

2012 IL App (2d) 111143-U
Nos. 2-11-1143 & 2-11-1144 cons.
Order filed March 23, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re Darnae K., a Minor) Appeal from the Circuit Court
) of Lake County.
)
) No. 10-JA-120
)
(The People of the State of Illinois, Petitioner-) Honorable
Appellee, v. Sonia M. and Darnell K.,) Valerie Boettle-Ceckowski,
Respondents-Appellants).) Judge, Presiding.

In re Nasir K., a Minor) Appeal from the Circuit Court
) of Lake County.
)
) No. 10-JA-121
)
(The People of the State of Illinois, Petitioner-) Honorable
Appellee, v. Sonia M. and Darnell K.,) Valerie Boettle-Ceckowski,
Respondents-Appellants).) Judge, Presiding.

In re Amir K., a Minor) Appeal from the Circuit Court
) of Lake County.
)
) No. 10-JA-122
)
(The People of the State of Illinois, Petitioner-) Honorable
Appellee, v. Sonia M. and Darnell K.,) Valerie Boettle-Ceckowski,
Respondents-Appellants).) Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court did not err in terminating respondents' parental rights to their three children.

¶ 1 Respondents, Sonia M. and Darnell K., individually appeal from the trial court's orders terminating their parental rights to their children Darnae K., Nasir K., and Amir K. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Respondents were married at the time of the children's birth and throughout the proceedings at issue. Amir was born on January 28, 2001; Darnae was born on September 9, 2003; and Nasir was born on December 1, 2004. The children were adjudicated neglected on January 26, 2009. They were adjudicated wards of the court on April 20, 2009, with guardianship given to the Department of Children and Family Services (DCFS).

¶ 4 The State filed petitions to terminate parental rights on September 8, 2010. The petitions collectively alleged unfitness based on: (a) abandonment (Sonia only); (b) failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare; (c) deserting the children for more than three months immediately preceding the commencement of the adoption proceeding (Sonia only); (d) failure to make reasonable efforts to correct the conditions that were the basis of removal; (e) failure to make reasonable progress toward the return of the children within nine months after the children were adjudicated neglected; (f) failure to make reasonable progress toward the return of the children during any nine month period after the nine month period following the adjudication of neglect; (g) failure to visit the children for 12 months; (h) failure to communicate with the children or agency for 12 months, even though able to do so; and (i) failure to maintain

contact with the children or plan for their future for a 12-month period although physically able to do so.

¶ 5 Hearings on the issue of fitness took place on March 3, April 14, May 23, and June 1, 2011. The State entered copies of several orders into evidence. An October 26, 2007, temporary custody order found that probable cause existed that the minors were neglected. The order stated that the children were found shivering in a home deemed to be uninhabitable, with no heat or electricity, and relying on warmth by a candle. The order further found that there was no immediate and urgent necessity to remove the children, and the minors were released to Sonia. A January 15, 2008, temporary custody order found that there was probable cause to believe that the children were neglected. The order stated that Sonia had abandoned the children because she left them at a neighbor's house, which was a known drug house, and did not return after the two-hour period she had indicated. Instead, she was found the next night at a hospital, intoxicated. While Sonia was gone, she also failed to meet her caseworker for a drug test as required by court order. The January 2008 order further found that immediate and urgent necessity existed to remove the children, and that it was in their best interests to be placed in shelter care. On April 3, 2008, Sonia was court-ordered to cooperate with random urinalysis, have a substance abuse evaluation and follow all recommendations, provide written verification of any employment, obtain stable housing and income, and take parenting classes. Sonia admitted neglect of the children according to a July 24, 2008, interim order, which had similar requirements of her to regain custody of the children.

¶ 6 Peter Sajovec, the foster care caseworker formerly assigned to the case, provided the following testimony. He worked for Arden Shore Child and Family Services. He was first assigned to the case in January 2008, after the temporary custody hearing, and remained the caseworker until

April 2010. When the children initially came into care, they were placed for 7 to 10 days with Lilly M., Sonia's grandmother. In February 2008, they were placed with Sharon F., Darnell's mother, where they remained until August 2008. That month, Sharon called the agency and said that she had taken the minors to visit Lilly's home and decided that she was not going to pick them up. The children stayed with Lilly until May 2009. Sonia was living with the children at Lilly's home from August 2008 until February or March 2009. The children were in traditional foster care from May until August 2009, and they were in a different foster care home from August 2009 on.

¶ 7 The goal at the time of the July 2008 order was to return the children home to Sonia, even though there had not been a formal adjudication yet. Darnell's whereabouts were unknown at the time. A "diligent search" was done by speaking with the family, checking with public aid, going through "the file," and submitting any information to the "diligent search center." Sharon was not able to provide an address for Darnell, but he was unofficially visiting the children at the time. Sharon told Sajovec that Darnell told her that he had no intention of cooperating with DCFS. Darnell first phoned Sajovec around the end of June 2008 and asked for a meeting to discuss the case, but he cancelled that meeting as well as a rescheduled meeting, allegedly due to transportation issues. Sajovec later learned that Darnell was arrested the day of the scheduled meeting. The agency began sending letters to the address he provided to the police department, which was one of the addresses it already had in the file. Sajovec sent a case plan there, but it came back unclaimed. Darnell also contacted Sajovec by phone in October 2008. Darnell set up a meeting but then called and cancelled it.

¶ 8 Sajovec testified that the initial service plan was done in February 2008. He completed an annual case review on January 20, 2009, which covered July 2008 to January 2009. Darnell was to

make his whereabouts known, participate in the case, and submit to a social history investigation. He did none of those things and was rated unsatisfactory for that time period. Sajovec mailed the review to Darnell to the addresses the agency had discovered through the diligent search process, but it was not signed for. Sonia was to deal with drug issues, specifically submit to drug testing, cooperate with a substance abuse evaluation, and refrain from using drugs and alcohol. She was rated satisfactory for submitting to drug testing and a drug evaluation. However, she was rated unsatisfactory for the goal of refraining from abusing drugs and for her overall rating for addressing substance abuse problems, because she still tested positive for drugs and gave birth to a drug-exposed infant. Sonia was rated unsatisfactory on parenting skills because she did not begin parenting education classes, and she was rated unsatisfactory on the goal of stable housing and a legal means of income. She was rated satisfactory on the goal of cooperating with the agency and keeping in contact. Sonia had almost daily contact with the kids during this time because she was living with them at Lilly's home.

