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Order filed January 31, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re K.G. and A.A.,)	Appeal from the Circuit Court
)	of Du Page County.
Minors,)	
)	Nos. 06—JA—24
)	07—JA—32
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Amanda L.,)	C. Stanley Austin,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: Section 1(D)(g) of the Adoption Act is constitutional; the trial court's ruling on respondent's fitness and its determination to terminate respondent's parental rights were not against the manifest weight of the evidence; respondent received the effective assistance of counsel. We affirmed the judgment of the trial court.

The State filed petitions to terminate the parental rights of respondent, Amanda L., to her minor children, K.G. and A.A. Following a hearing, the trial court found that the State proved the following allegations of unfitness as to K.G.: (1) respondent had failed to protect K.G. from conditions within her environment injurious to the minor's welfare (750 ILCS 50/1(D)(g) (West 2006)); and (2) she had failed to make reasonable progress to correct the conditions that were the

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basis for the removal of K.G. within any nine-month period from October 28, 2008, to September 29, 2009 (750 ILCS 50/1(D)(m) (West 2006)). The trial court also found that the State proved by clear and convincing evidence the following allegation of unfitness as to A.A.: respondent had failed to make reasonable progress to correct the conditions that were the basis for the removal of A.A. within any nine-month period from October 28, 2008, to September 29, 2009 (750 ILCS 50/1(D)(m) (West 2006)). Subsequently, the trial court found that terminating respondent's parental rights was in the children's best interest. On June 4, 2010, the trial court entered an order terminating respondent's parental rights.

In this consolidated appeal, respondent challenges (1) the constitutionality of the fitness determination made pursuant to section 50/1(D)(g) (750 ILCS 50/1(D)(g) (West 2006)); (2) the trial court's findings that respondent did not make reasonable progress towards the return of the minors, that respondent was unfit, and that termination of her parental rights was in the best interest of the minors; and (3) the effectiveness of her trial counsel. We affirm.

As it pertains to K.G., counts I and II of the State's petition alleged that K.G. was abused and neglected pursuant to sections 2—3(2)(i) and (ii) of the Juvenile Court Act of 1987 (the Juvenile Court Act) (705 ILCS 405/2—3(2)(i), (ii) (West 2006)). The State alleged that K.G. was an abused minor for events including respondent striking K.G. on the head. K.G. was additionally alleged abused for respondent's failure to protect her from nonaccidental physical injuries inflicted by respondent's paramour, including strikes to K.G.'s head, body, and extremities and burns to K.G.'s midsection, upper legs, and groin. K.G. was also alleged abused for respondent's failure to seek medical attention for K.G.'s injuries. K.G. was alleged neglected for respondent's failure to remove K.G. from the injurious environment.

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Following a shelter care hearing, the trial court found probable cause existed that K.G. was abused and neglected. The trial court found that K.G. had sustained second- and third-degree burns on her groin area and numerous other injuries that were not accidental. The trial court found that removal was necessary because respondent allowed K.G. to remain in the household despite her knowledge that K.G. was being abused; respondent did not seek medical attention for K.G.'s burns; and as a result, K.G. was further injured. The trial court granted custody and guardianship to the Department of Child and Family Services (DCFS). K.G.'s father was separately found unfit for having abandoned K.G. since birth, pursuant to section 2—3(1)(a) of the Juvenile Court Act (705 ILCS 405/2—3(1)(a) (West 2006)).

DCFS created a client service plan for respondent in October 2006 with a series of goals including individual counseling and substance abuse treatment, seeking employment, maintaining contact with DCFS, attending visitation with K.G., and protecting and providing a safe environment for respondent's second child, A.A., who was born in July 2006. On January 23, 2007, the trial court conducted a dispositional hearing. DCFS gave respondent unsatisfactory ratings in most goal categories, and the court adopted the service plan. The trial court adjudged K.G. a ward of the court. The trial court set the permanency goal at return home within 12 months; determined that the October 19, 2006, was appropriate to achieve the goal; and ordered respondent to cooperate with DCFS, comply with the terms of the service plans, and correct the conditions which required K.G. to be put in care.

