

No. 2011 IL App (1st) 110164-U
No. 1-11-0164

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FIFTH DIVISION
August 9, 2011

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF:)	Appeal from the
)	Circuit Court of
JESSICA J. and DEMARCUS J.,)	Cook County.
)	
Minors/Respondents-Appellees/Cross-Appellants)	
)	
(The People of the State of Illinois,)	Nos. 07 JA 01028
)	07 JA 01029
Petitioner-Appellee,)	
)	
v.)	
)	
Eric J.,)	The Honorable
)	Marilyn Johnson,
Father/Respondent-Appellant/Cross-Appellee).)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Joseph Gordon and Epstein concurred in the judgment.

ORDER

HELD: Where natural father failed to complete services within nine month periods toward reunification goal, trial court's finding of unfitness under section 1(D)(m) of the Adoption Act was proper. Moreover, while appellate review of additional ruling regarding unfitness is not necessary, trial court's best interests determination must be

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remanded in light of recent change in minors' placement.

¶ 1 Respondent-appellant and cross-appellee Eric J. (respondent) appeals from the trial court's determinations in the instant cause finding him to be unfit under section 50/1(D)(m) of the Illinois Adoption Act (Adoption Act) (750 ILCS 50/1(D)(m) (West 2008)), and ordering the termination of his parental rights over respondents-appellees and cross-appellants Jessica J. and Demarcus J. (minors or as named), his minor children. He contends that he completed every service ordered of him save individual counseling, and that the trial court did not properly consider the required factors involved in a best interests analysis--both resulting in findings that are against the manifest weight of the evidence. He asks that we reverse the termination order and remand for the entry of an order finding him fit, willing and able and directing the trial court to return the minors to him.

¶ 2 The State and the minors' public guardian have filed appellees' briefs. The minors' public guardian has also filed a cross-appeal in this cause, contending that the trial court's failure to find respondent unfit pursuant to section 1(D)(b) of the Adoption Act, in addition to section 1(D)(m), was against the manifest weight of the evidence. Thus, the public guardian asks that we reverse the trial court's finding in this regard and declare that respondent is also unfit pursuant to subsection (b).

¶ 3 In addition, we note for the record that on August 2, 2011, the minors' public guardian presented a motion in our Court seeking leave to file a report. This report indicated that the minors' placement has changed since the termination of parental rights hearing took place in this cause. We allowed the motion.

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¶ 4 For the following reasons, we affirm the trial court's finding regarding respondent's unfitness and dismiss the cross-appeal; however, pursuant to the report filed by the minors' public guardian, we remand this cause to the trial court for a hearing with respect to the limited issue of the minors' best interests.

¶ 5 **BACKGROUND**

¶ 6 Jessica J. was born on September 10, 1996, and Demarcus J. was born on January 24, 1999, to respondent and Jeana C.¹, their biological parents. On December 5, 2007, the State filed petitions for adjudication of wardship, alleging that the minors were abused and neglected, and seeking their removal from respondent's care and the appointment of a temporary guardian. The petition, stemming from incidents where the minors reported being left home unsupervised and without electricity or heat, cited respondent's four prior indicated reports for inadequate supervision. Following a hearing, the trial court entered a temporary custody order granting custody to the Department of Children and Family Services (DCFS).

¶ 7 Caseworker Vinice Jones was assigned to the minors' matter. Jones developed several client service plans outlining for respondent what services he needed to complete in order to regain custody of the minors. In addition, several adjudicatory and permanency hearings were conducted to monitor respondent's progress; between 2008 and 2009, the court continued to recommend a goal of return home. However, by October 2009, the court changed the goal from return home to substitute care pending termination.

¹Jeana C. died in October 2009 in the midst of wardship proceedings and is not a party to this appeal.

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¶ 8 Ultimately, the State filed supplemental petitions for termination of parental rights. The petitions alleged that respondent was unfit based principally on three of the Adoption Act's statutory grounds: failure to maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2008)); being a habitual drunkard (750 ILCS 50/1(D)(k) (West 2008)); and failure to make reasonable efforts or progress to correct the conditions that are the basis for the minors' removal and/or failure to make reasonable progress toward their return (750 ILCS 50/1(D)(m) (West 2008)).

