

No. 1-12-0238

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF ORLANDO S.) Appeal from
(THE PEOPLE OF THE STATE OF ILLINOIS,) the Circuit Court
) of Cook County
)
Plaintiff-Appellee,) No. 07 JA 038
)
v.) Honorable
) Nicholas Geanopoulos,
DANTE MORRIS,) Judge Presiding.
)
Defendant-Appellant.))

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

ORDER

Held: The court's findings that (1) respondent was an unfit parent, and (2) that it was in the minor's best interest to terminate parental rights were not against the manifest weight of the evidence.

¶ 1 Respondent Dante Morris appeals the January 9, 2012, order of the juvenile court

terminating his parental rights to his biological minor son, Orlando S. The State, as well as counsel for Orlando, both filed appellee briefs. On appeal, respondent contends that the juvenile court's finding that he was an unfit father was against the manifest weight of the evidence, and that the court's finding that it was in Orlando's best interest to terminate respondent's parental rights was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Orlando was born on November 16, 2006, to Sabrina S. and respondent, although respondent did not find out he was the father until January 2008. On January 20, 2007, Sabrina brought Orlando to the hospital with a laceration through almost his entire tongue, which prompted an investigation by the Illinois Department of Children and Family Services (DCFS). On January 25, 2007, the State filed a petition for adjudication of wardship, requesting that Orlando become a ward of the court. According to the petition, Orlando's mother had two prior indicated reports for inadequate shelter, inadequate food, and substantial risk of physical injury in connection with her two other minor children. The two other children were currently in DCFS care and custody with findings of abuse, or neglect, or both. The juvenile court found that there was probable cause that Orlando had been abused and neglected, and that an immediate and urgent necessity existed to take temporary custody of Orlando. The juvenile court granted temporary custody of Orlando to the Guardianship Administrator of DCFS.

¶ 4 In November of 2007, respondent was identified as Orlando's potential father, and paternity was confirmed in January 2008 by a paternity test. Respondent was given a drug test in January 2008, which showed positive results for marijuana. Respondent was still a minor at this

time but turned 18 in June 2008.

¶ 5 On September 4, 2008, following an adjudicatory hearing, the juvenile court found that Orlando was physically abused, at substantial risk of injury, and neglected due to an injurious environment. The court also entered a disposition order finding that the mother was unable and unwilling to care for Orlando, and that respondent was unable to care for the minor but was visiting and would re-engage in services. Orlando was adjudged a ward of the court.

¶ 6 On August 13, 2009, the juvenile court entered a permanency order with a goal of substitute care pending court determination on the termination of parental rights. The reasons listed for the goal were that the mother had signed general consents to Orlando's adoption, and that respondent's visits were inconsistent and he did not understand the minor's many special needs.

¶ 7 On August 19, 2010, the juvenile court entered a permanency order with the same goal of substitute care pending court determination of parental rights. The reasons listed for the goal were that the mother had signed general consents, and respondent was not consistent with the services necessary for the return home goal.

¶ 8 A final permanency order was entered on April 15, 2011, with the same goal. It indicated that the reasons for the goal were that the mother had signed general consents, respondent had re-engaged in services, and that foster placement was pre-adoptive.

¶ 9 A. Fitness

¶ 10 Termination proceedings commenced on January 9, 2012. The court took judicial notice that adoption consents were signed by the mother on February 23, 2008. The state moved

forward with its allegation that respondent failed to make reasonable efforts or progress, pursuant to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2010)), which states that a parent is deemed "unfit" to have a child if that parent fails to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or to make reasonable progress toward the return of the child within nine months after an adjudication of neglect or abuse, or to make reasonable progress toward the return of the child during any nine-month period after the end of the initial nine-month period following the adjudication of neglect or abuse. The State specified that the time frame for the allegations was from September 2008 (the time of adjudication of neglect and abuse) to March 2010, which encompassed both the initial nine-month period (beginning September 2008), as well as the subsequent nine-month period (June 2009 to March 2010).

