



in Kentucky as a result of several incidents of domestic violence between father and mother.

¶ 4 On February 17, 2010, the minors were placed in the custody of the Illinois Department of Children and Family Services (DCFS). Father was present at this hearing and was directed to give his address to the clerk of the court so that notices could be given once paternity was established.

¶ 5 On April 15, 2010, father agreed to adjudication of wardship. Father was now represented by counsel who indicated that father was willing to work with DCFS and follow any established service plans. The order of protection, however, was still in force and prohibited father from having visitation with his children. The order of adjudication found that the children were neglected or abused in that they were in an environment injurious to their welfare based upon a finding of father's willful violation of an order of protection, domestic violence in the presence of children, and substance abuse issues. The service plan subsequently generated for father required him to complete psychological and domestic violence assessments and follow any recommendations as a result of those assessments; obtain legal income; maintain housing that met minimum parenting standards; maintain contact with his caseworker; and attend substance abuse treatment.

¶ 6 At the permanency hearing held October 18, 2010, the court found that father had not made reasonable efforts toward the return of his children, had not had any contact with the caseworker, and had not engaged in any services in the service plan.

¶ 7 A motion for termination of parental rights and for appointment of guardian with power to consent to adoption was filed on April 8, 2011. The motion alleged that father had abandoned the minors; failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors; had deserted the minors for more than three months preceding the commencement of the proceedings; had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors within nine

months after an adjudication of neglect; and had failed to make reasonable progress toward the return of the minors within nine months after an adjudication of neglect. The case summary noted that there had been no contact with father since the last court date; there had been no visitation because of the order of protection, and no progress reports had been obtained for his domestic violence counseling. Father also had violated the order of protection on several occasions during this time period.

¶ 8 The hearing on the motion to terminate parental rights was held on May 12, 2011. Mother testified that her relationship with father had been very abusive. He regularly beat her at least two times a week and also subjected her to mental, emotional, and sexual abuse. Mother stated that when she was eight weeks pregnant with E.C., father beat her while she was holding J.E.C. He grabbed her by the shirt and then by the hair and drug her along a gravel road. She almost lost the baby and moved into a battered woman's shelter. She was granted a plenary order of protection, and father was ordered to complete classes. Although he did not complete them, mother went back to father after leaving the woman's shelter. They moved to Illinois, and after a short time, the abuse resumed. Mother testified father prevented her from leaving the house and nailed the windows shut. When she was seven months pregnant, he pushed her down a flight of stairs causing her to go into premature labor. After E.C. was born, the abuse worsened. At one point, father kicked mother in the stomach causing her caesarian section incision to become infected. He choked her into near unconsciousness and spat in the baby's face. After the choking incident, father was again arrested. Mother continued to live with father, however, for several months after the children were removed from their custody and placed with DCFS. The last time she lived with father was in November of 2010. Father again went to jail in February 2011 after having been convicted of delivering threats to mother's new boyfriend.

¶ 9 The initial caseworker testified that the case was transferred to her agency from DCFS

on January 22, 2010. She met with father on February 17, 2010, in court and discussed the services that would be formulated for his service plan. Father was on probation at that time and still could not visit with the minors, but he was offered domestic violence counseling so that he could start working on his service plan. She gave father her business card and encouraged him to stay in contact with her. Father never initiated any contact for counseling or services. In May of 2010, father was arrested for violating the order of protection and was incarcerated until August 2010. He initiated no contact with the caseworker during his incarceration nor after he was released. The caseworker rated his progress as unsatisfactory given his lack of engagement in services.

¶ 10 At the conclusion of the evidence and arguments, the court found father unfit. Evidence received at the best-interests hearing revealed that the children had been placed with the maternal grandfather and his wife and were responding well in that placement and had bonded with the grandparents. The grandparents were financially and physically able to care for the minors and were willing to adopt them. An order finding parental unfitness and terminating parental rights was filed subsequently on May 18, 2011. The court found that father had abandoned the minors, deserted them for more than three months next preceding the commencement of the proceedings, failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors, and failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors. Mother stipulated to a factual basis showing her to be unfit and did not appeal the court's finding of her unfitness or the termination of her parental rights.

¶ 11 Father argues on appeal that his due process rights were violated by the State electing to pursue grounds for termination of parental rights on grounds other than sections 1(D)(r) and 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(r), (D)(s) (West 2010)) pertaining to parents who are incarcerated. Father asserts that the State should have been required to

allege grounds of unfitness that "acknowledged his incarceration" instead of using other grounds of unfitness that required him to comply with service plans, which he could not complete because of his incarceration. He contends that allowing the State to proceed against him as was done is to hold incarcerated persons to standards with which they cannot possibly comply and then deprive them of a fundamental right when they are ultimately unable to successfully complete services. He further argues that even if the State properly proceeded upon the grounds they chose, the court's findings of unfitness on the grounds alleged were against the manifest weight of the evidence.