¶ 9 The State entered into evidence a January 26, 2009, trial court order that adjudicated the children neglected. The order stated that Sonia admitted neglect for leaving them unaccompanied for several hours in "occupancy prohibited" housing that lacked utilities and heat. The order stated that Darnell had been served by publication, and an order of default was entered on February 21, 2008. The January 2009 order required respondents to cooperate with DCFS, and it further required Sonia to refrain from drugs, submit to a drug assessment, submit to and pass random drug testing, notify DCFS within 24 hours of any change in residency, and provide proof of stable housing and income. The matter was continued to April 20, 2009, for ruling and disposition, at which time the trial court gave guardianship to DCFS. Respondents were ordered to meet requirements similar to

those in the previous court order. A permanency order entered the same day stated that: the previously-selected goal of return home could not be immediately achieved because respondents were not cooperating with services; it was in the minors' best interest that the goal stay return home within 12 months; the parents' whereabouts were unknown at the time; and they both needed to engage in services. Sajovec did not know for sure whether Sonia received a copy of the April 2009 order, but it would have been customary to mail it to her. Sajovec created an undated service plan based on the ruling, but he did not have a reliable address for Sonia at the time. He personally gave it to her when he met with her in September 2009.

¶ 10 Sajovec testified that he conducted a second case review in July 2009 which covered January through July 2009. Sonia was rated unsatisfactory for not cooperating with mental health services because she participated in a program for only about 1 or 1½ months. She was rated unsatisfactory for drug testing and treatment because she only briefly attended a drug treatment program. She was also rated unsatisfactory for not participating in parenting classes and not providing proof of stable housing and income. During this time, Sonia did not attend court hearings, and her whereabouts were unknown after her grandmother asked her to move out of the house in February or March 2009. Visitation was scheduled to be weekly, but Sonia did not visit more than twice a month; some months she did not visit at all. Sajovec did learn that Sonia was hospitalized in May 2009. Darnell was to comply with the same goals as the prior report, and he was rated unsatisfactory. Sajovec did not recall any contact with him during this time. The agency conducted a diligent search in January 2009 and sent registered mail to all of the addresses that were discovered. Darnell was arrested in February 2009 for a domestic battery, and mail was sent to the address he provided to the police. The agency typically sent service plans through both certified mail and regular mail, and the July

2009 plan sent through certified mail was returned without signature. Sajovec did not know if Darnell had any contact with the children during the six-month period, but the kids spent a few weekends with Darnell's mom, and he may have had unofficial contact there.

¶ 11 On October 19, 2009, there was a permanency hearing at which the goal was changed to substitute care pending court determination on the termination of parental rights. The order stated that the parents were not engaged in services, the children needed permanency, and they had been in placement for over two years.

¶ 12 Sajovec conducted a third case review in January 2010, covering July 2009 to January 2010. Darnell was still not "participating" during this time and not visiting the children, and he was rated unsatisfactory for his goals. Darnell did not officially visit the children between January 2008 and December 2009 and did not send any cards or gifts for the children. After the October 2009 order was entered, Darnell contacted Sajovec and stated that he wanted to cooperate and have the kids returned to his home. He provided a Peoria P.O. box in addition "to his normal address." Sajovec sent him a copy of the service plan but did not make referrals to specific services because Darnell still needed to have an integrated assessment and social history evaluation.

¶ 13 Sajovec did not know where Sonia was residing during the entire six months covered by the January 2010 case review, but there "were periods" where she provided an address. Sonia was rated unsatisfactory for the goals of cooperating with mental health providers, drug and alcohol treatment, and taking parenting classes. She also did not provide proof of stable housing and legal income during this period. Sonia did not visit the children from August 2009 to April 2010. Sajovec had met with Sonia and personally given her each service plan involved at some point after the plan review.

¶ 14 The State entered into evidence the trial court's April 12, 2010, order again finding that the appropriate goal was substitute care pending court determination of termination of parental rights. The reasons listed for the goal was that the minors needed permanency, Sonia had not made progress on tasks and services, and Darnell was engaged in services but had no contact for the first two years of the case.

¶ 15 Amy Friedland testified as follows. She took over the minors' foster care case from Sajovec on April 30, 2010. She first met with Sonia on May 17, 2010, at the NICASA office where Sonia was receiving outpatient substance abuse treatment. Friedland conducted a case review in July 2010 covering January to July 2010. Sonia was rated satisfactory for submitting to random drug testing and refraining from abusing alcohol and drugs. She began participating in the NICASA substance abuse program in April 2010 and had negative random drug tests in May and June. However, she was rated unsatisfactory overall in the category of drug treatment because she was discharged from the program due to an unexcused absence; she was put on an attendance contract for missing multiple days, and the contract stated that if she had another unexcused absence, she would be discharged. The program allowed her to re-engage with services within 30 days of the discharge date, though that would have been outside the case review period. Friedland testified that even if Sonia was still involved in the program during the entire six months, she would have been marked unsatisfactory because the plan required completion of the program. Sonia was also rated unsatisfactory in the categories of: establishing adequate housing, employment, and income; demonstrating an understanding of her children's special needs; engaging and completing a parenting program; attending court hearings and maintaining contact with the agency; and mental health treatment. Sonia said that she had a job as a secretary but would not provide employment

information, and she refused to sign a release of medical information. She began visiting the children again in May 2010, about once per week.

¶ 16 Darnell began visiting the children in February 2010. Friedland first had contact with Darnell in May 2010 when he was in the office visiting the kids. Friedland completed an integrative assessment on him and made recommendations that he complete domestic violence services, establish a safe and stable home for the children, and establish a legal means of income. He was living in Peoria at that time, reportedly with friends, and was in school and not employed. Darnell was rated satisfactory for completing the assessment. Respondents signed and received copies of the July 2010 service plan; parents were given the case plan so that they knew what they were supposed to be doing.

¶ 17 Friedland testified that during the permanency hearings, the trial court highly suggested that Darnell relocate to the Chicago area to further the reunification with his family, but he chose to stay in Peoria. Darnell had told her that if he relocated to the Chicago area, he would move in with his mother. Darnell began a domestic violence program prior to July 2010, completed a substance abuse assessment prior to September 2010, with no recommendations for treatment, and signed all necessary releases for information. He began working part-time at McDonald's at the end of August 2010. Friedland observed some of Darnell's visits with the children, and he acted appropriately. He was responsible for his own transportation from Peoria. Sometimes he had friends drive him, and sometimes he took the bus.

¶ 18 Darnell provided the following testimony. He was still married to Sonia, but they were separated. His understanding about the reason for the children's initial removal was because the lights were shut off, and they were homeless. He was living with Sonia and the children at the time

the children were removed; he was going to pick Sonia up from the store. He was later told by Sonia that they were taken to her grandmother's house, and then he learned that they went to his mother's house. During this time, no one from Arden Shores contacted him or sent him letters. Darnell believed that both relatives' homes were safe placements for the kids. In 2008, he "always for the most part kept a phone to keep in touch" with his mother and Sonia. He visited the children once or twice of week while they were living with his mother; he was living in Waukegan at the time. Darnell also visited the children when they returned to live with Lilly and spoke to them on the phone often.

