate. One week after N.H.'s birth, the State filed a petition for adjudication of wardship based on Wendella H.'s documented history of neglecting her three other children. While the petition was pending, the trial court granted temporary custody and guardianship to the Illinois Department of Children and Family Services (DCFS). DCFS placed N.H. with a foster family, where he has remained ever since.

¶ 5 The petition identified respondent as the putative father and showed that he lived in Louisville, Kentucky, where he continued to live throughout the proceedings below. In January 2022, respondent filed an affidavit of assets and liabilities in support of his request for appointed counsel, indicating that he was N.H.'s father. A DNA test in February 2022 verified that respondent was N.H.'s biological father.

¶ 6 The trial court held an adjudicatory hearing on the State's petition on March 17, 2022, with respondent present. The court issued an adjudicatory order finding that N.H. was an abused and neglected child because returning him to Wendella H.'s custody would place him in an environment injurious to his welfare. The same day, respondent underwent an integrated assessment interview with Brett Landwehr, N.H.'s caseworker at Chaddock Foster and Adoption Services (Chaddock), an agency under contract with DCFS to administer family service plans. Landwehr prepared an integrated assessment, which was approved by Kelsey Platt, his supervisor at Chaddock.

¶ 7 In April 2022, Landwehr and Platt submitted a dispositional hearing report to the

trial court, attaching the integrated assessment and DNA test results. The integrated assessment recommended the court require respondent to (1) complete mental health and substance abuse assessments with approved providers and follow their recommendations, (2) complete a sex offender assessment with an approved provider to determine if any services would be needed due to his 2017 conviction for rape, (3) meet all requirements of his probation from the 2017 rape conviction, (4) successfully complete a parenting education class, and (5) participate in consistent visitation with his son in order to build a bond.

¶ 8 The trial court held the dispositional hearing on April 28, 2022, with respondent again present. After the hearing, the court issued a dispositional order finding that respondent was "unable *** to care for, protect, train, educate, supervise or discipline [N.H.]" and that placement with respondent would be "contrary to the health, safety and best interests of [N.H.]," although the court did not provide a specific reason for this finding. The court granted the State's petition for adjudication of wardship, establishing a permanency goal of returning N.H. to his parents' custody within 12 months, with N.H. remaining in DCFS custody during that time. The court also ordered respondent to comply with the terms of his family service plan.

¶ 9 In May 2022, Landwehr prepared two family service plans, each of which was approved by Platt. Although there are some small differences between the portions of these plans involving Wendella H., there do not appear to be any differences between the portions involving respondent, and the parties have not identified any such differences. The May 2022 plans incorporated the recommendations from respondent's integrated assessment and described his progress as generally satisfactory with respect to his cooperation with Landwehr. Specifically, respondent had continued to have good communication with Landwehr, signed all necessary releases of information, disclosed his romantic relationship, avoided legal trouble, and cooperated

with DNA testing. Landwehr noted, however, that respondent had not disclosed all important information about his past legal history at the integrated assessment interview. With respect to mental health, substance abuse, and sexual assault assessments and the parenting class, respondent's progress was rated as unsatisfactory based on his failure to find service providers or complete any of the required assessments. Landwehr stated that he was working on finding appropriate services in Louisville but that respondent should also be seeking providers on his own. With respect to visitation, Landwehr noted: "Has not had one single visit due to scheduling on behalf of the parent. Multiple attempts have been made by visit worker, both via [Z]oom and in person. [Respondent] has failed to respond." Landwehr left his job with Chaddock in October 2022, and Jennifer Spohr replaced him as N.H.'s caseworker through the remainder of the proceedings below. Spohr prepared another family service plan in October 2022, which was approved by Platt.

¶ 10 In February 2023, the State moved to terminate Wendella H.'s and respondent's parental rights on the grounds that they (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to N.H.'s welfare, (2) failed to make reasonable efforts to correct the conditions which were the basis of N.H.'s removal from Wendella H.'s custody, and (3) failed to make reasonable progress toward the return of the child to their custody. See 750 ILCS 50/1(D)(b), (m)(i), (ii) (West 2022); see also 705 ILCS 405/2-29(2) (West 2022) (providing for termination of parental rights by motion).