On April 17, 2007, the trial court conducted permanency review hearing. The trial court found respondent had not made sufficient progress on the service plan to return K.G. to respondent's care. The trial court found that respondent had kept A.A. safe. However, the trial court also found

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that respondent had not made satisfactory efforts or progress to maintain contact with DCFS and her therapist. The trial court found that respondent had not gotten a job or followed through with alternative sources, i.e., public aid to provide financially for herself or K.G. Although respondent was evaluated for substance abuse, she had not followed through with treatment. The trial court also found that respondent left the shelter and was unavailable for a visit with K.G. The trial court ordered the permanency goal at return home within 12 months.

In May 2007, the State brought a petition, alleging A.A.'s environment was injurious to his welfare and that A.A. was neglected for respondent's failure to notify DCFS of respondent moving with A.A. to a different homeless shelter. See 705 ILCS 405/2—3(1)(b) (West 2006). Following a shelter care hearing, the trial court found that probable cause existed that A.A. was neglected. The trial court found that respondent had failed to correct the conditions that brought K.G. into care and had refused to provide accurate information as to her residence with A.A. The trial court ordered A.A. to be placed in shelter care. A.A.'s father, who was serving a sentence for aggravated battery to K.G., was also a named party. In August 2007, a review of the service plan revealed that respondent had failed to meet her therapy and substance abuse treatment goals, in addition to failing to notify DCFS of her changed address.

On October 30, 2007, the trial court conducted a permanency review hearing. The trial court found that respondent had made "some efforts" but that it did not rise to the level of " 'reasonable' efforts." The trial court found that respondent's failure to cooperate with the plan and comply with the conditions constituted a failure to make substantial progress. The court renewed the goal to return the children to respondent within 12 months.

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On November 13, 2007, the trial court adjudicated A.A. to be a neglected minor whose environment was injurious to his welfare. On December 11, 2007, the trial court conducted a dispositional hearing and adjudged A.A. to be a ward of the court. The trial court set the permanency goal at return home within 12 months and determined that the October 19, 2006, was appropriate to achieve the goal. The trial court also ordered respondent to cooperate with DCFS, comply with the terms of the service plans, and correct the conditions which required K.G. to be put in care. The case was transferred from DCFS to Evangelical Child and Family Agency (ECFA) in December 2007.

On April 29, 2008, the trial court conducted a permanency hearing with respect to K.G. The trial court found that respondent had made substantial progress but needed continued services to achieve the permanency goal. The trial court set the permanency goal as return home within 12 months.

On May 9, 2008, ECFA implemented an unsupervised visitation plan for respondent and the minors, but this was canceled when ECFA found out that unauthorized adults were present with respondent.

On October 28, 2008, the trial court conducted a permanency review hearing as to K.G., and it found respondent had made substantial progress reasonable efforts to achieve the permanency goal but that the goal could not be immediately achieved because more services and transition were required. The trial court set the permanency goal as return home within five months.

We note that in August 2008, respondent gave birth to a third child, M.L. In September 2008, respondent and M.L.'s father married.

The foster families of each minor were granted the right to intervene at A.A.'s May 26, 2009, and K.G.'s June 9, 2009, permanency review hearings. Respondent was found to have not made

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sufficient progress for either minor, although the goal for A.A.'s return remained five months, whereas K.G.'s goal was changed to substitute care pending court determination of termination of parental rights. In K.G.'s case the trial court found that K.G. had been in the system for more than three years, and respondent had not made consistent progress to provide for a safe and secure return home. In A.A.'s case, the trial court found that the goal had not been achieved because respondent "needs to do more to be able to provide for" the minors.

At the next permanency review hearing for both minors on September 29, 2009, the trial court changed A.A.'s goal to substitute care, finding that respondent had missed visitation with both minors and missed counseling sessions.