¶ 19 Darnell spoke to Sajovec once in 2008. His mother told him that the kids were placed in unrelated foster care in 2009, and he called Sajovec in October 2009. He did not visit the kids between May 2009 and February 2010. When asked why he did not call Sajovec prior to October 2009, Darnell replied:

"I was unstable, homeless, sleeping on friends' floors and couches at the time. My marriage was failing, I was pretty depressed, *** a lot of that time seemed cloudy, I was going through a rough time you know and I thought they were at their grandparents. I thought they were fine until I got myself together, you know, but it was pretty rough at the time."

Darnell believed that the children were okay because they were with their grandparents, and he contacted Sajovec when he found out that they were placed in unrelated foster care. Sajovec never told him that if he did not participate, he would risk losing his parental rights.

¶ 20 Darnell knew that Sonia had attended court hearings after the children's removal. He thought that she was "taking care of it." He did not think that he needed to attend the hearings because he

did not “know how the system worked at the time.” Darnell did not know that there was a case worker assigned to the case when the children were living with Lilly and his mother, though he knew that they were in the DCFS system and had people checking on them. When he talked to Sajovec in 2008, Sajovec introduced himself as the case worker, but Darnell did not “understand the weight of the situation” and thought that the kids were fine because they were with family. He visited the children every chance that he could; he did not know he needed to contact the case worker for visitation. Darnell thought Sonia “would take care of it and get the kids back,” and if she did not, one of the grandparents would. He was “not in the right mind at the time,” though he did not seek mental health treatment. When the kids were with Lilly and his mother, he knew that his mother was having contact with Arden Shore. His mother maintained contact with Arden Shore, and he maintained contact with his mother.

¶ 21 Darnell moved to Peoria in 2009. He first appeared in court on January 25, 2010. He began visiting the kids through Arden Shore in February 2010. He would visit twice a month. Darnell had to provide his own transportation, which cost about \$100 round trip, and he got a job at McDonald’s just to cover those costs. Arden Shore never offered assistance with transportation. Once he spoke to Sajovec and did the assessment, he received a service plan. He completed a substance abuse assessment in March 2010, and he started domestic violence classes, which he had to personally pay for, in April 2010. He was in school in Peoria and also had been diligently searching for employment. He was employed as a telemarketer before the kids were removed and also did some telemarketing in Peoria. Darnell never provided proof of employment to Sajovec, but he was never asked to.

¶ 22 Sharon testified that the children were placed in her care from January 15, 2008, to August 13, 2008. Darnell visited the children more than four or five times when they were with her. She always had a phone number to reach Darnell but did not always have an address to reach him. Arden Shore never asked for Darnell's number. The children were moved from her house to Lilly's because Sajovec said that Sonia preferred that. Sharon was "puzzled" but was all right with the move because the children would be with family, and Sonia could see them more often. Sharon called Arden Shore several times when she found out that the children were placed in unrelated foster care, but Sajovec did not call back. Sharon told Darnell, and he contacted Sajovec around August 2008, but Sajovec did not initially return Darnell's call, either. Sharon had two visits with the children in their first foster placement. Darnell did not attend those visits, but he visited the children when they were with the second foster family.

¶ 23 The trial court issued its oral ruling as to fitness on July 12, 2011, finding respondents unfit based on clear and convincing evidence proving allegations (b), (d), (e), (f), and (i). It found that the State did not meet its burden on allegations (a), (c), (g), and (h). The trial court entered a written order to this effect on July 26, 2011.

¶ 24 The trial court conducted best interests hearings on August 17, August 24, and September 14, 2011. Friedland testified as follows. Nasir was six, Darnae was seven, and Amir was 10. She visited them one to two times per month in their foster home. They lived with the foster parents, the foster parents' adult daughter, and another foster child. The foster parents were Caucasian and the children were African-American. The family lived in a single family home in a middle class neighborhood. Darnae had special needs educationally and emotionally, and the foster parents adequately addressed her needs. The children had bowel and urine problems, which they had before

arriving, and that issue was being dealt with. The kids were doing well in school and were appropriately groomed and dressed when she saw them. The children called the foster parents “Mom” and “Dad” and were bonded to them. The foster parents had expressed a desire to adopt the children, and they were willing to keep communication open with the biological family. The children were willing to be adopted in the foster home. Respondents were not in a position to resume parental responsibilities and provide a home for the kids because they were still working on services. They visited once per month but did not send cards, letters, or gifts between visits. Friedland opined that it was in the minors’ best interests to be adopted.

¶ 25 Friedland testified that Darnell had recently been incarcerated, but the charges were dropped, and he had a new job. She agreed that Darnell had requested more visits with the children, and she had denied his requests. She also agreed that Darnell had maintained a strong desire to be reunited with the children since he became involved in the case. His interaction with the children was appropriate, and they were loving and affectionate towards each other. Sharon had stated that she was willing to have guardianship of the children, but the agency decided against that because they had been removed from her home, and she had been inappropriate with them during visits. Friedland agreed that in her July 2010 report, she wrote that Amir had expressed that he would like to be adopted but at the same time feared that he would lose his biological family. The report also said that Darnae and Nasir would cry when parental visits were cancelled. Friedland testified that part of that reaction may have been due to the children’s expectations of their routine, as Darnae had asked if she could still come to the agency anyway.

¶ 26 Sonia had expressed concerns about the kids’ hair and skin being taken care of properly, and the foster family had taken the kids to an African-American barber and had African American friends

who were willing to help. After the parental rights termination process began, Sonia said that she wanted her sister to have custody of the children. However, the sister had been contacted before the kids were placed in traditional care, and she had said that she did not want them.

¶ 27 Ronald Lee, the court appointed special advocate, had visited the children in the foster home many times over a 1½-year period. The children were taken care of and bonded to the foster parents, and they considered the foster parents' house their home. He believed that it was in the children's best interests to maintain contact with Darnell, but he also believed that it was in their best interests that respondents' rights be terminated and the children be adopted. Lee agreed that he had not observed the children interacting with Darnell.

¶ 28 Frank Wagner, a clinical social worker, testified that he had been hired by Arden Shore as a therapist for the children since November 2009. The initial permanency goal was return home, so he tried to help the children deal with the temporary placement and the foster parents deal with behavioral problems and "transitions" that would be expected coming out of an experience of being neglected. When the permanency goal was changed, he addressed issues related to ongoing permanency and possible termination of parental rights. He met with the family every two weeks for an hour and had done about 60 sessions total. In each session, he would spend part of the time with just the children. The foster parents were appropriately addressing Darnae's developmental delay and the children's bed wetting issues. The foster family was willing to adopt the children, and the children were willing to be adopted. The children were bonded to the foster parents and generally called them Mom and Dad. Wagner did not think race was an issue, and minor hygiene and skin issues had been addressed.