¶ 9 In early 2011, the trial court held a bifurcated hearing on the State's petitions, beginning first with the unfitness portion. The State presented certified copies of respondent's 1996 felony conviction for possession of a controlled substance, his 2002 felony conviction for child endangerment, and his 2008 conviction for unlawful use of a weapon. The State also presented the testimony of Jones. Jones testified that respondent was assigned to complete the following services to regain custody of the minors: successfully complete parenting classes, participate in individual therapy, submit to random urine drops and take part in a psychological assessment which would first require a drug and alcohol recovery assessment. Respondent told Jones that he had completed a parenting class through his probation associated with one of his felony convictions, so Jones told respondent to provide her with this documentation for her review. While respondent eventually gave Jones his probation officer's information, he failed to provide her with this documentation. He also failed to submit to scheduled urine drops. Respondent told Jones that, although she had given him bus fare cards and scheduled the drops nearby, he did not have money to travel and there were scheduling conflicts.

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¶ 10 Jones recounted that, following respondent's release from jail following his unlawful use of a weapon conviction, she met with him in late 2008 and repeated his need to participate in a drug and alcohol assessment. Respondent failed to complete the assessment, at which time Jones rated his reunification efforts as unsatisfactory. In January 2009, respondent finally attended this assessment, where it was recommended that he participate in intensive outpatient therapy at a certain facility. He refused to participate in treatment at that facility, and requested that his treatment be moved to a different facility; he did not begin treatment there until April 2009. At this time, Jones rated respondent's efforts to correct the conditions which originated this case as "poor" and his progress toward reunification as "minimal," noting that he would start services but would not complete them. By August 2009, after completing 18 of the required 22 hours of drug and alcohol treatment, respondent left the program and informed Jones that he would have to start his treatment anew at another facility.

¶ 11 Jones further testified that, when the trial court changed the reunification goal in this case from return home to substitute care pending termination of respondent's rights in October 2009, respondent had to pay to complete the required services on his own and she could no longer send referrals for his services. It was only after the goal change that respondent finally became "energized" about completing the required services. In December 2009, he participated and completed a parenting class; in February 2010, he completed drug and alcohol treatment; and in March 2010, he completed a psychiatric examination. However, Jones averred that she was never able to recommend that the minors participate in unsupervised daytime or overnight visits with respondent. When questioned about respondent's visitation patterns, Jones stated that his

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attendance at monthly supervised visitation appointments was initially "fair" but, between October and December 2009, respondent visited the minors only once. And, in January 2010, respondent visited the minors while visibly under the influence of alcohol--his eyes were red and he smelled of alcohol. He had brought a friend along on the visit and, when confronted by Jones, told her that this friend had been drinking but he (respondent) had not. Finally, Jones reiterated that all of the services respondent completed were done only after the goal change, and that respondent still had not completed the required individual counseling and would also require another drug and alcohol assessment at this time. She opined that she could not recommend that the minors be returned to respondent's care, even though he expressed a desire for this.

¶ 12 At the close of the State's case, it presented records from respondent's February 2010 drug and alcohol treatment. These records indicated that respondent was still using alcohol as recently as December 2009, that he is alcohol dependent, and that he had two unexcused absences from his drug and alcohol treatment. The State also submitted into evidence respondent's March 2010 psychiatric evaluation, which recommended that he participate in individual therapy or counseling.

¶ 13 For his part, respondent presented evidence of six urine drop tests to which he submitted: one taken in 2007, one taken in 2008, one taken in 2009, and three taken in 2010. The results of these drops were negative. In addition, respondent presented the testimony of Samantha Mitchell, a worker at a social service agency. Mitchell testified that respondent first contacted her in May 2010, after the permanency goal in the case was changed to termination, to see if any referrals for counseling at her agency had been sent by Jones. Mitchell responded that there were

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none, explaining that after a change to termination, DCFS does not pay for such services and, likewise, her agency does not accept such cases.

¶ 14 At the conclusion of this hearing, the trial court reviewed the State's petitions in light of the evidence presented. First, regarding ground (b), the court determined that the State had not met its burden to show, by clear and convincing evidence, that respondent had failed to maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare. While the court noted that "he never through the relevant periods completed the services generally speaking," he had nonetheless appeared in court, communicated with DCFS and visited the minors "fairly consistently." Thus, the court denied the State's petition on ground (b). Next, the court also denied the State's petition regarding ground (k), being a habitual drunkard. While the court considered the records presented regarding respondent's drug and alcohol treatment, the court declared that it "is not totally clear *** that he could be considered an alcoholic or incapable" of ceasing his use of alcohol.