On March 26, 2010, the State filed petitions to terminate respondent's parental rights to both minors. Respondent was alleged unfit to protect K.G. from injurious environment pursuant to section 50/1(D)(g) of the Adoption Act (750 ILCS 50/1(D)(g) (West 2008)) and for failing to reasonably correct the conditions that were the basis for removal pursuant to section 50/1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2008)). Respondent was alleged unfit on the same bases for A.A., although the section 1(D)(g) claim was specifically for "failure to cooperate with the intact family services offered by DCFS" preceding A.A.'s temporary removal from respondent's custody.

On June 3, 2010, the trial court conducted a hearing on the State's petitions, and testimony was given by the DCFS child welfare specialist, the ECFA foster care supervisor, the DCFS caseworker, and the ECFA caseworker. During the hearing, the trial court took judicial notice of all materials in the court file. The fitness hearing concluded on June 3, 2010, and the trial court found

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respondent unfit on both grounds as to K.G. and on section 1(D)(m) (750 ILCS 50/1(D)(m) (West 2008)) as to A.A.

The case proceeded to a hearing on the best interest of the children, and the trial court determined that terminating respondent's parental rights was in the best interest of both minors. Following the trial court's denials of respondent's motions to reconsider, respondent filed a timely notice of appeal.

We first address respondent's constitutional challenge of the Adoption Act statutory provision by which the trial court found her to be "unfit." See 750 ILCS 50/1(D)(g) (West 2008). Respondent argues that subsection (g) of section 1(D) of the Adoption Act violates equal protection because subsection (g) is similar to other subsections which have been found unconstitutional. Respondent also argues that subsection (g) violates due process because the statute does not allow her to present evidence of rehabilitation to overcome an irrebuttable presumption of unfitness.

As a threshold matter, the State asserts that respondent waived her constitutional claim because it was not raised before the trial court. We disagree, because our courts have consistently held that "the question of the constitutionality of a statute can be raised at any time." *People v. Zeisler*, 125 Ill. 2d 42, 46 (1988); *In re S.F.*, 359 Ill. App. 3d 63, 65 (2005). An issue concerning the constitutionality of a statute presents a question of law that we review *de novo*. *In re Parentage of John M.*, 212 Ill. 2d 253, 265 (2004). The presumption is that the statute is constitutional. *John M.*, 212 Ill. 2d at 265. If reasonably possible, the court must construe the statute so as to affirm its constitutionality and validity. *In re R.C.*, 195 Ill. 2d 291, 296 (2001).

The level of scrutiny for both constitutional claims depends on the nature of the right implicated. Unless a fundamental right is implicated, the rational basis test applies, and the statute

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will be upheld so long as it bears a rational relationship to a legitimate state interest. *John M.*, 212 Ill. 2d at 266, citing *In re R.C.*, 195 Ill. 2d at 302. However, where the constitutional right at issue is one considered “fundamental,” the presumption of constitutionality is weaker, and courts must subject the statute to the more rigorous requirements of strict scrutiny analysis. *In re D.W.* 214 Ill. 2d 289, 310, quoting *People v. Cornelius*, 213 Ill. 2d 178, 203 (2004). To survive strict scrutiny, the measures employed by the legislature must be necessary to serve a compelling state interest and must be narrowly tailored thereto, *i.e.*, the legislature must use the least restrictive means consistent with the attainment of its goal. *D.W.*, 214 Ill. 2d at 310, citing *In re H.G.*, 197 Ill. 2d 317, 330 (2001).

The right of parents to control the upbringing of their children is a fundamental constitutional right. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (stating that raising one’s children is amongst the “basic civil rights of man”); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (stating “[t]he liberty interest *** of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests” the Court has recognized). Because a fundamental right is implicated here, the statute must be necessary to serve a compelling interest and must be narrowly tailored so as to use the least restrictive means consistent with the attainment of the government’s goal. See *D.W.*, 214 Ill. 2d at 311, citing *H.G.*, 197 Ill. 2d at 330; *R.C.*, 195 Ill. 2d at 303.