¶ 29 Wagner had met Darnell a few times and had observed a supervised visit with him in February 2010. Darnell acted appropriately during the visit. The children were happy to see him, and they were sad to leave when the visit was over. Wagner believed that the children were bonded to Darnell but did not see evidence of bonding to Sonia. He did not meet with Sonia and thought it could be helpful but was not necessary. The children had expressed that they would like to be with Darnell “if that were appropriate” but also recognized that there were a number of reasons that it was “unlikely and perhaps untenable,” in that they had an understanding that Darnell was “not prepared or qualified at this time to have the children placed with him.” The foster parents expressed a general willingness to have the children maintain contact with their biological family, and Wagner thought it would be helpful for the kids to maintain some contact with Darnell. Wagner believed that it was in the children’s best interests to achieve permanency as soon as possible, have parental rights terminated, and be adopted by their foster parents. Wagner also opined that removing the children from their foster parents’ home would be detrimental to them.

¶ 30 Darnell testified that he started working full-time on June 21 as a customer service representative. He had previously been taking college courses, but he took a semester off to work. He had received a welder operator’s license and a forklift operator’s license. He had monthly visits with the children, and the agency had denied his requests for more visits. The children loved him and expressed a desire to live with him. He believed that Nasir was more aggressive now and Darnae had temper tantrums because they were not returned to him. Darnell believed that if the children were not allowed to be with him or his family, it would be an irreplaceable void in their lives because he had a bond with them since their births. He believed that the foster parents were too old to take care of three young children, and he felt that the kids were not getting the love and

attention they needed. The boys had confided to him that the foster father had screamed at them and hurt their feelings. Darnell was also concerned that the kids' skin and hair were not being taken care of, and they had come to visits with clothes that were too small and holes in their shoes. More than once, Nasir arrived with feces in his pants and no change of underwear.

¶ 31 Darnell testified that if the children were returned to him, they would temporarily live with him at his sister's home in Bloomington. He would then find his own apartment or house. His sister would help him care for the children, and his mother would move down to Bloomington as well to assist. Darnell believed that his rights should not be terminated because the children should know their family and have contact with extended family. He loved his children and felt that throughout the process, he had grown and was a lot more responsible. Darnell believed that it was in his children's best interests to achieve permanency as soon as possible, but he believed that it should be with him and his family.

¶ 32 Sharon testified that she planned to move to Bloomington in October to assist Darnell in taking care of the children. She had a bond with the children, and the children adored Darnell. The children were happy to see him at the beginning of the visits and would cry at the end of the visits. Sharon identified pictures she took of the children and Darnell during visits, and they were admitted into evidence. The children always asked when they would be going home to their biological family.

¶ 33 Lakeia K., Darnell's sister, testified that she lived in Bloomington with her two children. She last saw Darnell's children in 2009 during one of Darnell's visits. The children and Darnell were affectionate and loving towards each other. Lakeia was willing to have Darnell and the children move in with her family.

¶ 34 Dr. Valerie Bouchard testified that she was a licensed clinical psychologist and examined Darnae in January 2011. She reviewed documents, talked with the foster father for about 45 minutes, and met with Darnae for about two hours. Darnae did not express overt love for her parents but expressed concern about how they were. Bouchard believed that Darnae had been extremely traumatized due to early life experiences and needed a permanent place where she knew that she belonged and could stay. Bouchard did not have an opinion about whom Darnae should be placed with because she had not evaluated all of the people involved.

¶ 35 At the commencement of the September 14 hearing, Sonia asked for a continuance in order to call as witnesses the three children as well as her two teenage children. The State objected on the basis that Sonia could have previously subpoenaed them, it was not in the minors' best interests to testify, and the older children's testimony might not be relevant. Sonia indicated through her attorney that the teenagers were present at the last three visits and could testify about the children wanting to return to Sonia. The guardian *ad litem* stated that Sonia was present at those visits and could testify regarding the conversations. She also objected on the basis of untimeliness and further stated that it was not in the minors' best interests to testify based on their ages, the fact that they were in therapy, and some of their special needs. The trial court found that it was in the minors' best interests not to testify, and they had a guardian *ad litem* who had talked to them. The trial court also clarified with the guardian *ad litem* that if the children had wished to speak to the court, the guardian *ad litem* would have already mentioned it. The trial court stated that it would not grant a continuance for the teenagers to testify because Sonia could testify as to what was said.

¶ 36 Sonia testified that she currently worked five days per week for the Department of Human Services, as a personal assistant for the Department of Brain and Stroke Injury. She had been

employed there since December 31. Since August 1, she had been living in a four-bedroom home with her 15- and 16-year-old children. Sonia felt like Sajovec was much more involved in the case than Friedland, and she and Friedland did not get along. Sonia had a close bond with her children, and they called her “Mom.” She felt that the foster parents were not meeting the children’s needs regarding their skin and hair, and the children still had bathroom issues. Darnae was supposed to wear her glasses every day, but she was only wearing them on one visit. The children were bonded to her teenage children because they all lived together at Lilly’s house, and the teenagers attended visits. At every visit, the children said that they wanted to be returned to her and did not want to be adopted. Sonia gave letters to her grandmother to give to the children, because her grandmother had a relationship with the foster mother. She had also provided the children with many gifts. Sonia testified that she had only missed one visit in the past 3½ years, and the others she had “rescheduled.”

¶ 37 The trial court issued its oral ruling on October 12, 2011, stating as follows. The children had been in care since January 2008 and in their current placement for over two years. Neither parent was currently able to provide for them. Sonia had been inconsistent with her visits throughout the case, and while the children knew who she was, they had little or no bond with her. “The more difficult decision” was Darnell. He was missing from the children’s lives for a substantial period of time while they were in foster care but had, over the past year, reestablished a loving and caring relationship with them. The caseworker, therapist, and psychologist all stated that permanency was in the children’s best interests, and that permanency should be sooner rather than later. Darnell also stated that they needed permanency. The children were bonded to their foster parents, who had been providing for their needs and caring for them in a structured and loving manner. The children

considered them their parents, or at least their second set of parents, and considered the foster home their home. Although there were race differences, the foster parents showed a commitment to learn about the children's special care and needs and educate them about their heritage. The children could not linger in foster care while their parents continued to try to work on a case plan and services in an attempt to stabilize their lives so that they could finally provide for the children in a safe environment. The children's best interests and permanency needs outweighed the parents' needs, and it was in their best interests that respondents' rights be terminated. The trial court entered a written order to this effect on October 13, 2011, and respondents timely appealed.