¶ 11 The termination hearing took place on April 13, 2023, without respondent present. Respondent's counsel moved to continue the hearing but could not explain why respondent was absent and did not assure the trial court that respondent would attend a continued hearing. The court denied the motion. The State called Platt and Spohr as witnesses; respondent and Wendella

H. did not call any witnesses or present any evidence.

¶ 12 The trial court first heard from Platt, who testified regarding the contents of the May 2022 plans, which were admitted over respondent's objection that his counsel had not received them in discovery. Wendella H. objected to one of the May 2022 plans on hearsay grounds; the court overruled this objection as well, concluding that Platt had laid a sufficient foundation. No other objections were raised during Platt's testimony.

¶ 13 The trial court then heard testimony from Spohr, who testified regarding her experience as N.H.'s caseworker and the contents of the October 2022 plan, which was admitted without objection. Spohr explained that respondent had never completed any assessments or engaged in any services. Although Spohr had reached out to a person with child and family services in Kentucky who could start respondent's parenting and mental health services, respondent never followed up with this person. According to Spohr, respondent would answer the phone when she called, but he never asked her how N.H. was doing, never asked her to try to set up visits between him and N.H. because of "how much of an issue it was where he was," and never sent N.H. any cards, letters, or gifts. Spohr testified that respondent had offered to drive up for monthly in-person visits but ultimately never visited N.H. in person and visited him via Zoom just once, despite multiple attempts by Chaddock's visitation specialists to arrange visits. Spohr further testified that she had last reached out to respondent on March 2 or 3, 2023, and he never called back. No objections were raised during Spohr's testimony.

¶ 14 The trial court found Wendella H. and respondent were unfit parents because clear and convincing evidence supported each of the grounds in the State's motion for termination of their parental rights. The court found that adoption by the same foster family was in N.H.'s best interest, terminated Wendella H.'s and respondent's parental rights, and granted DCFS the

authority to consent to N.H.'s adoption.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Under section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2022)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit" as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). Second, if the court makes a finding of unfitness, the State must prove by a preponderance of the evidence it is in the minor child's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). In this appeal, we focus solely on the first step: respondent's lack of fitness. We will reverse only if the trial court's findings are against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). "A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *In re C.N.*, 196 Ill. 2d 181, 208 (2001).

¶ 18 Respondent argues that the trial court's finding that he failed to maintain a reasonable degree of interest, concern, or responsibility as to N.H.'s welfare is against the manifest weight of the evidence. When terminating parental rights on this ground, the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278 (1990). "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *In re Richard H.*, 376 Ill. App. 3d 162, 166 (2007). The court's determination must be based on "the parent's efforts to communicate with and show interest in the child, not the success of those efforts." *Syck*, 138 Ill. 2d at 279. However, "[a] parent is not fit merely because the parent has

shown *some* interest in or affection for a child. [Citation.] Rather, the interest, concern, and responsibility must be objectively reasonable. [Citation.]" (Emphasis added.) *In re Tr. A.*, 2020 IL App (2d) 200225, ¶ 50. Additionally, "the failure to comply with the directives of a service plan with the stated goal of returning a child home is tantamount to objectively unreasonable interest, concern, or responsibility as to the child's welfare." *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000).

¶ 19 With these principles in mind, we consider respondent's efforts in light of his circumstances.

¶ 20 A. Respondent's Efforts

¶ 21 Respondent describes his efforts as (1) identifying himself as N.H.'s biological father on his affidavit of assets and liabilities in January 2022, (2) submitting to the paternity test in February 2022, (3) participating in the integrated assessment interview with Landwehr in March 2022, (4) attending the adjudicatory hearing in March 2022 and the dispositional hearing in April 2022, and (5) making satisfactory progress by having good communication with Landwehr, as documented in the May 2022 plan.

¶ 22 Respondent does not point to any efforts he made between May 2022 and the termination of his parental rights in April 2023. This omission is glaring; even if respondent had been a model parent in the first six months of N.H.'s life, he cannot show us that he expressed *any* interest in his infant son's welfare over the following year, much less "some interest" or the reasonable degree of interest required by the Adoption Act. Indeed, the only evidence of respondent's efforts between October 2022 and April 2023 was Spohr's testimony that respondent would pick up the phone when she called him but failed to answer her most recent call or respond in the preceding six weeks. Spohr also testified that even when respondent did pick up the phone, he never asked her how N.H. was doing.