We conclude subsection (g) of section 1(D) of the Adoption Act is constitutional under the equal protection claim. See also *In re C.E.*, No. 1—10—0671 (2010) (finding constitutional section 1(D)(g) of the Adoption Act). Respondent correctly argues that portions of the Adoption Act have been deemed unconstitutional because subsections did treat similarly situated respondents differently regarding their ability to rebut a presumption of unfitness. See, *e.g.*, *D.W.*, 214 Ill. 2d at 312-13 (invalidating subsection 1(D)(q)). Here, respondent argues that a parent convicted of attempted

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murder would get an opportunity to rebut the presumption of unfitness but a parent found to have a filthy home would not get that same opportunity.

Respondent's reliance on *D.W.* is misplaced, as the reviewing court in *C.E.* found that "section 1(D)(g) does not concern nor require a criminal conviction and does not contain a presumption of unfitness." *C.E.*, slip. op. at 13. The reviewing court's analysis distinguishing *D.W.* as applied to section 1(D)(g) is directly on point and persuasive, and we adopt it here. Accordingly, we conclude section 1(D)(g) does not violate equal protection concerns.

Moving to respondent's due process argument, it is unclear if respondent is challenging the lack of an opportunity to present evidence of her rehabilitation as procedural or substantive due process. The present case challenges the application of an irrebuttable presumption; it does not invoke the procedural questions that warranted reversal in *In re D.T.*, because *D.T.* strictly examined the appropriate burdens of proof in determining parental unfitness and the best interest of the child. *In re D.T.*, 212 Ill. 2d 347 (2004). This court has clarified that a challenge to an irrebuttable presumption is substantive, not procedural: "The conclusive presumption is actually a substantive rule of law based upon a determination by the Legislature [of] a matter of overriding social policy." *In re Amanda D.*, 349 Ill. App. 3d 941, 944-46, citing *Michael H. v. Gerald D.*, 491 U.S. 110, 119-20 (1989), quoting *Vincent B. v. Joan R.*, 126 Cal. App. 3d 619, 623 (1981). Therefore, the substantive due process question is whether an act under section 1(D)(g) of the Adoption Act "is sufficient, in itself, to warrant state action that severs the parent-child relationship." *Amanda D.*, 349 Ill. App. 3d at 946. We hold that it is.

Subsection (g) of section 1(D) of the Adoption Act states that a finding of unfitness is warranted for a parent's "[f]ailure to protect the child from conditions within his environment

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injurious to the child's welfare.” 750 ILCS 50/1(D)(g) (West 2008). Reviewing courts have consistently held that even a parent’s inaction to known abuse of her child, less severe than in the present case, is sufficient to satisfy section 1(D)(g). See, e.g., *In re Brown*, 86 Ill. 2d 147 (1981); *In re G.V.*, 292 Ill. App. 3d 301 (1997). The State has an undeniably compelling interest in maintaining the safety of a child, and as such, we must determine only whether the statute is narrowly tailored to justify taking away the parent’s fundamental right to rear her or his children. “ ‘A statute is narrowly tailored if it targets and eliminates no more than the exact source of the “evil” it seeks to remedy.’ ” *Amanda D.*, 349 Ill. App. 3d at 946, quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988).

The challenged portion of the statute is the least restrictive means to attain its goal of protecting the safety and welfare of children while best preserving the parent’s opportunity to contest the claim of unfitness. *In re G.V.*, 292 Ill. App. 3d 301, 306 (1997). The State must establish by clear and convincing evidence that respondent failed to protect the child from an injurious environment. *Id.* Here, respondent argues that the statute should incorporate a rebuttable presumption safeguard to allow for specific consideration of parental rehabilitation before automatically determining a parent unfit. However, this argument fails to recognize the court’s role in making a fitness determination based on all of the evidence presented. Section 1(D)(g) requires the court to make a determination whether the environment was “injurious to the child’s welfare.” 750 ILCS 50/1(D)(g) (West 2008).