¶ 11 Patricia Miller then testified that she was the first case worker from Little City Foundation to be assigned to Orlando's case in May 2007. Little City is an agency that works with special-needs children and adults, helping to place those in need of a home. When Miller was assigned to Orlando's case, the recommended permanency goal was to return home within 12 months. After a paternity test confirmed that respondent was Orlando's father, Miller met with respondent in January 2008. An initial drug drop was given to him at that time, when he was still a minor. In September 2008, after Orlando was adjudged a ward of the court, respondent was given an assessment by the Juvenile Court Assessment Project (JCAP). Following the assessment, Miller recommended an intensive inpatient substance abuse treatment at South Suburban Council for 90 days. Respondent refused to do the inpatient treatment because he

believed he did not need it. He indicated a willingness to do the outpatient treatment instead.

¶ 12 Miller testified that on September 25, 2008, she participated in a child and family team meeting with respondent at the Little City Foundation office. She and respondent went over the service plans for respondent. Respondent was assigned a coach, Robert Allen, by Treatment Alternatives for Safe Communities (TASC), a program that advocates on behalf of people with drug and alcohol issues. Miller testified that respondent began treatment at South Suburban in December of 2008 for outpatient treatment of marijuana abuse. In June of 2009, Miller had to make a re-referral for respondent's treatment because he had not been compliant.

¶ 13 Miller testified that while she was assigned to Orlando's case, she rated respondent "unsatisfactory" regarding his drug treatment because he never completed the 90-day inpatient treatment and never completed the outpatient treatment.

¶ 14 In addition to substance-abuse treatment, Miller also recommended parenting classes, individual therapy, a psychological exam, a parenting capacity assessment, anger management classes, and Down syndrome training. South Suburban offered respondent parenting classes while he was doing the drug treatment. Following the drug treatment, Miller's agency was going to offer parent-child psychotherapy, but the drug treatment had to be fully completed first. He did receive individual counseling at South Suburban, but he did not complete it. Respondent attended some parenting classes but did not complete them.

¶ 15 Miller was unable to refer respondent for anger management because he did not complete drug treatment. Miller originally recommended anger management because of two incidents that occurred while Miller was assigned to the case. One was during a June 2009 visit with Orlando

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at the DCFS office. Respondent asked for a log of the visits he had missed, so Miller wrote them down and gave them to him. He became angry and said the list was inaccurate and that he had not missed that many visits. He began to swear and yell at Miller, so she took Orlando out of the room.

¶ 16 Respondent was given random drug tests by his TASC worker and South Suburban, but was rated "unsatisfactory" in getting drug free. DCFS does not approve any psychological evaluations while a client is under the influence of drugs or engaged in a drug treatment program, so respondent was unable to obtain a psychological evaluation.

¶ 17 In June 2009, Miller gave respondent materials regarding Down syndrome for him to read in order to help understand Orlando's needs, since Orlando was born with Down syndrome. Respondent never read the materials.

¶ 18 Respondent was not referred to a parenting capacity evaluation because he did not complete drug treatment.

¶ 19 While Miller was Orlando's caseworker, respondent lived with his mother in Robbins, Illinois. Miller went to the home once in 2008 to assess whether it could be Orlando's return home. Miller determined that it was not suitable for a special-needs child because respondent's mother was living in the attic, respondent was sleeping on the couch, there was not enough room for a young child, and there were bugs on the wall.

¶ 20 During her time as the caseworker, Miller maintained contact with respondent by phone, but sometimes his phone did not work and she would have to wait for him to call her.

¶ 21 Respondent never completed any of the tasks that Miller recommended for him to

complete, which consisted of: the 90-day inpatient treatment, all TASC services, random drug testing, the psychological assessment, parenting classes, individual therapy, anger management, and Down syndrome material review.

¶ 22 Miller testified that there was supervised visitation between Orlando and respondent scheduled for once a week. At first the visits were at the Little City Foundation office, but they also would occur at the day care facility that Orlando attended, and sometimes at the DCFS office. There was a confirmation policy in place for all visits, whereby the parent had to call 24 hours prior to confirm the visit. Respondent was consistent in his visits in September 2008 and November 2008. He missed one visit in December 2008. He missed all his visits in January 2009, and all of his visits in February 2009. He missed half of his visits in March 2009.

¶ 23 Miller testified that respondent would confirm that he was coming to the visit and then would fail to show up to the visit. Miller had to amend the confirmation policy to require respondent to call the morning of his visits as well as 24 hours prior to the visits, and if he was more than 20 minutes late, the visit would be cancelled.