¶ 15 Finally, turning to ground (m), the failure to make reasonable efforts or reasonable progress, the court found this to be "fundamentally the ground that is most descriptive of the issue here." Reviewing the evidence, the court concluded that it was "fairly overwhelming" that respondent did not make reasonable efforts or progress in light of the recommended services. Specifically, the court cited respondent's failure to complete his intensive outpatient therapy after participating in 18 of 22 hours, his failure to provide documentation of the initial parenting course he told Jones he completed while on probation, and his refusal to submit to the ordered random urine drops. While the court took into consideration respondent's evidence that he had

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six negative urine drops between 2007 and 2010, it described that these were not consistent but, rather, exhibited "significant gaps" in the time periods the drops were taken. The court also noted that, although respondent did in fact visit the minors, there was not "total consistency" in these visits and that he had not visited them at all in October, November or December of 2010, even though there was no impediment to visitation. Ultimately, the court found that, "after being given ample time to comply" with the services, respondent did not do so until long after they were required and, therefore, was unfit pursuant to ground (m).

¶ 16 The court then proceeded to the second portion of the termination proceedings, namely, a best interests hearing. Felicia M.C., the minors' foster parent, testified that the minors have been living with her since July 2009. She stated that when the minors first moved in with her, Jessica J. had self-esteem issues and was angry and prone to fighting, and Demarcus J. had no interest in school, was angry and always tried to fight with other children. However, since they have been with her, Jessica J.'s self-esteem has improved, she is an "A" student on the honor roll, plays sports, takes modeling classes and plans to go to college to study nursing; likewise, Demarcus J.'s grades have improved and he is on the honor roll, he plays sports, and he has changed his entire demeanor in a positive way. Felicia M.C. stated that they all attend church together in their community, that they go out together and that they participate in various activities together. She noted that the minors sometimes call her "mommy," and that both have expressed a desire to live with her forever. She further testified that the minors have had frequent contact with their maternal relatives since their mother's death, and that she would continue to foster this contact should she gain custody of the minors. Regarding their paternal relatives, Felicia M.C. stated

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that, after the paternal grandmother apologized for being belligerent with her, their relationship has improved and she allows the paternal grandmother to visit with the minors. Regarding respondent, Felicia M.C. averred that he has not called the foster home regularly, but she would allow the minors to maintain contact with him were he incarcerated, due to his pending criminal case. Finally, Felicia M.C. testified that she wants to adopt the minors, and that they have expressed to her that they want her to adopt them.

¶ 17 Jones testified that she last visited the minors in their foster home in December 2010, and that the home was safe, appropriate, and exhibited no signs of abuse or neglect. She spoke personally with the minors and determined that there was no cause for concern regarding their health and safety at the foster home; they are consistently attending school and are current with their medical checkups. She stated that the minors both told her that they wanted to stay in Felicia M.C.'s home and they want Felicia M.C. to adopt them. Jones also observed the minors' interaction with Felicia M.C., and found that they have a bond and a loving relationship; the minors have friends in their community and consider Felicia M.C.'s home as their home. Ultimately, Jones opined that it was in the minors' best interests that respondent's rights be terminated and that the permanency goal be changed to adoption by Felicia M.C.

¶ 18 For his part, respondent presented the testimony of Janet J., his mother. Janet J. testified that she loves the minors and does not want respondent's parental rights to be terminated or the minors to be adopted. She stated that respondent wants to maintain contact with the minors, and that the minors should continue to be involved in family gatherings.

¶ 19 At the conclusion of this portion of the hearing, the trial court began its colloquy by

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noting the bonds of attachment the minors have with both their maternal and paternal relatives, and that the relationship between the foster mother and these relatives has been "a very positive thing." Then, the court stated that, when it "look[s] at the factors in the Juvenile Court Act that are set forth in terms of what factors should be considered *** in determining what is in [the minors'] best interest[s]," it would conclude that it was in their best interests to remain with their foster mother. In support of this decision, the court specifically mentioned the "sense of stability" the minors experienced with Felicia M.C., as well as the bond and attachment they share, which was exhibited by Felicia M.C.'s zealous, affectionate and particular testimony about each minor. The court also noted the minors' wishes and goals, as well as Jones' testimony regarding what the minors said to her. In addition, the court detailed the ties the minors have developed in their current community, their church attendance, and their friends and extended relationships--all of which should not be disrupted. Ultimately, the court held that it was in the minors' best interests to terminate respondent's parental rights and enter a permanency goal of adoption by Felicia M.C.