Unlike the subsections that provide a rebuttable presumption of unfitness based on previously adjudicated matters, such as criminal code convictions, subsection (g) allows the court to determine whether the parent failed to protect the child from an injurious environment based on evidence

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presented. Therefore, after the State presents its evidence, the respondent is afforded the opportunity to present evidence and establish the statutory element was not proved, unlike the respondent whose criminal acts were already adjudicated. In the present case, respondent never contested the allegations of injury to the child or her failure to protect the child from the injuries, one of which the respondent inflicted on the child directly. A rebuttable presumption would be counter-productive to respondent's cause, because it shifts the burden to the respondent to overcome the presumption instead of the State first establishing a failure to protect the child from an injurious environment by a clear and convincing standard. Therefore, respondent has failed to establish that an alternate solution would be less restrictive to a respondent's rights, and subsection (g) of section 1(D) of the Adoption Act is not deemed to be unconstitutional under the equal protection or due process claims asserted. Inasmuch as respondent is the party challenging the constitutionality of a statute, she bears the burden of clearly establishing the constitutional violation. See *People v. Wright*, 194 Ill. 2d 1, 24 (2000). Upon our review of the issue presented, we determine that respondent has failed to satisfy such burden.

Respondent next challenges the trial court's findings and rulings regarding (1) her failure to make reasonable progress towards the goal of return of the minors to her custody; (2) her fitness; and (3) the termination of her parental rights.

Under the Act, the involuntary termination of parental rights involves a two-step process: the State must first prove that the parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)); second, the trial court considers whether it is in the best interest of the minor to terminate parental rights (705 ILCS 405/229(2) (West 2008)). *In re C.W.*, 199 Ill. 2d 198, 210 (2002). Cases concerning parental unfitness are unique unto themselves; we will not make

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factual comparisons between cases. See *In re C.M.*, 305 Ill. App. 3d 154, 163 (1999). It is only necessary that the State prove by clear and convincing evidence one statutory factor of unfitness for the termination of parental rights to ensue. *In re A.S.B.*, 293 Ill. App. 3d 836, 843 (1997). Therefore, this court need not consider other findings of unfitness where sufficient evidence exists to satisfy any one statutory ground. *A.S.B.*, 293 Ill. App. 3d at 843. Finally, our function is not to substitute our judgment for that of the trial court on questions regarding the evaluation of witness credibility and the inferences to be drawn from their testimony; the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses as they testify. *In re Adoption of J.R.G.*, 247 Ill. App. 3d 104, 109 (1993). Because of this, its finding of unfitness is entitled to great deference, and we will not disturb its finding unless it is against the manifest weight of the evidence. *In re D.F.*, 332 Ill. App. 3d 112, 124 (2002). The trial court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001).

In the present case, the trial court found that respondent was unfit to protect K.G. from injurious environment pursuant to section 50/1(D)(g) of the Adoption Act (750 ILCS 50/1(D)(g) (West 2008)). As to both K.G. and A.A., the trial court found respondent unfit for failing to reasonably correct the conditions that were the basis for the minors' removal pursuant to section 50/1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2008)).

With respect to the trial court's reasonable progress determination, reasonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006), citing *In re Allen*, 172 Ill. App. 3d 950, 956 (1988). At a minimum, reasonable

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progress requires measurable or demonstrable movement toward the goal of reunification. *Daphnie E.*, 368 Ill. App. 3d at 1067, citing *Allen*, 172 Ill. App. 3d at 956. The benchmark for measuring a parent's progress under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives in light of the condition that gave rise to the removal of the child and other conditions which later become known and would prevent the court from returning custody of the child to the parent. *Daphnie E.*, 368 Ill. App. 3d at 1067, citing *C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future. *Daphnie E.*, 368 Ill. App. 3d at 1067, citing *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

Our supreme court has held that the only matters that are relevant to a reasonable progress analysis are those that occurred within the applicable period--in the present case, any nine-month period of time between October 28, 2008, and September 29, 2009. See *In re D.L.*, 191 Ill. 2d 1, 10 (2000); see also 750 ILCS 50/1(D)(m) (West 2008). Accordingly, we look only to respondent's progress within a 9-month period to determine whether the trial court's conclusion was contrary to the manifest weight of the evidence.