¶ 24 Respondent missed all of his visits in April 2009 and in May 2009. In June 2009, he only missed one visit. However, on June 3, 2009, respondent was asleep when Miller arrived at the office. He smelled of alcohol and said he had been drinking the night before. This was the same visit at which he asked for the log of missed visits and became angry.

¶ 25 Miller testified that respondent was scheduled for five visits in July 2009 but only attended one. There was one date that respondent had not confirmed, yet he showed up anyway. The foster parent, Adrian Gross, was bringing Orlando's sibling to the office for a visit with the

sibling's father. Gross called Miller, and Miller called the Little City therapist, Phil Weglarz, who was working with Orlando's sibling at the DCFS office. Apparently respondent had arrived and saw Orlando in the car and took him out of the car, even though there was not a scheduled visit.

¶ 26 On July 22, 2009, Miller supervised a scheduled visit at which she was concerned for Orlando's safety. She had to prompt respondent to watch out for Orlando's safety while he was playing. Respondent was rated "unsatisfactory" in the category of whether he needed three prompts or less during a visit. Besides safety, Miller worried about respondent's overall engagement with Orlando. Respondent would just watch Orlando play instead of engaging him in activities. Miller wanted respondent to interact with Orlando more. Respondent did not show that he could watch for Orlando's safety and engage him without prompting, so he was never granted unsupervised visits.

¶ 27 Miller testified that during the nine months after September 2008, respondent never made any substantial progress in completing his services. Miller further testified that respondent did not have a job during the course of the time that she worked with him. He claimed to have interviewed at places but could not find a job.

¶ 28 Respondent's counsel showed Miller a TASC document that indicated that respondent did not test positive for drugs from September 2008 through August 2009. Miller stated that it appeared respondent was maintaining some level of sobriety according to that document. Miller stated that even if respondent's drug testing was clean, he still could not be referred to parenting programs until he completed drug treatment. The JCAP recommendations were mandatory, so

respondent could not take additional steps until those were completed. Additionally, the document showed that a TASC worker had gone to respondent's house on 15 occasions when respondent was apparently not home and therefore was not drug-tested. Miller noted that drug testing is only one factor in rating a parent on his progress towards becoming drug-free.

¶ 29 Christina Frederick, the Little City Foundation foster-care case worker assigned to Orlando's case from August 2009 to August 2010, testified next. Frederick testified that when she was first assigned to the case, the recommended permanency goal was substitute care pending court determination of termination of parental rights. Respondent started attending South Suburban Council in December of 2009, for outpatient treatment. Frederick never received any documentation indicating that respondent had completed the outpatient treatment. Frederick rated respondent's progress on completing TASC services as "unsatisfactory." She also rated him "unsatisfactory" in whether he was drug free.

¶ 30 Frederick testified that while she was assigned to the case, respondent was living at both his mother's house as well as his girlfriend's house. Frederick had his mother's home number, but she was not able to maintain consistent contact with respondent. There were months at a time that he did not confirm his visits or answer her calls.

¶ 31 When the goal changed from returning Orlando home to finding substitute care, the visits were scheduled once a month with respondent. Respondent was still expected to call the night before and in the morning before a visit, but his visitation with Orlando remained irregular. Respondent missed the September 2009 visit, did not confirm the October 2009 visit, and did not confirm the November 2009 visit. Respondent visited Orlando in December 2009, but missed

the January 2010 visit because he did not call to confirm.

¶ 32 In February 2010, during his visit with Orlando, respondent told Frederick that he could not get to South Suburban Council, and that it was easier to get there when he had a TASC worker because TASC had provided transportation.

¶ 33 During the March 2010 visit, respondent was on his phone and only somewhat engaged with Orlando. Respondent was not able to redirect Orlando, and Frederick was worried about respondent being unable to meet Orlando's needs.

¶ 34 On cross examination, Frederick testified that when the goal changed to substitute care, it was respondent's responsibility to pay for services, but she did not know if he had a job. He did admit himself to South Suburban during this time. Frederick did not give respondent a community-based referral for any of his outstanding services, although she did tell respondent that he would be happy to do so if respondent wanted.