¶ 38

II. ANALYSIS

¶ 39 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2010)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2010)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). *Id.* If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008). During the best interest hearing, the State must establish, by a preponderance of the evidence, that it is in the child's best interests to terminate the relationship with his or her parent. *Id.* at 698.

¶ 40

A. Fitness

¶ 41 The trial court found respondents unfit based on what we have labeled as allegations: (b) a failure to maintain a reasonable degree of interest, concern, or responsibility as to the children (see 750 ILCS 50/1(D)(b) (West 2010)); (d) a failure to make reasonable efforts to correct the conditions

that were the basis for removal of the children (see 750 ILCS 50/1(D)(m)(I) (West 2010)); (e) a failure to make reasonable progress toward the return of the children within nine months after the children were adjudicated neglected minors (see 750 ILCS 50/1(D)(m)(ii) (West 2010)); (f) a failure to make reasonable progress toward the return of the children during any nine month period after the end of the initial nine month period following the adjudication of neglect (see 750 ILCS 50/1(D)(m)(iii) (West 2010)); and (i) a failure to maintain contact with and plan for the future of the children although physically able to do so (see 750 ILCS 50/1(D)(n)(iii) (West 2010)). A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009). We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the ruling is unreasonable, arbitrary, or not based on the evidence. *In re B.B.*, 386 Ill. App. 3d 686 at 697-98.

¶ 42 We first address allegation (d), that respondents failed to make reasonable efforts to correct the conditions that were the basis for removal. See 750 ILCS 50/1(D)(m)(i) (West 2010). The evaluation period for this subsection is the nine months after the children were adjudicated neglected, and not when the trial court enters the dispositional order. *In re D.F.*, 208 Ill. 2d 223, 243 (2003). We may not consider evidence of a parent's efforts outside of this nine-month period. *In re Haley D.*, 2011 IL 110886, ¶ 88. In determining whether a parent is unfit under subsection 1(D)(m)(i), the trial court looks at the amount of effort that was subjectively reasonable for the parent whose rights are at stake. *In re Gwynne P.*, 346 Ill. App. 3d 584, 596 (2004). Reasonable efforts pertain to the goal of correcting the conditions that were the basis for removing the child from the parent, and

“[p]arental deficiencies collateral to the conditions that were the basis for the child’s removal, even if serious enough to prevent the return of the child, are outside the scope of this inquiry and are therefore not relevant.” *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000).

¶ 43 Respondents argue that the trial court’s findings of unfitness on this ground as well as under allegation (e) are against the manifest weight of the evidence. Sonia argues that she was not present at the January 26, 2009, hearing, and Sajovec could not recall if copies of the orders entered that day were sent to her. Sonia argues that, more importantly, the very essence of the ratings system of a service plan requires a participant to know what she is being rated on, and Sajovec testified that he did not give her a copy of the service plan until June 2009, which was only one month before the next evaluation report. Sonia contends that despite this, she substantially complied with requirements because, during this period, she did not refuse testing or test positive for drugs and spent three to four months involved with substance abuse treatment. Further, she participated in “groups” and cooperated with the case worker.

¶ 44 Darnell argues that he did not receive notice and was not present at the two temporary custody hearings, and the trial court entered a default order in February 2008 for failure to appear after service by publication. He argues that there was no diligent inquiry into his whereabouts considering that the children stayed with his mother for a period of time, and Sajovec knew that he was visiting the children there. Darnell also argues that the reason for removal of the minors was never attributed to him, and the State alleged and provided exhibits that the minors came into care because Sonia left them unaccompanied in a home lacking proper heat and electricity. Darnell argues that even otherwise, he substantially complied with the tasks requested of him before the filing of the petition to terminate parental rights, in that he completed a substance abuse evaluation

with no recommendation for further treatment, completed domestic violence abuse treatment, was employed, acted appropriately during visits, and requested additional visits.

¶ 45 Here, the adjudication order was entered on January 26, 2009, so the period in question is from that date until October 26, 2009. The January 2009 order found neglect based on Sonia leaving the children alone for several hours on October 24, 2007, in an “occupancy prohibited” house that lacked utilities and heat. The children were initially removed in January 2008 based on Sonia’s abandoning the children by leaving them at a neighbor’s house and not returning; Sonia was found the next night at a hospital, intoxicated.

¶ 46 Sonia cites Sajovec’s testimony in support of her argument that she was not present at the January 26, 2009, hearing, but he actually testified that he had no independent recollection of whether she was there. In fact, the January 26, 2009, order indicates that she was present. The order required Sonia to refrain from drugs, submit to a drug assessment, submit to and pass random drug testing, notify DCFS within 24 hours of any change in residency, and provide proof of stable housing and income. Sonia had been ordered to follow almost identical requirements in April and July 2008 orders, as well as in 2008 service plans, so her argument that she was unaware of what was required of her to regain custody of the children is without merit. Certainly, Sonia would have also known the reasons why the children were removed.

¶ 47 The evidence showed that Sonia was living with the children and her grandmother from January 2009 until February or March 2009, when her grandmother asked her to leave. Sajovec did not even know where she was living from the time she left her grandmother’s house until July 2009, and even after that she did not have a stable address; Sajovec testified that there “were periods” from July 2009 to January 2010 where she provided an address. During January to October 2009, Sonia

did not provide proof of a stable income. Sajovec rated Sonia unsatisfactory for the goal of drug treatment in the July 2009 case review because she was not involved in treatment from February through mid-May 2009 and in July 2009. Although Sonia argues that she did not test positive for drugs during the relevant period, the July 2009 case review states that Sonia's "whereabouts were unknown for a significant period of time[,] making random testing impossible." The January 2010 service plan covering the previous six months also rated Sonia unsatisfactory on the goal of drug treatment, stating that she was briefly involved with a drug program in the summer of 2009 but then dropped out of the program. Sajovec did testify that he learned that Sonia was hospitalized in May 2009, but the evidence also showed that she would not sign consents to release her medical information, so the cause, duration, and impact of this hospitalization remains unknown. In light of the evidence that Sonia did not have stable housing from February or March 2009 to October 2009, did not have a stable income during this period, and participated in drug treatment for a short time before dropping out, the trial court's finding that she failed to make reasonable efforts to correct the conditions that were the basis for removal within nine months after the children were adjudicated neglected is not against the manifest weight of the evidence.