The relevant time period was covered by two service plans, which were admitted into evidence at trial. The evidence reflects that the goals were partially and inconsistently met, even after the trial court extended the goal dates to allow respondent additional opportunities to establish her fitness. The court found respondent failed to attend counseling and substance abuse sessions; respondent failed to utilize her allotted visitations with both minors; respondent at one point had an unclean home environment; and respondent failed to notify DCFS when she moved with A.A. These shortcomings when aggregated are sufficient to affirm the trial court's finding that respondent did

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not make reasonable progress to successfully correct the conditions that first necessitated both minors' placement in foster care. See *In re Konstantinos H.*, 387 Ill. App. 3d 192 (2008) (concluding that mother's failure to attend counseling sessions and visit child was sufficient grounds to find mother did not make reasonable progress).

Respondent's argument regarding the alleged proper upbringing of M.L. may be anecdotal but it is also unpersuasive. Once a child is removed from a parent's custody, the issue under section 1(D)(m) is not whether the parent is fit to raise any child; the issue is whether the parent corrected the problems that initially necessitated that particular child's removal. *In re A.A.*, 324 Ill. App. 3d 227 (2001). Our courts have correctly recognized relevance of abuse and neglect to other children in the household to determine parental fitness regarding another child. *In re Janine*, 342 Ill. App. 3d 1041 (2003). However, respondent presents no authority to support that the proper care of M.L. provides sufficient evidence of fitness to disturb the trial court's finding of unfitness for failing to correct the problems causing K.G.'s or A.A.'s removal.

The record reflects a lack of measurable or demonstrable movement toward the goal of reunification. See *Daphnie E.*, 368 Ill. App. 3d at 1067, citing *Allen*, 172 Ill. App. 3d at 956. Respondent's claim is unpersuasive because the record shows the trial court, in finding that respondent did not make sufficient progress, considered the evidence provided by all the service personnel involved in the instant case. The trial court properly relied on that information and the testimony of the caseworkers to find respondent unfit for failure to make reasonable progress toward the return of K.G. and A.A. during the relevant period. See *Daphnie E.*, 368 Ill. App. 3d at 1067, citing *C.N.*, 196 Ill. 2d at 216-17. Consequently, we determine that the trial court's decision finding respondent unfit was not against the manifest weight of the evidence.

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As previously noted, clear and convincing evidence of one statutory ground of parental unfitness obviates the need to consider other grounds of unfitness found by the trial court. *A.S.B.*, 293 Ill. App. 3d at 843; see also *C.W.*, 199 Ill. 2d at 210. Accordingly, we decline to consider respondent's other arguments as they relate to the trial court's alternative determination of unfitness.

We continue now to the issue concerning the termination of respondent's parental rights as to the minors. Respondent presents two challenges to the trial court's best interest determination. First, respondent argues that the trial court did not indicate the level of scrutiny it used in its determination; and second, the trial court's ruling was against the manifest weight of the evidence because the trial court did not consider certain factors in respondent's favor.

At the outset, this court presumes the trial court knows the law and follows the law, which includes its level of scrutiny, unless the record indicates otherwise. See *In re Alexander R.*, 377 Ill. App. 3d 553, 557 (2007). The record does not indicate otherwise. To the contrary, the record reflects the trial court's awareness of the differing standards it applies in cases involving parental fitness and termination. At the conclusion of the fitness hearing, the trial court stated, "[t]here is a high standard that the Courts and the law require before I can take away a child in the first place, and there is a higher standard that I have to apply, having once taken a child away on a temporary basis and setting up service plans and so forth, to permanently take away a child from a parent." Accordingly, we reject respondent's first argument.