¶ 35 Frederick testified that respondent did not give an explanation as to why he missed certain visits, and he never expressed any goals about providing a home for Orlando at some point in the future.

¶ 36 According to the substance abuse treatment records from South Suburban, respondent consistently failed to achieve treatment objectives, was not responsive to treatment, had a hard time staying awake during group sessions, and his attendance was "extremely poor."

¶ 37 Respondent then testified on his own behalf. He claimed that Frederick never told him that she could make referrals for any kind of therapy, and that he never asked for any referrals. The agency did not tell him that they would no longer pay for services once the goal changed

from returning Orlando home to finding him substitute care. Respondent testified that he admitted himself to South Suburban on his own in December 2009 because he knew it was in his service plan and he had to complete it.

¶ 38 The trial court then made its findings in regards to whether respondent was considered "unfit" based on subsection 1(D)(m) of the Adoption Act. The trial court stated that it looked at the totality of the circumstances in reaching its decision. It stated that while Miller was Orlando's caseworker, respondent could have completed the outpatient drug treatment and then had the rest of the services paid for. Instead, respondent did not complete drug treatment and therefore did not successfully complete any of his TASC services. Accordingly, he did not make progress in parenting Orlando or in any other of the services. The trial court found that the State proved by clear and convincing evidence that respondent failed to make reasonable efforts to correct the conditions that were the basis for Orlando's removal, and that he did not make reasonable progress.

¶ 39 **B. Best Interests**

¶ 40 The "best interests" portion of the hearing then commenced. Adrian Gross, Orlando's foster parent, testified first. Gross testified that at the time of trial she was married with a 31-year-old daughter, who was also married. Orlando had been living with her and her husband since July 2008. At the time of trial, Orlando was in pre-kindergarten and attended a half day of school every day, where he received occupational, physical, and speech therapy. Orlando was not verbal, but he communicated with hand signals. He was learning sign language at his school, and Gross worked on sign language with him at home.

¶ 41 Gross testified that Orlando's Down syndrome doctor was at La Rabida and his pediatrician was in South Holland.

¶ 42 Gross stated that Orlando was a happy child. Orlando had trouble detecting when he was full, so his eating had to be monitored. Orlando loved music and playing with toys. He liked to go to church and listen to the music. If he was upset, Gross would put music on for him to listen to and he would calm down. Gross and Orlando worked on the alphabet, numbers, puzzles, coloring, and drawing together.

¶ 43 Gross testified that Orlando had a good relationship with Gross' husband. They played outside and played video games together. Gross' daughter, son-in-law, and grandchildren all lived in the same town and saw Orlando every other day. Gross babysat for her grandchildren often and Orlando looked forward to that.

¶ 44 Gross testified that her daughter was the backup care giver should something happen to her and her husband. Gross wished to adopt Orlando because she loved him and he was a sweet child. She had him since 2008 and had nurtured him for several years.

¶ 45 Gross further testified that if parental rights were terminated, she would continue to allow respondent to have contact with Orlando, and had in fact already told respondent that she would give him her phone number.

¶ 46 Kelly King, a caseworker for Orlando from Little City Foundation testified next. King was assigned to Orlando's case in October 2010. She last visited the Gross family on January 3, 2012. The home appeared safe and appropriate. The foster parent took Orlando to his therapy appointments and to school. Orlando was up to date on his medical, dental, and hearing

evaluations. King had the opportunity to observe interactions between Orlando and the foster parents, and she observed that Orlando seemed attached to them. The foster parents were able to redirect him often if he got upset about something. He liked to be around them and they appeared to work well with him.

¶ 47 King testified that since she had become Orlando's caseworker, respondent completed an outpatient drug treatment program with South Suburban, and to her knowledge he was able to engage in parenting classes with Catholic Charities, although she had not seen any certification from that. Since April 2011, respondent had two visits per month with Orlando and had been consistent with his visits. Those visits had gone well and King had seen some improvements. King did not have to intervene in any visits for safety reasons.

¶ 48 King testified that at times during the visits when Orlando became anxious or had tantrums, it was difficult for respondent to redirect him or to get him to listen. King did not think that respondent had a full grasp of Orlando's needs and his Down syndrome. King believed that as a father, respondent would need additional training in order to have custody of Orlando.