¶ 48 Regarding Darnell, his argument that the State did not make reasonable efforts to locate him is not persuasive given that he was admittedly living with the children when they were removed, knew that they were in DCFS care, knew that court proceedings were occurring, knew that his mother was in contact with Arden Shore, and was able to call Sajovec when he chose to do so. Sharon testified that she had phone contact with Darnell but did not always have an address for him. Sajovec testified that the agency conducted diligent searches and also mailed materials to addresses Darnell provided to the police after arrests. Sajovec further testified that, according to Sharon,

Darnell said that he had no intention of cooperating with DCFS. Darnell called Sajovec once or twice in 2008 to set up meetings, which he later cancelled, and did not call again until October 2009. In sum, Darnell knew that his children were involved in the court process but chose not to participate in the case for a significant amount of time. Moreover, by later appearing in court without objection, Darnell waived notice requirements. *In re A.M.*, 402 Ill. App. 3d 720, 724 (2010).

¶ 49 As for his argument that the reason for the minors' removal was attributed to Sonia, the reasons underlying the removal included the lack of stable housing and income. The trial court's finding that Darnell did not make reasonable efforts to remedy these conditions during the first nine months after the adjudication is not against the manifest weight of the evidence, as he did not participate in court proceedings and he himself testified that he was unstable and homeless during this time. Although Darnell also testified that he was depressed at this time, which could arguably be a subjective impediment towards correcting the conditions that lead to removal, he agreed that he did not seek mental health treatment, which could have been evidence of some reasonable efforts. Accordingly, the trial court's finding that Darnell did not make reasonable efforts to correct the conditions that were the basis for removal within nine months after the children were adjudicated neglected is not against the manifest weight of the evidence.

¶ 50 We now turn to allegation (e), which alleged that respondents failed to make reasonable progress toward the return of the children within nine months after they were adjudicated neglected. See 750 ILCS 50/1(D)(m)(ii) (West 2010). In contrast to the subjective standard of reasonable efforts, reasonable progress is an objective standard that focuses on the amount of progress toward the goal of reunification that can reasonably be expected from the parent under the circumstances. *In re J.A.*, 316 Ill. App. 3d at 564. Progress towards return of the child is measured by the parent's

compliance with the service plans and the court's directives, in light of both the condition which caused the child's removal and conditions that became known later and which would prevent the court from returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress can be found if the trial court can conclude that it can return the child to the parent in the near future, and at a minimum it requires measurable or demonstrable progress toward the goal of reunification. *In re K.P.*, 305 Ill. App. 3d 175, 180 (1999).

¶ 51 As stated, the January 2009 order required Sonia to refrain from drugs, submit to a drug assessment, submit to and pass random drug testing, notify DCFS within 24 hours of any change in residency, and provide proof of stable housing and income. Service plans contained similar goals and also required her to address her mental health issues, take parenting classes, and cooperate with the agency. Sajovec testified that he rated her unsatisfactory on the goal of mental health treatment from January to July 2009 because she enrolled in the "Phoenix" program in February or March 2009 but only participated for 1 or 1½ months. He also rated her unsatisfactory for not taking a parenting class, despite referrals. She had some visits with the children during this time, but they were sporadic. In the January 2010 case review, which covered July 2009 to January 2010, Sajovec again rated Sonia unsatisfactory for mental health treatment because she had not been compliant with recommendations from her mental health provider since July 2009 and had not provided any documentation regarding services she had engaged in. Sonia had not taken any parenting classes, and she had not maintained regular contact with Sajovec or attended court hearings. Thus, there was evidence that Sonia was not adequately addressing her mental health issues, had not taken parenting classes, and was in decreasing contact with the agency and the court during the first nine-month period after the adjudication of neglect. We have already determined that there was also evidence

did not have stable housing and income during this time and that she participated in drug treatment for only a short time before dropping out. As such, the trial court's finding that Sonia failed to make reasonable progress toward the return of the children within nine months after they were adjudicated neglected is not against the manifest weight of the evidence.

¶ 52 The January 2009 service plan required Darnell to cooperate with DCFS, namely attend relevant court hearings and meetings and submit to an integrated assessment interview. He did not submit to the interview, attend any court hearings, or attend any agency meetings in 2009. Darnell testified that he knew that Sonia attended court hearings after the children's removal, and he thought that she was "taking care of it" and that either she or the grandparents would "get the kids back." Given Darnell's choice to not engage in the children's case during January to October 2009, the trial court's finding that Darnell failed to make reasonable progress during this time is not against the manifest weight of the evidence.

¶ 53 We next look at allegation (f), that respondents failed to make reasonable progress toward the return of the children during any nine month period after the end of the initial nine month period following the adjudication of neglect. See 750 ILCS 50/1(D)(m)(iii) (West 2010). The parties agree that the relevant nine month period would be from about October 27, 2009, to July 27, 2010, as the State did not introduce any evidence as to any nine month period after July 2010.

¶ 54 Sonia argues that although Friedland testified that she rated her unsatisfactory for drug treatment for the period of January to July 2010, Friedland acknowledged that the service plan required that she complete the treatment within the six months. Sonia argues that Friedland also acknowledged that Sonia engaged in treatment for five of the six months reviewed in the service plan and was rated satisfactory for participating in drug testing and for signing consents. Sonia also

argues that although Friedland rated her unsatisfactory for parenting classes, Friedland acknowledged that the substance abuse program she had been involved in also provided parenting classes, and Friedland did not inquire if Sonia had participated in parenting classes. Sonia argues that although she was also rated unsatisfactory for housing, Sajovec indicated that Sonia had requested DCFS emergency funds in January 2010, but to his knowledge she did not receive assistance. Sonia argues that she was rated unsatisfactory for employment even though she was employed. Sonia also argues that although she allegedly failed to visit the minors, Sajovec testified that he and Sonia agreed that she would need to be in compliance with the service plan before she would be allowed visitation, but Friedland denied knowing of any prohibition. Sonia argues that Friedland testified that after Sonia requested visitation, visitation resumed. Sonia maintains that we must consider restrictions on her visitation in evaluating reasonable progress.