With respect to the trial court's ruling, even after a parent has been found unfit, it does not automatically follow that the parent's rights should be terminated. *In re M.S.*, 302 Ill. App. 3d 998, 1003 (1999). Once a trial court finds a parent unfit under one of the grounds of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)), the court must consider whether it is in the best

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interest of the child to terminate parental rights pursuant to the Juvenile Court Act (705 ILCS 405/1--3 (West 2008). *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004). All considerations yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004); see also *In re Travarius O.*, 343 Ill. App. 3d 844, 854 (2003). The State must prove by a preponderance of the evidence that termination is in the child's best interest. *D.T.*, 212 Ill. 2d at 366. The factors that a trial court should consider in making its best interest determination include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preference of the persons available to care for the child. See 705 ILCS 405/1—3(4.05) (West 2008).

On review, our function is not to substitute our judgment for that of the trial court on questions regarding the evaluation of witness credibility and the inferences to be drawn from their testimony; the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses as they testify. *In re Adoption of J.R.G.*, 247 Ill. App. 3d 104, 109 (1993). A trial court's decision on the best interest of a child will not be reversed unless it is against the manifest weight of the evidence. *In re A.H.*, 195 Ill. 2d 408, 425 (2001); *Tiffany M.*, 353 Ill. App. 3d at 892.

Respondent asserts that the trial court did not consider (1) the children's cultural and religious background and ties; (2) the bond of the children to respondent and respondent's other children; (3) respondent was having significant and liberal visitation until the goal changed; (4)

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respondent's current living situation; (5) and respondent's ability to safely parent the children. We reject respondent's assertion. In her brief, respondent highlights the testimony that the trial court purportedly did not consider, but this testimony was all presented into evidence. Again, this court will presume the trial court considered all evidence, unless the record indicates otherwise. See *Alexander R.*, 377 Ill. App. 3d at 557. At the conclusion of the best interest hearing, the record clearly reflects the trial court's receipt of the evidence presented. The trial court stated, "[m]uch of [its ruling on best interest] is based upon the Court's impression of the facts that are presented." The trial court reflected on specific evidence and arguments of the parties. Before rendering its decision, the trial court also stated that it had "considered the evidence" and had "considered the closing arguments of counsel" and had applied its understanding of the law to the facts in the case. Respondent's assertion is belied by the record on appeal; we, therefore, reject respondent's argument.

The trial court properly applied the statutory factors when it determined it was in K.G.'s and A.A.'s best interest that respondent's parental rights be terminated. With respect to K.G., the trial court reflected that K.G. had come into the system injured, withdrawn, frightened, and four years later she was in a much better place in terms of her emotional state of mind, well being, and her ability to proceed forward. See, *e.g.*, 705 ILCS 405/1—3(4.05)(a), (d) (West 2008). The trial court also noted that K.G. still suffers from and would always suffer from the physical ramifications of the injuries she suffered. See 705 ILCS 405/1—3(4.05)(a), (c) (West 2008). The trial court credited K.G.'s progress to the work of her foster parents. See 705 ILCS 405/1—3(4.05) (a), (b), (d), (g) (West 2008). The trial court also reflected on respondent's actions with respect to K.G., *i.e.*, her missed visits, the missed doctors' appointments, and the lack of initially providing for K.G. See 705