¶ 20

ANALYSIS

¶ 21 Respondent appeals from both the trial court's order finding him to be unfit under section 1(D)(m) of the Adoption Act and its finding that it was in the minors' best interests to terminate his parental rights. He argues that both these decisions were against the manifest weight of the evidence.

¶ 22 Regarding defendant's first contention about fitness, we note that the Adoption Act allows for the involuntary termination of a parent's rights to his children if he is determined to be unfit

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as defined in section 1(D). See 750 ILCS 50/1(D) (West 2008); *In re S.J.*, 407 Ill. App. 3d 63, 67 (2011). Section 1(D) lists various grounds under which a parent may be found unfit, any one of which, standing alone, may support such a finding. See *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). Under any of these grounds, proof of unfitness must be clear and convincing. See 750 ILCS 50/8 (West 1998); *In re R.C.*, 195 Ill. 2d 291, 302 (2001); accord *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010) ("proof of parental unfitness must be clear and convincing"). In examining a decision to terminate parental rights, the reviewing court will defer to the trial court's disposition unless it is against the manifest weight of the evidence. See *Deandre D.*, 405 Ill. App. 3d at 952 (this is because the trial court is in the best position to assess the credibility of the testifying witnesses); see also *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Because each case concerning parental unfitness is unique to itself, the reviewing court must examine each case on its own facts and circumstances. See *Gwynne P.*, 215 Ill. 2d at 354. Ultimately, a finding of parental unfitness under any one of the statutory grounds of section 1(D) of the Adoption Act is against the manifest weight of the evidence only when the opposite conclusion is clearly evident from a review of the evidence presented. See *Deandre D.*, 405 Ill. App. 3d at 952; accord *Gwynne P.*, 215 Ill. 2d at 354.

¶ 23 The operative statutory basis of unfitness in the instant case is section 1(D)(m). This section contains three separate grounds, any one of which, again, may uphold a finding of parental unfitness. See 750 ILCS 50/1(D)(m) (West 2008); see, e.g., *Gwynne P.*, 215 Ill. 2d at 349. Subsection (i) deals with a parent's failure to make "reasonable efforts" to correct the conditions that were the basis for the children's removal; subsection (ii) deals with a parent's

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failure to make "reasonable progress" toward the return of the children within nine months after an adjudication of neglect; and subsection (iii) deals with a parent's failure to make "reasonable progress" toward the return of the children during any nine month period after the end of the initial nine month period following the adjudication of neglect. See 750 ILCS 50/1(D)(m) (West 2008). Subsections (i) and (ii) are to be examined within the first nine months after an adjudication of neglect, whereas subsection (iii) permits a finding of unfitness after an examination of any nine month period thereafter. See 750 ILCS 50/1(D)(m) (West 2008); accord *In re D.F.*, 332 Ill. App. 3d 112, 118-20 (2002). Moreover, "reasonable efforts" relates to the correction of the conditions that led to the children's removal from the parent and are adjudged on a subjective basis upon a consideration of what is reasonable for that particular parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). "Reasonable progress," meanwhile, relates to the amount of progress measured from the conditions existing at the time of removal and, thus, is adjudged on an objective basis. See *Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 24 In the instant cause, the minors were adjudicated neglected on August 28, 2008. Regarding unfitness, the trial court ultimately held that respondent failed to make either reasonable efforts (section 1(D)(m)(i)) or reasonable progress (sections 1(D)(m)(ii) and (iii)) toward reunification with the minors. However, respondent does not present any argument on appeal contesting the court's determination regarding reasonable efforts. Rather, he only argues that he made "reasonable progress" toward reunification, thereby focusing solely on subsections (ii) and (iii). As he has failed to contest the trial court's findings regarding reasonable efforts, we conclude that he has waived any such argument to the contrary on appeal and, accordingly, has

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waived any potential claim pursuant to section 1(D)(m)(i).²