¶ 55 As discussed, in the January 2010 case review, which covered July 2009 to January 2010, Sajovec rated Sonia unsatisfactory in the categories of drug treatment, stable housing and income, mental health treatment, parenting classes, and maintaining regular contact with Sajovec and attending court hearings. In Friedland's July 2010 case review, she rated Sonia unsatisfactory for drug treatment because she had been discharged from the program due to an unexcused absence. However, Sonia was not effectively discharged for a single absence, as Friedland explained that Sonia had been put on an attendance contract for missing multiple days. Sonia was rated unsatisfactory in the category of stable housing and income because she was staying with some friends, and though Sonia claimed to be employed during this time, she did not specify the name or location of her employment or provide any paystubs. Contrary to Sonia's argument about emergency funds, Sajovec actually testified that the request line on the case review would allow

DCFS to obtain additional funds and does not entitle the parent to any money. Further, regarding visitation, Sajovec testified that they mutually agreed that Sonia should be engaged in services and have clean drug tests prior to commencing visits. Thus, there was no strict restriction that she be in complete compliance with the service plan before she could visit, yet she did not visit the children from August 2009 to April 2010. Thus, despite some progress in the area of drug treatment, which ceased with Sonia's discharge from the treatment program, there was evidence of failure to progress in the remaining areas of the service plan during the months of October 2009 to July 2010. These areas included lack of stable housing, which was one of the reasons for the children's removal. Thus, the trial court's finding that Sonia failed to make reasonable progress toward the return of the children during any nine month period after the end of the initial nine month period following the adjudication of neglect was not against the manifest weight of the evidence.

¶ 56 Darnell argues that he contacted Sajovec in October 2009 and came to the next court date of January 25, 2010. Darnell maintains that Friedland acknowledged that he: cooperated and maintained contact with her; completed a social history; completed domestic violence treatment; completed a substance abuse evaluation which did not recommend further services; enrolled in a trade program; was employed; consistently asked for additional visits, which requests were denied; and had appropriate interaction with the children during visits, with the children showing a strong bond with him. Darnell argues that all of this occurred prior to the State filing its petition for termination of parental rights, and he should have been found to have made reasonable progress.

¶ 57 We agree with Darnell to the extent that the evidence showed that he certainly made some progress after January 2010. However, contrary to his argument that Friedland acknowledged that he was employed during the October 2009 to July 2010 period, Friedland actually testified that he

was not employed in May 2010 and that he began working part-time at McDonald's at the end of August 2010, which is outside this nine-month period. She also testified that he was living in Peoria with friends and had chosen to stay there even though the trial court had suggested moving to the Chicago area to further the reunification with the children. Given that Darnell had not made any progress during the relevant nine-month period in addressing the goals of stable housing and income, which were related to the circumstances surrounding the children's initial removal, we cannot say that the trial court's finding that he failed to make reasonable progress toward the return of the children during this time was against the manifest weight of the evidence. *Cf. In re Grant M.*, 307 Ill. App. 3d 865, 871 (1999) (while father's recent efforts towards regaining custody of his children were laudable, they were " 'too little, too late' ").

¶ 58 Even if, *arguendo*, the trial court erred in finding one or both respondents unfit for failing to make reasonable progress from October 2009 to July 2010, as stated, a parent may be found unfit as long as *one* of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d at 1149. Here, we have already found that the trial court did not err in finding respondents unfit on two other statutory grounds of unfitness, those being a failure to make reasonable efforts to correct the conditions that were the basis for removal of the children and a failure to make reasonable progress toward the return of the children within nine months after the children were adjudicated neglected minors. Each of these grounds would independently support a finding of unfitness. Moreover, as we have already addressed multiple grounds for affirming the trial court's ruling of unfitness, we do not address respondents' challenge to the trial court's ruling that they were also unfit under allegations (b) (failure to maintain a reasonable degree of interest,

concern, or responsibility as to the children) and (i) (failure to plan for the children's future although physically able to do so).

¶ 59

B. Best Interests

¶ 60 Respondents next argue that the trial court's ruling that it was in the children's best interest to terminate their parental rights is against the manifest weight of the evidence. A trial court's ruling that a parent is unfit does not automatically mean that it is in the child's best interest to terminate parental rights. *In re B.B.*, 386 Ill. App. 3d at 698. Still, during the best interests hearing, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. In determining a child's best interest, the trial court is required to consider the following statutory factors of the Juvenile Court Act in light of the child's age and developmental needs: (1) the child's physical safety and welfare, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachment, including love, sense of security, sense of familiarity, continuity of affection of the child, and least disruptive placement for the child; (5) the child's wishes and 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 related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52 (2008).

¶ 61 The State must show by a preponderance of the evidence that it is in the child's best interest to terminate the relationship with his or her parent. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33. We will not disturb a trial court's determination that it is in the child's best interest to terminate a parent's rights unless the ruling is against the manifest weight of the evidence. *Id.*

¶ 62 Sonia argues that she requested that the trial court speak to the minors, whether by subpoena or other means, because the minors wanted to tell the court where they wanted to live and who they wanted to be raised by. Sonia argues that the refusal of the trial court to allow the minors to speak to the trial court or testify violated her due process rights.

¶ 63 We note that, contrary to Sonia's argument, the record shows that she did not request that the trial court speak with the children *in camera* to ascertain their wishes. Rather, on the day she was going to testify, she asked for a continuance in order to subpoena the children. Even otherwise, the trial court did say that it assumed that the guardian *ad litem* would have already mentioned it if the children had wanted to speak to the court, and the guardian *ad litem* agreed.

¶ 64 Regarding Sonia's request to have the children testify, proceedings terminating parental rights must comply with procedural due process requirements. *In re Haley D.*, 403 Ill. App. 3d 370, 376 (2010). In considering whether a parent's due process rights were violated in a termination proceeding, we consider: (1) the private interests affected by the State's action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute safeguards; and (3) the State's interest, including the function involved and the fiscal and administrative burdens that additional or substitute safeguards would entail. *In re M.H.*, 196 Ill. 2d 356, 363 (2001) (citing *Mathews v. Eldrige*, 424 U.S. 319 (1976)). Here, we conclude that although Sonia had a liberty interest in maintaining her parental relationship, the

procedures used did not deprive her of that interest, as she could still testify regarding the children's wishes and cross-examine witnesses also testifying regarding the children's wishes. Further, the State had interest in preserving the children's best interests and preventing a delay in adjudicating parental rights (*In re A.M.*, 402 Ill. App. 3d 720, 725 (2010)), and the guardian *ad litem* stated that given the children's ages, special needs, and the fact that they were in therapy, it was not in their best interests to testify. Additionally, determining whether to have a child testify in a termination proceeding is within the trial court's discretion (*In re A.W.*, 397 Ill. App. 3d 868, 874 (2010)), and, for the reasons stated above, the trial court did not abuse its discretion by denying Sonia's request. *Cf. In re A.W.*, 397 Ill. App. 3d at 874 (noting the stress and pressure placed on children requested to testify in a termination proceeding, and the possible detrimental effects by putting a child in such a situation). This is especially true given that the request was made during the best interests hearing, where the focus was on the children's best interests rather than on the parent (see *id.*), and having the children testify would have required a continuance (see *In re Stephen K.*, 373 Ill. App. 3d 7, 29 (2007) (it is within the trial court's sound discretion whether to grant a continuance, and it should keep in mind that keeping a minor's status in limbo for an extended period of time is not in the child's best interests)).