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ILCS 405/1—3(4.05)(c) (West 2008). With respect to A.A., the trial court reflected on respondent's actions, *i.e.*, her missing A.A.'s first day at school, not going to the doctor when there was a possibility of surgery, and noted those instances stood out as situations where respondent was either unable or unwilling to put the needs of A.A. ahead of her own. See 705 ILCS 405/1—3(4.05)(a),(c) (West 2008). The trial court commended A.A.'s foster parents for A.A.'s well being. See 705 ILCS 405/1—3(4.05)(a), (b), (d), (g) (West 2008). The trial court also commended A.A.'s foster parents for their efforts in encouraging contact with respondent. In terminating respondent's parental rights, the trial court also noted that A.A. has spent a greater portion of his life with his foster parents and away from respondent. See 705 ILCS 405/1—3(4.05)(d), (g) (West 2008). Through adoption, the minors will end the transition as foster children. See *D.T.*, 212 Ill. 2d at 363-64 (noting that a child has an important interest in a loving, stable, and safe environment). As expressed in the Act, the public policy of this State is to provide every child with adequate care and guidance to provide for the child's safety and moral, emotional, mental, and physical welfare. 705 ILCS 405/1—2 (West 2008). The trial court's findings were supported by the manifest weight of the evidence introduced at trial, and we affirm its decision.

Respondent's final contention is that she was denied the effective assistance of counsel by counsel's failure to make numerous objections, including the trial court's decision to take judicial notice of the entire court file. Specifically, respondent argues that her counsel failed to object to portions of the caseworkers' testimony; failed to make foundational objections concerning K.G.'s injuries; failed to make hearsay objections; and failed to object to the State's request that the court take judicial notice of the orders entered in both K.G.'s and A.A.'s cases, as well as all reports admitted in the file.

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A respondent parent has a right to the effective assistance of counsel in both a neglect proceeding and in any subsequent termination of parental rights proceeding that might arise from the underlying finding of neglect. *In re J.P.*, 316 Ill. App. 3d 652, 660 (2000), citing *In re Kr. K.*, 258 Ill. App. 3d 270, 280 (1994). The standard set forth in *Strickland* and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984), is that the defendant must show that his or her counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that the outcome of the trial would have been different had there not been ineffective assistance of counsel. *Strickland*, 466 U.S. at 687; *Albanese*, 104 Ill.2d at 525. Claims of ineffectiveness can be disposed of on the ground that the defendant suffered no prejudice from the claimed errors without deciding whether the errors were serious enough to constitute less than reasonably effective assistance. *People v. Caballero*, 126 Ill. 2d 248, 260 (1989).

In the present case, respondent cannot establish that the result would have been different had counsel interposed objections. Respondent has provided neither legal authority nor evidence demonstrating sufficient prejudice resulting in an outcome of the adjudication hearing that would have been different. Respondent has not shown that any objection would have been ruled in her favor, resulting in suppression of any line of questioning and thereafter leading to a different result. See *In re R.G.*, 165 Ill. App. 3d 112, 128 (1988), citing *People v. Bell*, 152 Ill. App. 3d 1007 (1987) (providing that even errors in trial strategy or judgment alone do not establish that the representation was incompetent). Our supreme court has stated that decisions regarding “ ‘what matters to object to and when to object’ ” are matters of trial strategy. *People v. Perry*, 224 Ill. 2d 312, 344 (2007), quoting *People v. Pecoraro*, 175 Ill. 2d 294, 327 (1997). Respondent must overcome the presumption that the challenged actions might be considered “trial strategy.” *Strickland*, 466 U.S.

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at 689. We determine that such a tactic could be considered trial strategy. Moreover, courts can clearly take judicial notice of orders and documentary evidence contained in the case file. See *In re D.C.*, 209 Ill. 2d 287, 293-94 (2004) (taking judicial notice of the State’s neglect petitions; orders of protection; adjudication orders; dispositional orders; permanency orders; a psychological evaluation; and counseling records).

As the Supreme Court stated, “[t]here are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” *Strickland*, 466 U.S. at 689. Respondent’s counsel’s decision to object or not to object does not constitute defective performance. Respondent’s ineffectiveness claim must therefore fail.

For these reasons, we affirm the judgment of the circuit court of Du Page County.

Affirmed.