¶ 12 It is true that a parent's interest in maintaining a parental relationship with his child is a fundamental liberty interest protected by the due process clause of the fourteenth amendment *In re D.R.*, 307 Ill. App. 3d 478, 482, 718 N.E.2d 664, 667 (1999). We fail to see how father was denied due process in this instance, however. Father had a full and fair adjudication of his parental rights, and the grounds of unfitness alleged were proven by clear and convincing evidence. Father should not be heard to complain that he suffered a due process violation because he was not also proved unfit on grounds not pled. The State is not required to file a petition alleging every specific ground of unfitness as long as the State can clearly establish unfitness on any one ground. We acknowledge that father was incarcerated part of the time during the relevant time periods and that services required under his plan may not have been provided for him in each facility. But, father was not incarcerated all of the time. He made no effort to accomplish or even start any of his service plans whether incarcerated or not, nor did he even attempt to contact DCFS at any time other than to request a letter to have the order of protection lifted. We further note that, while he was not allowed to visit with his children, father still could have communicated with them via DCFS, even while incarcerated. Father was not thwarted from accomplishing his service plans or maintaining an interest in his children by being incarcerated; rather, father was thwarted by

his own lack of effort and his repeated violations of the order of protection. Given that father did not complain that he was not afforded all of his procedural and due process rights otherwise, we see no reason to overturn the court's decision in this instance.

¶ 13 Turning to the finding of unfitness, we recognize that the determination of whether an individual's parental rights should be terminated involves a two-step process whereby the State must prove by clear and convincing evidence that the individual is unfit, as defined by the Adoption Act (750 ILCS 50/1(D) (West 2010)), and if unfitness is found, the court must then consider whether it is in the best interest of the child or children to terminate parental rights (705 ILCS 405/2-29(2) (West 2010)). See also *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). When the parent challenges the sufficiency of the evidence, we, as a reviewing court, will only reverse the trial court's finding of unfitness if it is against the manifest weight of the evidence. *In re C.W.*, 199 Ill. 2d 198, 211, 766 N.E.2d 1105, 1113 (2002); *In re D.F.*, 201 Ill. 2d at 495, 777 N.E.2d at 940-41. A determination will be found to be against the manifest weight of the evidence only if an opposite conclusion is clearly evident or if the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d at 498, 777 N.E.2d at 942; *In re M.J.*, 314 Ill. App. 3d 649, 655, 732 N.E.2d 790, 795 (2000). Additionally, if there is sufficient evidence to satisfy any one statutory ground of unfitness alleged, we as a reviewing court need not consider other grounds of unfitness found by the trial court. *In re M.J.*, 314 Ill. App. 3d at 655, 732 N.E.2d at 795. We are also to give deference to the trial court as finder of fact and will not substitute our judgment for that of the trial court with respect to the credibility of witnesses, the weight given the evidence, or inferences drawn from the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 324 (2008). In this instance, the trial court found that father had abandoned the minors; had deserted them for more than three months next proceeding the commencement of the proceedings; failed to maintain a reasonable degree of interest,

concern, or responsibility as to the welfare of the minors; and failed to make reasonable efforts to correct the conditions that were the basis of the removal of the minors from him. We conclude that the court's finding of unfitness on all grounds is not against the manifest weight of the evidence.

¶ 14 Turning to the issue of abandonment first, father argues he did not abandon his children but rather was prevented from seeing them because of the order of protection issued in Kentucky and enforced by Illinois and because he was incarcerated. "Abandonment means conduct on the part of a parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 427, 869 N.E.2d 214, 219 (2007). If the only reason a parent has not visited or cared for his or her children is because of imprisonment, that parent cannot be held to have the intent to abandon or desert the children. *In re Sanders*, 77 Ill. App. 3d 78, 84, 395 N.E.2d 1228, 1233 (1979). When a parent's attempt to see a child has been officially frustrated, it is the intent to establish and/or maintain contact with the child, rather than actual contact, which is determinative. *Regan v. Joseph P.*, 286 Ill. App. 3d 889, 893, 677 N.E.2d 434, 437 (1996). Here, the only reason the order of protection was issued in the first place was because of father's behavior in beating the children's mother. Father bears the entire responsibility for not being able to see his children, especially when he was convicted twice of violating the order of protection subsequent to its issuance. Father's choice to beat the children's mother repeatedly and severely and while she was pregnant evinced an intent to abandon the children, if not destroy them. And, his continuing intent to abandon the children can be inferred from his subsequent actions in violating the order of protection. There simply was no evidence presented that father contributed anything to the children, even during those periods when he was not incarcerated.

¶ 15 The record shows that father was arrested on December 16, 2009. At the temporary

shelter care hearing on January 13, 2010, father represented himself. While in the custody of the Bond County jail at the time, he was to be released the next day. At the adjudicatory hearing on April 15, 2010, it was brought to the court's attention that father was on probation. Father was again incarcerated in May of 2010 for another violation of the order of protection and remained in custody until August of 2010. Father was next arrested in November of 2010. Clearly there were times that father was not incarcerated and could have taken steps to show his intent not to abandon his children. The court's finding of unfitness based on abandonment was not manifestly erroneous. Similarly, the court's finding of unfitness based on desertion was not manifestly erroneous for the same reasons.