¶ 49 Respondent then testified on his own behalf. He stated that he attended parenting classes in 2011 at Catholic Charities, but he could not remember how many. He completed all the classes and completed drug treatment at South Suburban.

¶ 50 Respondent stated that regardless of what happened at trial, he wanted to remain in Orlando's life because he felt like he and Orlando had a close bond, and he thought it would hurt Orlando if he never saw respondent again.

¶ 51 Respondent testified that he believed he was in need of more parenting classes for

specialized children and could benefit from more training on how to properly care for a child with Down syndrome. Respondent stated that he did not believe he could adequately meet all of Orlando's needs at the time of trial. Respondent admitted that his housing situation was unstable and that he was unemployed. He had never attended any of Orlando's appointments or had any contact with his teachers or therapists.

¶ 52 The trial court then made a ruling based on the totality of the circumstances and the best interest factors pursuant to section 4.05 of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2010)). The court stated that although respondent recently completed his drug treatment and took parenting classes, his housing remained unstable and he was unemployed. Orlando was currently with the foster parents that he had been with since 2008, so when considering Orlando's physical safety, welfare, food, shelter, health, and clothing, the place where he should be was with his foster parents. Orlando was going to church weekly with his foster parents, he was engaged with them, and he had bonded with them. The court found that staying with the foster parents would be the least disruptive placement alternative for Orlando. The trial court noted that it was not basing its decision on the fact that respondent would be allowed to see Orlando in the future. The trial court found that it would be in Orlando's best interests to terminate parental rights of both respondent and the mother.

¶ 53

II. ANALYSIS

¶ 54 On appeal, respondent contends that the trial court's findings that he was unfit pursuant to section 1(D)(m) of the Adoption Act, and that it was in Orlando's best interests to terminate his parental rights, were against the manifest weight of the evidence. We note that in addition to

respondent and the State filing briefs, the minor's counsel also filed an appellee brief. Because the State and Orlando's counsel present many of the same arguments, we will address the State's arguments and address any additional arguments made by Orlando's counsel as appropriate.

¶ 55 The Adoption Act expressly provides that it "shall be construed in concert with the Juvenile Court Act of 1987." 750 ILCS 50/2.1 (West 2008). The Juvenile Court Act (705 ILCS 405/2-29(2) (West 2008)), provides a bifurcated system in which parental rights can be terminated. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008). First, the State must show by clear and convincing evidence that the parent is unfit. *Id.* at 203. "A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act." *Id.* at 203-04. Then, the State must show that the best interests of the child are served by terminating the parental rights. *Id.* at 203. The trial court's decision to terminate parental rights involves factual findings and credibility assessments that the trial court is in the best position to make. *Id.* Thus, the trial court's finding of unfitness will not be disturbed unless it is contrary to the manifest weight of the evidence and the record clearly shows that the opposite result was proper. *Id.* Each case concerning parental unfitness requires a close analysis of its individual facts; consequently, factual comparisons to other cases by reviewing courts are of little value. *Id.* (citing *In re Daphnie*, 368 Ill. App. 3d 1052, 1064 (2006)).

¶ 56 A. Fitness

¶ 57 The Adoption Act states that a person shall be considered unfit to have a child under any of the grounds in section 1(D), including:

"(m) Failure by a parent (i) to make reasonable efforts to correct the

conditions that were the basis for the removal of the child from the parent, or (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court act of 1987 or dependent minor under Section 2-4 of the Act, or (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act." 750 ILCS 50/1 (D)(m) (West 2008).

Subsections (i) and (ii) are examined only in the context of the first nine months after adjudication of neglect, and subsection (iii) is examined in the context of any nine-month period following the end of the first nine months after the adjudication of neglect. *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004). Here, the applicable time periods are the initial nine-month period after Orlando was adjudged a ward of the court (September 2008 to June 2009), as well as the subsequent nine months (June 2009 to March 2010).

¶ 58 Reasonable efforts and reasonable progress are separate and distinct grounds for finding a parent unfit under section 1(D)(m) of the Adoption Act. *In re Daphnie*, 368 Ill. App. 3d at 1066. Reasonable efforts relate to the goal of correcting the conditions that caused the removal of the child from the parent, and they are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *Id.* at 1066-67 (citing *In re Allen*, 172 Ill. App.

