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).

2022 IL App (4th) 220245-U

NO. 4-22-0245

FILED
November 15, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re M.G., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Peoria County
Petitioner-Appellee,	)	No. 18JA94
v.	)	
Nicole S.,	)	Honorable
Respondent-Appellant).	)	Derek G. Asbury,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Doherty concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's findings respondent was an unfit parent and it was in the minor's best interest to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 Respondent mother, Nicole S., appeals from the trial court's judgment terminating her parental rights to her child, M.G. (born December 4, 2015). On appeal, respondent argues the trial court's findings she was an unfit parent and it was in the minor's best interest to terminate her parental rights are against the manifest weight of the evidence. For the reasons that follow, we disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 The parental rights of the minor's legal father, Brian B., were also terminated during the proceedings below. He is not, however, a party to this appeal.

¶ 5 A. Petition to Terminate Parental Rights

¶ 6 In October 2021, the State filed a petition to terminate respondent's parental rights to the minor. In the petition, the State alleged respondent was an unfit parent in that she failed to make reasonable progress toward the return of the minor to her care within a nine-month period following the minor's September 27, 2018, adjudication of neglected (750 ILCS 50/1(D)(m)(ii) (West 2020)), namely May 24, 2020, to February 24, 2021. The State further alleged it was in the minor's best interest to terminate respondent's parental rights and appoint a guardian with the power to consent to adoption.

¶ 7 B. Hearing on the Petition to Terminate Parental Rights

¶ 8 In February 2022, the trial court conducted a hearing on the State's petition to terminate respondent's parental rights to the minor. Respondent appeared at the hearing *pro se*. After a motion filed by respondent was denied by the court, respondent refused to further participate in the hearing and left the courtroom. The court proceeded with the scheduled hearing.

¶ 9 During the fitness portion of the hearing, the trial court, on motion of the State, took judicial notice of a March 2, 2018, petition for adjudication of wardship, a September 27, 2018, adjudicatory order, and a November 8, 2018, dispositional order. The court also heard testimony elicited by the State from a caseworker who had been assigned to the minor's case during the period of May 24, 2020, to February 24, 2021. The following is gleaned from the evidence before the court.

¶ 10 In March 2018, the State filed a petition for adjudication of wardship, alleging the minor was subject to an environment injurious to her welfare in that, amongst other reasons, Brian B. committed acts of domestic violence. On September 27, 2018, the minor was adjudicated neglected. In November 2018, the minor was made a ward of the court, and respondent was found

unfit and unable to care for the minor because of her "failure to recognize domestic violence issues that seriously affect children."

¶ 11 According to the dispositional order, it was recommended respondent (1) execute all authorizations for releases of information, (2) cooperate with the agency assigned to monitor the welfare of the minor, (3) perform drug drops three times per month, (4) submit to a psychological examination, (5) participate and successfully complete individual counseling, (6) participate and successfully complete a domestic violence course, (7) provide information about any relationship which will affect the minor, (8) attend visitations with the minor, and (9) use best efforts to obtain and maintain a legal source of income. According to the caseworker, respondent was to complete services related to "[i]ndividual counseling, domestic violence, visitation, cooperation with the agency, [and] drug drops three times a month."

¶ 12 Between May 24 and June 19, 2020, respondent had inconsistent attendance at visitations, did not complete any drug drops, and declined to attend services to address her domestic violence and trauma issues. As for respondent's attendance at visitations being inconsistent, the caseworker testified that information was based upon a report from the minor's caregiver. There were also concerns during this period about respondent continuing a relationship with Brian B., who had not completed court-ordered services. The caseworker believed it would not have been safe to return the minor to respondent during this period.

¶ 13 Between June 20 and August 27, 2020, respondent had inconsistent attendance at visitations. The caseworker spoke with respondent about her attendance and tried to accommodate her work schedule. Despite these efforts, respondent's attendance remained inconsistent. Respondent also during this period was maintaining a relationship with Brian B. and was found to

be driving on a suspended license while in an uninsured vehicle. The caseworker believed it would not have been safe to return the minor to respondent during this period.

¶ 14 Between August 28 and December 3, 2020, respondent had inconsistent attendance at visitations and did not complete any drug drops. In September, the caseworker informed respondent that her continued relationship with Brian B. prevented the minor from being returned to her care. In October, respondent denied having any contact with Brian B. but also reported Brian B. was threatening her and demanding she give him money. In both November and December, there were physical altercations involving respondent and Brian B. which resulted in police involvement. The caseworker learned respondent was pregnant from a police report. Respondent self-reported that she obtained an order of protection against Brian B.