¶ 16 Turning to father's failure to show a reasonable degree of interest, concern, or responsibility as to the welfare of the two minors, we agree that the court's finding of unfitness on this ground also was not manifestly erroneous. In determining whether a parent showed reasonable concern, interest, or responsibility as to a child's welfare, again the parent's conduct concerning the child or children is to be examined in the context of the circumstances in which that conduct occurred. *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). The court is to consider the parent's efforts, regardless of whether those efforts were successful. *In re Gwynne P.*, 346 Ill. App. 3d 584, 591, 805 N.E.2d 329, 335 (2004), *aff'd*, 215 Ill. 2d 340, 830 N.E.2d 508 (2005). Father was first ordered to complete certain classes while still in Kentucky. He was not incarcerated at that time, and there is no evidence on the record that he was in any way hindered from completing those classes. Once in Illinois, father was not allowed to visit his children because of the order of protection. That did not mean, however, that he could not work on the service plan while on probation. Father's counsel reported to the court that father understood and agreed to his service plan. Father also told the court he understood all of the requirements listed in his service plan. Father's caseworkers testified that father never made

contact with them outside of court. In fact, the only effort father made to fulfill any tasks assigned to him was to submit to paternity testing. Between his periods of incarceration, father had several months in which to contact his caseworkers or begin working on fulfilling his service plan. Instead of doing so, father continued in his acts in violation of the order of protection and committed another crime. Not only did father make no efforts to complete the service plans, he engaged in acts that frustrated his ability to complete the service plans because they resulted in his incarceration and were the same acts that caused the children to come under the protection of DCFS in the first place. The failure to comply with the directives of a service plan with the stated goal of returning a child home is tantamount to objectively unreasonable interest, concern, or responsibility as to the child's welfare. *In re M.J.*, 314 Ill. App. 3d at 657, 732 N.E.2d at 796. Father's failure to make any effort to contact his caseworkers to even begin the completion of any service plan objective is evidence of a failure to maintain a reasonable degree of responsibility as to the welfare of his children. See *In re Katrina R.*, 364 Ill. App. 3d 834, 844, 847 N.E.2d 586, 595 (2006).

¶ 17 Father also failed to make reasonable efforts to correct the conditions that were the basis of the children's removal within nine months of the adjudication of neglect. Reasonable effort is judged by a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal. *In re R.L.*, 352 Ill. App. 3d 985, 998, 817 N.E.2d 954, 966 (2004). The conditions that led to the children's removal in this instance were domestic violence in the presence of the children, wilful violation of the order of protection, and substance abuse issues, all creating an environment injurious to the children's welfare. Not only did father make no efforts to complete the service plan in effect during the first nine months after adjudication of neglect, he affirmatively made efforts that frustrated his ability to complete the service plan given that his acts resulted in several periods of incarceration. Father's efforts to correct the conditions that were the basis for the children's

removal were nonexistent. He instead engaged in a course of action that exacerbated those conditions by continuing to violate the order of protection. We conclude that the trial court's finding of unfitness on this ground also is not against the manifest weight of the evidence given the evidence presented.

¶ 18 For his last point on appeal, father argues that he received ineffective assistance of counsel. He specifically finds fault with counsel's failure to present any evidence as to what programs were unavailable to father while he was incarcerated in the county jail and by failing to call any witnesses in his support and insufficiently cross-examining the State's witnesses. Parents are entitled to the effective assistance of counsel in proceedings that seek the termination of their parental rights. *In re W.L.W. III*, 299 Ill. App. 3d 881, 885, 702 N.E.2d 606, 609 (1998). In order to show ineffective assistance of counsel, father must demonstrate that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, the outcome of the proceedings would have been different. *In re W.L.W. III*, 299 Ill. App. 3d at 885, 702 N.E.2d at 609. Father cannot do this in this instance. First, counsel did in fact call two witnesses, one at the fitness hearing and one at the best-interests hearing. More importantly, father waived this issue by making only a conclusory statement that witnesses were not called and by not developing his argument further as to what testimony such witnesses may have given. Conjecture as to the impact of such omitted testimony is not a basis for a demonstration of ineffective assistance of counsel. *People v. Lewis*, 997 Ill. App. 3d 982, 990, 423 N.E.2d 1157, 1164 (1981). Moreover, the matter of which witnesses will be presented is a matter of trial strategy. In order to show prejudice, father had to demonstrate how a witness, who was not called, would have aided him and also whether counsel did not try to contact the witness. In the absence of such a showing, we, as a reviewing court, cannot assess whether counsel's alleged omission was prejudicial. *People v. Fountain*, 179 Ill. App. 3d 986, 996, 534 N.E.2d 1303, 1309 (1989).

Father also failed to support his argument that counsel was ineffective for conducting insufficient cross-examination of the witnesses. Again, father makes only a conclusory statement, identifies no witnesses, and argues no questions that should have been asked. He demonstrated no prejudice. We likewise find waiver with respect to all other ineffective assistance of counsel claims. Counsel was not required to manufacture a defense for father where none existed. *People v. Lopez*, 241 Ill. App. 3d 160, 171, 610 N.E.2d 189, 196 (1993).

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Bond County.

¶ 20 Affirmed.