3d 950, 956 (1988)). Respondent does not take issue with the trial court's finding that he failed to make reasonable efforts, but rather focuses on the finding by the trial court that he failed to make reasonable progress.

¶ 59 The Adoption Act does not define "progress." However, our supreme court has found that "progress" ordinarily denotes movement or advancement toward a goal. See *In re C.N.*, 196 Ill. 2d 181, 211 (2001). 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. *Daphnie*, 368 Ill. App. 3d at 1067 (citing *Allen*, 172 Ill. App. 3d at 956). Because the goal set forth in the statute is the return of the child, "[a]t a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *Id.* (citing *Allen*, 172 Ill. App. 3d at 956). The statute does not explain what steps are necessary to reach the goal of returning the child. "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." *Id.* (citing *In re 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." *Id.* (citing *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991)). The court will be able to order the child returned to parental custody in the near future because, at that point, the parent will have fully complied with the directives previously given to the parent in order to regain custody of the child. *L.L.S.*, 218 Ill. App. 3d at 461.

¶ 60 Respondent contends that he made reasonable progress by participating in the services he was asked to do, despite the fact that he did not complete those services. Respondent maintains that the only reason he was unable to complete services was because the agency required him to complete drug treatment first. Respondent relies on *In re Adoption of Syck*, 138 Ill. 2d 255 (1990), in support of his contentions, arguing that he showed more care and concern for Orlando than the respondent in *Syck* did for her child.

¶ 61 In *Syck*, the minor's mother was found to be unfit based on section 1(D)(b) of the Adoption Act, rather than section 1(D)(m), in that she failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare. In the case at bar, respondent was found to be unfit under section 1(D)(m), which focuses on the efforts and progress of the parent. Accordingly, we find *Syck* to be inapposite to the case at bar.

¶ 62 Rather, we find that the evidence offered at the fitness hearing, which is set forth in detail above, clearly and convincingly established that respondent failed to make reasonable progress during both the first nine months following adjudication of wardship, as well as the subsequent nine months. During the first nine months, respondent started a drug treatment outpatient program, but never finished it. He did not complete any of his other services because he was required to complete the drug treatment first. Respondent was given random drug tests but was rated "unsatisfactory" in terms of whether he was drug-free. Respondent did not read any materials that were given to him regarding Orlando's Down syndrome. Respondent lived with his mother in a home where there was not enough room for a child. Respondent missed all of his visits with Orlando in January and February 2009, and half of his visits in March 2009. He

missed all of his visits in April and May 2009. He only missed one visit in June 2009, but during one of the June visits, respondent smelled of alcohol and said he had been drinking the night before. He was sleeping when Miller arrived at the office. During this visit respondent also became angry and yelled at Miller, which caused Miller to take Orlando out of the room.

¶ 63 During the subsequent nine months, there is some suggestion that respondent maintained a level of sobriety, but random drug-testing is only one factor in becoming drug free and he was not tested on 15 separate occasions. Moreover, he still did not complete his drug treatment. He was living with his mother at times and his girlfriend at other times, and he remained unemployed.

¶ 64 Respondent was scheduled for five visits in July 2009, but he only attended one. During visits, Miller had to prompt respondent to look out for Orlando's safety and she worried about respondent's overall engagement with Orlando, because he would just watch Orlando play instead of interacting with him.

¶ 65 In August 2009, the goal changed from returning Orlando home to finding substitute care, and thus visits were reduced to once a month. Respondent missed the September 2009 visit, and failed to confirm both the October and November 2009 visits. He visited Orlando in December 2009, at which point he re-enrolled in the drug treatment program at South Suburban. However, respondent continually missed group sessions and his attendance was "extremely poor," according to a group progress report from South Suburban Council. Respondent again failed to confirm his visit in January of 2010. He made it to both the February 2010 and the March 2010 visit, but he was on his cell phone during the March visit and only somewhat engaged with

Orlando.