¶ 65 Both respondents argue that the trial court's ruling on the children's best interests should be reversed because it failed to specify what statutory factors it considered in arriving at its decision. However, in such a hearing, the trial court is not required to explicitly mention each statutory factor or even articulate any specific rationale for its decision. *In re Deandre D.*, 405 Ill. App. 3d at 954-55.

¶ 66 Sonia also argues that the trial court's ruling is against the manifest weight of the evidence because she testified that she was employed; still cared for her two older children; had been limited in her visitation by the agency; had raised a number of concerns to the caseworker that went unanswered; continued to have a strong bond with the children; and was told by the minors that they wanted to live with her and not the foster parents. Darnell argues that the court acknowledged that he had reestablished a loving and caring relationship with him yet focused on the bond and permanency with the foster parents.

¶ 67 In a best interests hearing, it is the trial court's province to determine witness credibility and the weight to be given to their testimony, and to draw inferences from the evidence. *In re B.B.*, 386 Ill. App. 3d at 698. In contrast to Sonia's testimony, caseworker Friedland, special advocate Lee, and therapist Wagner all testified that the children were bonded to their foster parents, and Wagner specifically testified that he saw no evidence of a bond with Sonia. While Friedland and Wagner also testified that the children had a bond with Darnell, Wagner and Dr. Bouchard testified about the children's need for permanency, and Darnell also agreed that the children needed permanency. Friedland and Wagner testified that the foster parents were willing to adopt the children and were addressing their special needs, and the children were willing to be adopted by the foster parents. Friedland testified that respondents, on the other hand, were not in a position to resume parental responsibilities and provide a home for the children because they were still working on services. Accordingly, given the children's need for permanency, their bond with the foster parents, their willingness to be adopted by the foster parents, and respondents' inability to care for the children in the near future, the trial court's finding that it was in the children's best interests to terminate respondents' parental rights was not against the manifest weight of the evidence.

¶ 68 Last, Darnell argues that his counsel in the termination proceedings was ineffective for failing to object to prior service by publication. We review claims of ineffective assistance of counsel in juvenile proceedings under the same standards as those in criminal proceedings, namely the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re Ch. W.*, 408 Ill. App. 3d 541, 546 (2011). The party must first establish that, despite the strong presumption that counsel acted competently and that the challenged action was the product of sound trial strategy, counsel's representation fell below an objective standard of competence under prevailing professional norms, to the extent that he or she was not functioning as the counsel guaranteed by the sixth amendment. *People v. Manning*, 241 Ill. 2d 319, 326-27 (2011). Second, the party must establish prejudice by showing a reasonable probability that the proceeding would have resulted differently had counsel's representation not been deficient. *People v. Houston*, 229 Ill. 2d 1, 11 (2008).

¶ 69 Darnell argues that an objection to the insufficiency of process or service should have been filed because his failure to be involved in the proceedings before January 2010 has, for all intents and purposes, sealed his fate. Darnell argues that a diligent inquiry and completion of an affidavit as required by section 2-16 of the Juvenile Court Act (705 ILCS 405/2-16 (West 2008)) is lacking, and no one testified that any caseworker checked with school personnel, emergency contacts, public aid, the telephone book, or with relatives. Darnell argues that Sajovec also failed to send or obtain confirmation that he received the service plans of June 2008, January 2009, or June 2009. Darnell notes that he himself testified that he was never informed that if he did not cooperate with the requested services, he could lose his parental rights. Darnell notes that Sajovec testified that his whereabouts were unknown in 2008, but he argues that it was known that he was visiting the

children who were placed with his own mother for much of the year. Darnell argues that if counsel would have filed a motion pursuant to section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2010)), it would have provided additional time to investigate the matter. Darnell argues that if proper service or process was used, he would have been properly before the court, as evidenced by his appearance once the goal was changed to substitute care pending determination of termination of parental rights. Darnell cites *In re Dar C. & Das C.*, 2011 IL 111083, where our supreme court held that no diligent inquiry of the father's whereabouts was completed.

¶ 70 Section 2-16 of the Juvenile Court Act states that where a respondent's abode is not known, DCFS shall conduct a diligent inquiry to ascertain the respondent's current and last known address. If, after diligent inquiry made at any time within the preceding 12 months, the address cannot be ascertained, or the respondent is concealing his whereabouts to avoid service of process, the petitioner's attorney shall file an affidavit stating such. The affidavit is also required to state the respondent's last known address and what efforts were made to effectuate service. Three days after receiving the affidavit, the clerk shall issue publication service. 705 ILCS 405/2-16(2) (West 2008).

¶ 71 Although Darnell argues that an affidavit pursuant to section 2-16 was never filed before he was defaulted in 2008, he has not provided us with the common law record covering the period of time before the September 2010 petition to terminate parental rights was filed. As an appellant, Darnell has the burden to provide a sufficiently complete record of trial proceedings to support his claims of error, and we will resolve any doubts that arise from the incompleteness of the record against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Thus, we must presume that the affidavit was filed and listed sufficient efforts to effectuate service prior to publication. Even otherwise, as stated, Sajovec testified that the agency conducted diligent searches and also mailed

materials to addresses Darnell himself provided to the police after arrests. Sajovec also testified that he spoke to Sharon about Darnell's whereabouts, and Sharon did not have an address for him and said that he had no intention of cooperating with DCFS. This case is inapposite to *In re Dar C. & Das C.*, because there the father was in and out of mental facilities, had no contact with his daughters for several years, the agency did not contact the father's relatives or try to investigate Social Security information, and the State was able to locate him in a separate action and obtain his consent for a child support order. *In re Dar C. & Das C.*, 2011 IL 111083, ¶¶ 39, 66, 76. Here, in contrast, in addition to the aforementioned efforts made by the agency, Darnell was admittedly living with the children when they were removed, knew that they were in DCFS care, knew that court proceedings were taking place, knew that his mother was in contact with Arden Shore, was able to call Sajovec when he chose to do so, and decided for a substantial period of time to rely on Sonia and other family members to get the children back. That is, Darnell knew of his children's court proceedings but chose not to get involved. Furthermore, as the guardian *ad litem* points out, submitting to jurisdiction could arguably have been a strategic decision in itself, as it allowed Darnell to immediately engage in services and try to get the children back, whereas contesting jurisdiction could have lengthened court proceedings, delaying the possibility of return home and further bonding the children with the foster parents. Accordingly, Darnell cannot show that counsel was deficient for failing to object to personal jurisdiction, and his ineffective assistance of counsel argument fails.

III. CONCLUSION

¶ 72 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 73 Affirmed.