¶ 15 Between December 4, 2020, and February 20, 2021, respondent's attendance at visitations was more frequent, and she had met with a psychiatrist. She did not, however, complete counseling or any drug drops during this period. The caseworker believed it would not have been safe to return the minor to respondent during this period.

¶ 16 Based on this information, the trial court found respondent was an unfit parent as alleged in the State's petition to terminate parental rights.

¶ 17 Immediately following the fitness portion of the hearing, the trial court conducted the best-interest portion of the hearing. During that portion of the hearing, the court, on motion of the State, took judicial notice of a February 14, 2022, best-interest report. The court also heard testimony elicited by the State from the same caseworker who testified during the fitness portion of the hearing. The following is gleaned from the evidence before the court.

¶ 18 The minor had been placed with her relative foster mother since September 2019.

The minor was bonded to her foster mother and referred to her as "grandma." The minor's older brother and half-siblings also resided in the foster home. The foster mother provided for the minor's needs of food, shelter, health, and clothing. The foster home presented no safety issues. The minor had "developed extremely well" in the foster home. The foster mother expressed a desire to adopt the minor. The caseworker had no reservations about the minor being permanently in the care of the foster mother.

¶ 19 The minor last resided with respondent in March 2018. When respondent attended visitations, she would bring the minor meals, be affectionate towards the minor, demonstrate effective discipline, and ask about the minor's school. Respondent's relationship with the minor appeared to deteriorate after Brian B. was released from incarceration in April 2020. Her participation in recommended services was inconsistent until August 2021. She then refused to attend visitations after the permanency goal was changed in September 2021.

¶ 20 The minor voiced a desire to live with respondent. She also, in the event she could not live with respondent, voiced a desire to live with her foster mother and siblings.

¶ 21 The caseworker believed it would be in the minor's best interest to terminate respondent's parental rights.

¶ 22 Based on this information, the trial court found it would be in the minor's best interest to terminate respondent's parental rights. The court entered judgment terminating respondent's parental rights to the minor.

¶ 23 C. Commencement of an Appeal

¶ 24 In March 2022, respondent filed a *pro se* notice of appeal from the trial court's judgment terminating her parental rights to the minor.

¶ 25 In April 2022, this court dismissed the respondent's appeal as a result of her failure to file a timely docketing statement.

¶ 26 In May 2022, this court, following the receipt of a *pro se* motion to reconsider the dismissal of the appeal from respondent, reinstated the appeal.

¶ 27 In June 2022, respondent filed a *pro se* motion for an extension of time to file an appellant brief, which we allowed.

¶ 28 In July 2022, respondent filed in the trial court a *pro se* motion for the appointment of appellate counsel, which the court allowed. Thereafter, respondent, through appellate counsel, filed in this court a second motion for an extension of time to file an appellant brief, which we allowed.

¶ 29 In September 2022, respondent, through appellate counsel, filed in this court an appellant brief.

¶ 30 In October 2022, the State filed an appellee brief, and the case was submitted for disposition.

¶ 31 II. ANALYSIS

¶ 32 On appeal, respondent argues the trial court's findings she was an unfit parent and it was in the minor's best interest to terminate her parental rights are against the manifest weight of the evidence. The State disagrees with respondent's arguments.

¶ 33 A. Timeliness of Disposition

¶ 34 At the outset, we must address the timeliness of this disposition. This case has been designated as accelerated pursuant to Illinois Supreme Court Rule 311 (eff. July 1, 2018). Rule 311(a)(5) provides, in part, "[e]xcept for good cause shown, the appellate court shall issue its

decision within 150 days after the filing of the notice of appeal." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). In this case, we find the existence of good cause for the disposition being issued outside the 150-day deadline given the fact it was not submitted for our review until after the deadline had passed.

¶ 35 B. Unfitness Finding

¶ 36 Respondent argues the trial court's finding she was an unfit parent is against the manifest weight of the evidence.

¶ 37 In a proceeding to terminate parental rights, the State must prove parental unfitness by clear and convincing evidence. *In re N.G.*, 2018 IL 121939, ¶ 28, 115 N.E.3d 102. A trial court's finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* ¶ 29. A finding is against the manifest weight of the evidence "only where the opposite conclusion is clearly apparent." *Id.*

¶ 38 The trial court found respondent was an unfit parent as defined in section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2020)). Section 1(D)(m)(ii) provides, in part, a parent will be considered an "unfit person" if he or she fails "to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected." *Id.*

¶ 39 "Reasonable progress" has been defined as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001). This is an objective standard. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227. The benchmark for measuring a parent's progress toward reunification "encompasses the parent's compliance with the service plans and the court's directives, in light of

the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d at 216-17.