¶ 66 When we consider the totality of the evidence, we cannot say that the little progress respondent made in attempting to comply with his service plan was sufficient. Over the course of almost two years, respondent was unable to comply with the required drug treatment plan. He therefore was unable to complete any of the services recommended for him. In addition to not completing any of the services in his plan, respondent missed the majority of his scheduled visits with Orlando, displayed concerning behavior during some of his visits, and did not have a home for Orlando. He did not show an understanding of Orlando's special needs as a child with Down syndrome, and he did not have a job to support Orlando. What little progress that was shown, while certainly not nothing, was simply not sufficient to allow the court to conclude that Orlando could be returned to respondent's custody in the near future. See *Daphnie*, 368 Ill. App. 3d at 1067 (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." (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991))). Accordingly, we cannot say that the trial court's ruling of unfitness as to section 1(D)(m) of the Adoption Act was against the manifest weight of the evidence.

¶ 67

B. Best Interests

¶ 68 Respondent's second contention on appeal is that the trial court's finding that it was in the best interest of Orlando to remain with his foster parents was against the manifest weight of the evidence.

¶ 69 Following a finding that a parent is unfit, the focus then shifts to the child. The issue is no longer whether parental rights can be terminated, but whether, in light of the child's needs,

parental rights should be terminated. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State must show by a preponderance of the evidence that it is in the best interests of the minor that parental rights be terminated. *Id.* at 366. The trial court's determination in this respect lies within its sound discretion, especially when it considers the credibility of testimony presented at the best interest hearing. *In re Joshua K.*, 947 N.E. 2d 280, 292 (2010). A finding that termination is in the child's best interest will not be disturbed unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883 (2010) (citing *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52 (2008)). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004).

¶ 70 In making a best-interests determination, the court is required to consider the factors listed in section 1-3(4.05) of the Juvenile Court Act: the child's physical safety and welfare, including food, shelter, health, and clothing; the child's background and ties, including familial, cultural, and religious; the child's sense of attachments, including the child's sense of security and familiarity, and the least disruptive placement alternative for the child; the child's need for permanence, including his need for stability and continuity with parental figures and other relatives; the risks related to substitute care; and the preferences of the person available to care for the child. *In re Anaya J.G.*, 403 Ill. App. 3d at 883; 705 ILCS 405/1-3(4.05) (West 2010).

¶ 71 Additionally, a court may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004).

¶ 72 Respondent contends that the trial court's finding that it was in Orlando's best interest to

terminate parental rights was against the manifest weight of the evidence because he completed the drug treatment in January 2011, he engaged in parenting classes, he has been visiting with Orlando regularly two times a month since April 2011, and King had seen some improvement in respondent's visits with Orlando. We note that these factors focus on the respondent, but the applicable statutory factors to be considered are focused on the minor. While respondent seems to have made some changes in his life recently, the evidence in relation to the statutory factors shows that the trial court's decision to terminate respondent's parental rights as to Orlando was not contrary to the manifest weight of the evidence.

¶ 73 Evidence presented at the hearing revealed that Orlando was happy; was in a stable, appropriate, safe home; and had bonded with his foster parents and their relatives. Gross, Orlando's foster parent, testified that she loved Orlando and wished to adopt him. Gross worked on sign language with Orlando, took him to appointments, monitored his eating habits, took him to church, listened to music with Orlando, and worked on numbers and the alphabet. Orlando had a good relationship with Gross' husband, her daughter, her son-in-law, and her grandchildren, whom Gross babysat often. Gross had a comprehensive grasp on Orlando's needs as a child with Down syndrome. Orlando's foster parents were able to redirect him often when he got upset and he liked to be around them.

¶ 74 On the contrary, at the time of trial, respondent's living situation remained unstable, he was still unemployed, and he did not have a complete grasp on Orlando's needs as a child with Down syndrome. By respondent's own admission, he was unable to properly care for Orlando and could benefit from more parenting classes.

¶ 75 Moreover, we note that it is not in any child's best interest to "remain in limbo for an extended period of time." *In re D.L.*, 191 Ill. 2d 1, 13 (2000). Accordingly, it is not in the best interest of Orlando, who has now been in foster care with the same family for several years, to wait and see if respondent will be able to provide for him one day, and we find that the trial court's finding was not against the manifest weight of the evidence.

¶ 76

III. CONCLUSION

¶ 77 For the foregoing reasons, we find that it was not against the manifest weight of the evidence for the trial court to find that respondent was unfit, and that it was in the best interests of Orlando to terminate parental rights.

¶ 78 Affirmed.