¶ 23 Furthermore, respondent's "efforts" over the first six months of N.H.'s life were largely obligatory. His acknowledgement of parentage, verified by DNA testing, shows some interest in the relationship but was also the necessary first step towards pursuing parental rights. See 750 ILCS 50/1(E), (X) (West 2022) (defining "Parent" and "Legal father"). While failing to attend juvenile court proceedings might well show a significant lack of interest, concern, or responsibility as to a child's welfare, mere attendance at those proceedings is a very low bar to clear. And perhaps most importantly, respondent's argument cuts both ways: if his presence at the March and April 2022 hearings showed interest, concern, or responsibility, then his unexplained absence from the April 2023 hearing presumably showed a lack of interest, concern, or responsibility. Although respondent's participation in the integrated assessment interview did help establish the framework of the family service plan, respondent was still not completely forthcoming. Finally, respondent's participation and communication with N.H.'s caseworker before May 2022 became meaningless when he never took even the most basic steps to follow through with his court-ordered family service plan.

¶ 24 The record reveals nothing showing that respondent ever made any efforts beyond what was required of him, and even then, he did the bare minimum. While such minimal efforts would unlikely be considered objectively reasonable under any circumstances, we nevertheless consider respondent's efforts in context. See *Syck*, 138 Ill. 2d at 278.

¶ 25 B. Respondent's Circumstances

¶ 26 Respondent's only explanation for his failure to make greater efforts is that he lived in Louisville, Kentucky, an eight-hour drive away from N.H. We must determine whether this provided respondent with a valid excuse such that his minimal efforts were reasonable under the circumstances. See *In re M.I.*, 2016 IL 120232, ¶ 29 (stating that circumstances must provide a

valid excuse).

¶ 27 First, respondent's residing in Kentucky did not provide a valid excuse for failing to pursue parenting and mental health services in light of Spohr's testimony that he could have started these services by calling a contact person at child and family services in Kentucky. The evidence showed that respondent was capable of communicating well with his caseworkers by phone, and there is no evidence that he could not have similarly communicated with the contact person in Kentucky. Respondent's failure to satisfy even this simplest directive of his family service plan constituted a lack of reasonable interest, concern, or responsibility as to N.H.'s welfare. See *In re M.J.*, 314 Ill. App. 3d at 657.

¶ 28 As for the eight-hour drive, it is unclear whether this driving distance alone was sufficient to show personal visits were impractical in the absence of additional considerations such as difficulty obtaining transportation, poverty, actions and statements of others that hindered or discouraged visitation, or other aspects of respondent's life besides indifference or lack of concern for the child. See *Syck*, 138 Ill. 2d at 278-79 (listing these as examples why personal visits may be impractical for a distant parent). There is no evidence that respondent faced any of these circumstances; on the contrary, he once offered to drive to monthly in-person visits with N.H.

¶ 29 In any event, respondent was not required to visit N.H. in person. If personal visits were truly impractical, respondent could have demonstrated a reasonable degree of interest, concern, or responsibility through "letters, telephone calls, and gifts to the child or those caring for the child." *Id.* at 279. Respondent initiated no such contact. Although Chaddock could have arranged Zoom visits, respondent only visited N.H. once and rebuffed other attempts to arrange visits because of "how much of an issue it was." Moreover, respondent never sent N.H. a gift or even asked his caseworkers how he was doing. There is no evidence showing why Zoom visits

were an "issue," why respondent could not have sent gifts, or why he could not have asked about N.H. in any of his frequent conversations with N.H.'s caseworkers.

¶ 30 In short, the trial court heard significant evidence showing respondent's lack of effort and little to no evidence showing that his lack of effort was the result of any circumstance other than a lack of interest, concern, or responsibility as to N.H.'s welfare. Accordingly, the opposite of the court's conclusion on this ground is not clearly evident, and we find that the court's finding of unfitness is not against the manifest weight of the evidence.

¶ 31 C. Other Grounds

¶ 32 Respondent also argues that the trial court erred by finding clear and convincing evidence supported the remaining two grounds in the State's motion to terminate his parental rights. See 750 ILCS 50/1(D)(m) (West 2022) (providing for termination of parental rights on these grounds). We need not address these arguments because "[a] parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." (Internal quotation marks omitted.) *M.I.*, 2016 IL 120232, ¶ 43.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.