¶ 25 Now, turning to the trial court's reasonable progress determination, we note that the court specified in its holding that it was examining the evidence in light of the following nine month periods: January 1, 2009 to October 1, 2009; and March 1, 2009 to December 1, 2009.³

¶ 26 As noted earlier, "reasonable progress" is adjudged on an objective basis. See *Daphnie E.*, 368 Ill. App. 3d at 1067. It focuses on the steps the parent has taken toward the goal of reunification. See *D.F.*, 332 Ill. App. 3d at 125. To determine if reasonable progress has been achieved, the parent's compliance with the court's directives, service plans or both are examined, as is the amount of progress measured from the conditions existing at the time the children were removed. See *D.F.*, 332 Ill. App. 3d 125. While a mechanical application of these principles should not necessarily be used to determine reasonable progress, the concept does require, at the

²Even were such an argument be entertained on review, a claim by respondent that the trial court's holding of unfitness was against the manifest weight of the evidence in relation to section 1(D)(m)(i) could not stand. Under such an argument, the operative period of time in which to examine respondent's actions toward reunification would be the first nine months after the minors' adjudication of neglect, *i.e.*, August 28, 2008 to May 28, 2009. During that time, the evidence presented demonstrates clearly and convincingly that respondent did not complete any of the recommended services; particularly, he did not begin to do so until after the goal change ordered by the court in October 2009 (14 months after adjudication), completing his parenting class in December 2009 (16 months later), his drug and alcohol treatment in February 2010 (18 months later), and his psychiatric examination in March 2010 (19 months later). While we applaud respondent for finally participating in and completing these services, under section 1(D)(m)(i), he could not succeed on a claim of reasonable efforts.

³The trial court also mentioned another nine month period: November 1, 2008 to August 1, 2009; this was one several nine month periods on which the State based its petition. However, as this time frame neither comprises the initial nine months after the August 28, 2008 adjudication, nor a nine month period following the end of the initial nine month period beginning on August 28, 2008 (according to statute), it does not serve as a basis for our findings herein.

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very least, some measurable or demonstrative movement toward reunification on the part of the parent. See *Daphnie E.*, 368 Ill. App. 3d at 1067; see also *In re C.N.*, 196 Ill. 2d 181, 214-16 (2001) ("benchmark for measuring" reasonable progress is parent's compliance with service plans and court directives, in light of conditions leading to removal and any other conditions which later become known which would prevent return home); *In re M.C.*, 201 Ill. App. 3d 792, 797 (1990). It is when it can be concluded that the children's return to their parent in the near future is feasible that reasonable progress may be determined to have been achieved by the parent. See *Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 27 Based on the record before us, we find no error with the trial court's determination that respondent was unfit pursuant to section 1(D)(m). The evidence presented clearly and convincingly proves that he simply did not make reasonable progress toward reunification with the minors during the nine month time periods cited.

¶ 28 Respondent was ordered, via multiple service plans, to participate and complete four requirements in order to regain custody of his children. That is, he was to complete parenting classes, participate in individual therapy, submit to a psychological assessment, and take random urine drops. Respondent insisted that he had already completed a parenting class as part of his probation associated with one of his felony convictions. However, he continually failed to provide this documentation to Jones, the minors' caseworker, upon her request to prove that he had done so. He also failed to submit to any urine drops, citing scheduling conflicts and a lack of funds, even though Jones gave him bus fare cards monthly and purposefully scheduled the drops at a nearby location. Then, it was not until January 2009 until he submitted to a psychological

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assessment, where it was determined that he was in need of intensive outpatient alcohol treatment and therapy. However, again, even though this service was set up for him at a certain facility, he refused to participate. He demanded that he be able to do this therapy at a different location, he did not begin his treatment for several months thereafter, and after completing 18 of the required 22 hours of treatment, he left the program entirely.

¶ 29 It is true that respondent has, more recently, seemed to change things around. We are not unmindful of these changes and, as we stated earlier, we applaud his decision to finally get his life back on track. We note that in December 2009, he participated and completed a parenting class. Likewise, in February and March 2010, respectively, he completed drug and alcohol treatment and a psychiatric examination. He also submitted evidence to the court that he took and successfully passed six urine drops between 2007 and 2010.