¶ 40 Respondent, in support of her argument that the trial court's finding of unfitness is against the manifest weight of the evidence, makes a series of assertions about the State's actions that we find are not supported by the record presented and/or vague and, therefore, must be rejected. Specifically, we reject respondent's assertions that the State (1) "did not ask the [trial] court to take judicial notice of the files," (2) "did not offer any documentary evidence", (3) "did not offer evidence of the underlying adjudication and dispositional orders," (4) "did not prove what brought [the minor] into care" or "the date of the underlying adjudication," (5) "did not accurately establish what [respondent] was ordered to do (in the dispositional order) to correct the conditions that brought [the minor] into care," and (6) "did not have any evidence to support [respondent's] progress or lack of progress because there was nothing offered or proved to give the court anything with which to measure [respondent's] progress."

¶ 41 Respondent also, in support of her argument, invites this court to consider various orders and reports contained in the common law record as well as the general difficulties stemming from the pandemic. We decline respondent's invitation. The various orders and reports were not admitted into evidence and there was no evidence suggesting the general difficulties stemming from the pandemic had any impact on respondent's ability to make reasonable progress toward the return of the minor to her care. See *In re C.M.*, 305 Ill. App. 3d 154, 165, 711 N.E.2d 809, 816 (1999) (stating "a court's findings in an adjudicatory hearing on a petition to terminate parental rights must be based only upon the evidence presented during that hearing"); *In re C.D.*, 2020 IL

App (3d) 190176, ¶ 30, 165 N.E.3d 873 (declining to consider unsubmitted "evidence").

¶ 42 Finally, respondent, in support of her argument, raises evidentiary concerns related to the testimony elicited from the caseworker. Specifically, respondent complains some of the testimony amounted to inadmissible hearsay and other testimony was elicited without a sufficient foundation and/or by leading questions. Respondent's concerns are not substantiated. The complained-of testimony was elicited at the hearing without objection and, moreover, respondent has not persuaded any objection would have led to the exclusion of the information presented or affected the outcome of the proceeding.

¶ 43 In the end, the evidence presented during the fitness portion of the hearing on the State's motion to terminate respondent's parental rights to the minor showed respondent, during the relevant period of May 24, 2020, to February 24, 2021, (1) had inconsistent attendance at visitations, (2) did not attend drug drops, (3) did not complete individual counseling, and (4) continued to be involved in a domestically violent relationship. The caseworker did not believe it would have been safe to return the minor to respondent during the relevant period. Given this information, we find the trial court's unfitness finding based on respondent's failure to make reasonable progress towards the return of the minor to her care is not against the manifest weight of the evidence.

¶ 44 We note in reaching this finding we have considered *In re J.O.*, 2021 IL App (3d) 210248, 195 N.E.3d. 837, a case relied upon by respondent, and found that case to be factually distinguishable. Indeed, cases involving the termination of parental rights are "*sui generis* and must be decided based on the particular facts and circumstances presented." *In re D.D.*, 196 Ill. 2d 405, 422, 752 N.E.2d 1112, 1121 (2001).

¶ 45 C. Best-Interest Finding

¶ 46 Respondent argues the trial court's finding it was in the minor's best interest to terminate her parental rights is against the manifest weight of the evidence.

¶ 47 In a proceeding to terminate parental rights, the State must prove termination is in the child's best interest by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004); see also 705 ILCS 405/1-3(4.05) (West 2020) (setting forth several factors a trial court must consider when determining whether termination of parental rights would be in a child's best interest). A trial court's best-interest finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re J.B.*, 2019 IL App (4th) 190537, ¶ 33, 147 N.E.3d 953. Again, a finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Id.*

¶ 48 Respondent, in support of her argument that the trial court's best-interest finding is against the manifest weight of the evidence, asserts the State "did not offer the [best-interest] report into evidence." We disagree. The record shows the State asked the trial court to take judicial notice of the best-interest report, which it then did. Respondent also complains some of the testimony from the caseworker was elicited by leading questions. The complained-of testimony, however, was elicited without objection and, moreover, respondent has not persuaded any objection would have led to the exclusion of the information presented or affected the outcome of the proceeding. Finally, respondent complains the testimony presented was "minimal." We disagree with respondent's characterization of the testimony.

¶ 49 In the end, the evidence presented during the best-interest portion of the hearing on the State's motion to terminate respondent's parental rights to the minor showed the minor had

been in her current placement for over two-and-a-half years. The minor was bonded to her foster mother. The minor's needs were being met. The foster mother was willing to provide the minor with permanency through adoption. Conversely, the minor had not resided with respondent for almost four years, and respondent had not completed recommended services. Given this information, we find the trial court's finding it was in the minor's best interest to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 50 III. CONCLUSION

¶ 51 We affirm the trial court's judgment.

¶ 52 Affirmed.