¶ 30 However, this simply does not amount to reasonable progress, particularly in light of respondent's actions during the operable periods here of January 1, 2009 to October 1, 2009 and March 1, 2009 to December 1, 2009. For example, Jones testified that it was only after the trial court changed the reunification goal in the minors' case from return home to termination of parental rights in October 2009 that respondent finally became "energized" about completing the required services. Indeed, as the record indicates, he did not complete any of these services until, at the earliest, December 2009. Even then, as respondent himself admits, he has still never participated in individual therapy, as ordered. In addition, although he presented evidence of negative urine drops, we cannot help but note that this, essentially, comprised only six drops taken at irregular intervals over a lengthy three year period. Moreover, it cannot be forgotten

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that, between October and December 2009, respondent only visited the minors once. And, when he did so in January 2010, it was clear to Jones that he was visibly intoxicated. As Jones testified, respondent showed up for a meeting with them with red eyes and smelling of alcohol; he then blamed his companion, whom he also brought around the minors, for the smell of alcohol. Ultimately, Jones consistently reiterated that at no point during her involvement in the minors' case, which was virtually from the beginning, could she ever recommend that they participate in unsupervised daytime or overnight visits with respondent, let alone be returned to his custody.

¶ 31 Respondent argues that he did, indeed, make reasonable progress under the statutory requirements because he performed all the services except individual therapy, and his failure to complete this lies with Jones, who never made a referral for his therapy as she was required to do. In addition, he cites *In re Adoption of Syck*, 138 Ill. 2d 255 (1990), and insists that his case merits the same outcome. However, neither of his arguments can stand here. First, regarding his claims about a referral, respondent neglects, once again, to acknowledge that the requirements of section 1(D)(m) come with time restraints; that is, review of his reasonable progress, if any, is subject to examination of his actions during nine month periods of time. The standards of termination cases are not to be taken lightly, and reasonable progress is not, as he seems to urge, measured at whatever time during the litigation a respondent finally decides to complete the requirements of his service plans. Second, the testimony in this cause refutes his assertions regarding the referral. Social service worker Mitchell, respondent's own witness, testified that respondent did not contact her agency to participate in the required individual therapy until May

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2010, *after* the October 2009 goal change in the minors' case from return home to termination. Mitchell herself explained that, once a permanency goal is changed to termination, DCFS does not make referrals or pay for any of the required services listed in a parent's service plan and, even if it made a referral at that time, her agency would not accept such a case. Jones, too, confirmed this process in her corroborative testimony. Thus, the blame respondent attempts to place on Jones for a failure to give him a referral for therapy, and claiming this is why he did not complete it, is utterly disrespectful.

¶ 32 Furthermore, *Syck* has no bearing on the instant case. In *Syck*, our state supreme court reversed a trial court's decision terminating a natural mother's parental rights to her child. See *Syck*, 138 Ill. 2d at 281-82. However, *Syck* involved determinations of unfitness regarding section 1(D)(b) of the Adoption Act, which examines a parent's "reasonable degree of interest, concern or responsibility" as to a minor's welfare. 750 ILCS 50/1(D)(b) (West 2008). It does not even mention in the slightest the pertinent section relevant to the case at bar, namely, 1(D)(m), which, again, looks at reasonable progress, an entirely different and separately defined legal concept with its own, different requirements. Compare 750 ILCS 50/1(D)(b) (West 2008), with 750 ILCS 50/1(D)(m) (West 2008). Moreover, the facts in *Syck*, even if considered in relation to respondent's case (even though parental termination cases are *sui generis*), are quite distinguishable. The record in that case demonstrated that, although the mother moved to a different state, she continued to make numerous telephone calls to the minor, sent a multitude of letters, cards and gifts to him, and expressed interest in the minor's life to others; further, it was found that the minor's natural father and his wife attempted to prevent communication between

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the minor and his mother. See *Syck*, 138 Ill. 2d at 280-82. In contrast, and in addition to his failure to complete his service plans, the evidence here indicates respondent's continued lack of visitation and contact with the minors, even though there was no impediment in his way.

Therefore, *Syck* does little to support respondent's assertions on appeal.

¶ 33 Accordingly, based on the record before us, we hold that, in considering the operable time periods at issue in this cause, the "progress" respondent claims he undertook occurred too late. The essentially limited steps he took from January 1, 2009 to October 1, 2009 and March 1, 2009 to December 1, 2009 do not comprise a demonstrable movement toward the goal of reunification. Therefore, the trial court's finding of unfitness under section 1(D)(m) of the Adoption Act was not against the manifest weight of the evidence.

¶ 34 At this point, we are reminded that the minors' public guardian has filed a cross-appeal in this cause, contending that the trial court's failure to find respondent unfit pursuant to section 1(D)(b) of the Adoption Act, in addition to section 1(D)(m), was against the manifest weight of the evidence. Again, the public guardian has asked that we reverse the trial court's finding in this regard and declare that respondent is also unfit pursuant to subsection (b).

¶ 35 Because we have thoroughly discussed and upheld the trial court's decision with respect to a finding of respondent's unfitness pursuant to section 1(D)(m) of the Adoption Act, and because, as we have already repeated, a finding under any one of the grounds listed in section 1(D) standing alone is sufficient to establish such unfitness, we need not reach this issue. See *Gwynne P.*, 215 Ill. 2d at 349. Therefore, we choose not to address the public guardian's additional argument here and, instead, we dismiss the cross-appeal as moot.

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¶ 36 Respondent's second, and final, contention on appeal is that the trial court's finding that termination of his parental rights was in the best interests of the minors was erroneous because the court failed to properly consider the "best interest factors" as statutorily required since it did not state specifically what those factors were and, consequently, that the court's finding was against the manifest weight of the evidence due to its lack of analysis.

¶ 37 After the trial court here found respondent unfit under section 1(D)(m) of the Adoption Act, the next step in its termination proceedings required the court to consider whether it was in the best interests of the minors to terminate respondent's parental rights pursuant to the dictates of the Juvenile Court Act (705 ILCS 405/1-3 (West 2010)). See *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). In this phase, the burden is upon the State to show that termination is proper based on a preponderance of the evidence. See *Jaron Z.*, 348 Ill. App. 3d at 261. The court's final decision in this regard lies within its sound discretion, especially when it considers the credibility of testimony presented at the best interests hearing, and that decision will not be overturned unless it is against the manifest weight of the evidence or the court has in some way abused its discretion. See *Jaron Z.*, 348 Ill. App. 3d at 261-62.

¶ 38 Pursuant to section 1-3(4.05) of the Juvenile Court Act, the trial court here was required to consider a number of factors in forming its decision regarding termination, in light of the minors' ages and developmental needs. See *Jaron Z.*, 348 Ill. App. 3d at 262. These include:

- "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;

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- (c) the child's background and ties, including familial, cultural, and religious;
- (d) the child's sense of attachments, including:
 - (i) where the child actually feels love, attachment, and a sense of being valued ***;
 - (ii) the child's sense of security;
 - (iii) the child's sense of familiarity;
 - (iv) continuity of affection for the child;
 - (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2008).

See also *In re Austin W.*, 214 Ill. 2d 31, 49-50 (2005); *In re Desiree O.*, 381 Ill. App. 3d 854, 865-66 (2008). Additionally, a court may consider the nature and length of the children's relationship with their present caretaker and the effect that a change in placement would have upon their emotional and psychological well-being. See *Austin W.*, 214 Ill. 2d at 50; *Desiree O.*,

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381 Ill. App. 3d 865-66; *Jaron Z.*, 348 Ill. App. 3d at 262.

¶ 39 As noted, respondent claims that the trial court’s decision to terminate his rights was against the manifest weight of the evidence because the court did not state each of these factors when it rendered its decision. Respondent is correct that the trial court did not list each of the statutory factors found in section 1-3(4.05) in its colloquy which resulted in the termination of his parental rights over the minors. However, we note that respondent has provided us with no legal precedent to indicate that such a requirement was necessary. Rather, our law has recently and repeatedly made clear that the opposite is true. That is, our courts have stated, in direct contradiction to respondent’s claim, that “the trial court is not required to explicitly mention each factor listed in section 1-3(4.05) when rendering its decision” regarding termination. *Deandre D.*, 405 Ill. App. 3d at 955 (“[i]n fact, the court need not articulate any specific rationale for its decision”); accord *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004); *Jaron Z.*, 348 Ill. App. 3d at 263. Accordingly, simply because the trial court here did not set out and discuss each factor with specificity during its colloquy does not render its decision to terminated respondent’s rights against the manifest weight of the evidence.

¶ 40 Moreover, even were this not a well-established principle of law, we note for the record that the trial court verbally touched on virtually every, if not all, of the statutory factors during its colloquy in one manner or another. The court began by stating outright that it looked “at the factors in the Juvenile Court Act that are set forth in terms of what factors should be considered by [it] in determining what is in [the minors’] best interest[s],” and that these proved to be a “very compelling” basis for its decision that they should remain with Felicia M.C. The court

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then went on to recount that Felicia M.C. knew the minors' identities very well, as was exhibited by her zealous and specific testimony about each of them and their personalities as individuals. It referred to the attachment and bond the three of them share, as well as the affection between them. The court repeatedly detailed the "sense of stability" the minors experienced and exhibited while in Felicia M.C.'s care, along with the "groundings in the community" they have established, including their church attendance and the friends and extended relationships they have developed. It also found that it would "not make sense to disrupt" the minors' sense of permanence with their foster mother. Finally, the court specifically mentioned that both the minors and Felicia M.C. have all indicated that their preferences, wishes and goals are to stay together.

¶ 41 With that said, however, the circumstances in this cause have recently, and drastically, changed. As noted, on August 2, 2011, the minors' public guardian filed a motion with our Court seeking leave to file a report, which we granted. According to this report, it was recently discovered that Felicia M.C.'s live-in boyfriend is a registered sex offender. In addition, the report notes that attempts were made at a resolution regarding this issue, and its effect on the minors, between the public guardian and Felicia M.C., to no avail.⁴ Pursuant to this, the minors were removed from Felicia M.C.'s home and currently, at least as of the date of the report, it appears that they are now staying with respondent's mother (the minors' paternal grandmother), Janet J.

⁴Namely, it was suggested to Felicia M.C. that she not allow her boyfriend to continue to live in the home with the minors; however, an agreement as to this suggestion was never reached.

¶ 42 In light of this turn of events, we believe it is necessary that this cause be remanded to the trial court for resolution of the limited issue of the minors' best interests regarding their placement. Clearly, as the situation stands, it is not in their best interests to be placed in the home of Felicia M.C. if her boyfriend is also still currently living there. Evidence regarding the situation as a whole should be presented on behalf of all the parties involved and resolved by the trial court pursuant to its discretion and, again, the statutory factors at play. See, *e.g.*, *Jaron Z.*, 348 Ill. App. 3d at 261-62 (a minor's best interests is for trial court to determine, in light of statutory factors and its evaluation of the credibility of the testifying witnesses).⁵

¶ 43 CONCLUSION

¶ 44 Accordingly, for all the foregoing reasons, we affirm the trial court's finding of respondent's unfitness under section 1(D)(m) of the Adoption Act, and we dismiss the public guardian's cross-appeal. However, we also remand this cause in part for a limited hearing on the

⁵Finally, we wish to note for the record that respondent, relying on *In re Custody of Townsend*, 86 Ill. 2d 502 (1981), asserts one final basis that the trial court's best interests analysis was incorrect, namely, that his natural rights as a parent should have been adjudged superior to all other considerations. His argument fails. While he is correct that *Townsend* stands for the proposition that a natural father's superior rights to the care and custody of his children over that of a third person should be acknowledged (see *Townsend*, 86 Ill. 2d at 508-09), not only has that case long since been overruled (see *In re R.L.S.*, 218 Ill. 2d 428 (2006), abrogating *Townsend*), but even that court made clear that such "superior rights" are not automatic or absolute and comprise only one of several factors that are to be considered when determining the best interests of a child (see *Townsend*, 86 Ill. 2d at 508). Instead, today, it is well established that, in all guardianship cases, "the issue that singly must be decided is the best interest[s] of the child." *Austin W.*, 214 Ill. 2d at 49 (quoting *In the Interest of Ashley K.*, 212 Ill. App. 3d 849, 879 (1991) (this "is not part of an equation" but, rather, the main factor that "must remain inviolate and impregnable from all other factors")). Contrary to respondent's claim, then, a child's best interests take precedence over any other consideration, including the natural parents' right to custody. See *In re S.J.*, 364 Ill. App. 3d 432, 442 (2006) (the superior right of a parent to custody of his minor child is not absolute and must always yield to the minor's best interests).

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minors' best interests, in light of the recent change in their placement.

¶ 45 Affirmed in part; remanded in part; cross-appeal dismissed.