

NOTICE
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2012 IL App (4th) 110782-U

Filed 1/25/12

NOS. 4-11-0782, 4-11-0783, 4-11-0784, cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.U., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v. (No. 4-11-0782))	No. 10JA26
MARCUS UPCHURCH and EBONY N. NEYLON,)	
Respondents-Appellants.)	
-----)	
In re: T.S., a Minor,)	No. 10JA25
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0783))	
EBONY N. NEYLON,)	
Respondent-Appellant.)	
-----)	
In re: N.S., a Minor,)	No. 10JA36
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0784))	Honorable
EBONY N. NEYLON,)	Thomas E. Little,
Respondent-Appellant.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly found respondent parents unfit and terminated their parental rights.
- ¶ 2 These consolidated appeals (Nos. 4-11-0782, 4-11-0783, and 4-11-0784) involve three children: T.S. (born April 20, 2005), N.S. (born June 6, 2007), and J.U. (born February 8, 2010). Respondent mother, Ebony Neylon, is the mother of all three children and is a party in all

three appeals. Respondent father, Marcus Upchurch, is the father of J.U. and is a party only in case No. 4-11-0782. Neylon appeals the orders finding her an unfit parent of her children and terminating her parental rights. Upchurch appeals the order finding him an unfit parent of J.U. and terminating his parental rights. Respondent parents contend the fitness findings and decision to terminate their parental rights were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Case No. 4-11-0782

¶ 5 On February 16, 2010, eight days after J.U.'s birth, the State filed a juvenile petition alleging J.U. was a neglected and abused minor. The State alleged J.U. was neglected because his environment was injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2010)) and because, as a newborn, J.U.'s blood, urine, or meconium contained a controlled substance (705 ILCS 405/2-3(1)(c) (West 2010)). The State alleged J.U. was abused because living with Neylon and Upchurch created a substantial risk of physical injury to him (705 ILCS 405/2-3(2)(ii) (West 2010)). Specifically, the State alleged domestic violence occurred in J.U.'s home between Neylon and Upchurch, Neylon and Upchurch had substance-abuse issues, Neylon had mental-health issues, and Upchurch had been convicted of the involuntary manslaughter of his infant son after smothering him with a pillow.

¶ 6 In April 2010, the trial court entered an adjudicatory order, finding J.U. neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act). The court based its decision on the fact both Neylon and Upchurch had domestic-violence and substance-abuse issues and Upchurch had been convicted of involuntary manslaughter following the death of his infant son. In May 2010, the court entered a dispositional order. As part of the order, the court

observed both parents were incarcerated. The court made J.U. a ward of the court and placed his guardianship and custody with the Department of Children and Family Services (DCFS).

¶ 7 In May 2011, the State filed a revised petition to terminate the parental rights of Neylon and Upchurch. In the revised petition, the State made the following allegations of parental unfitness: (1) Upchurch was convicted of involuntary manslaughter after he killed his infant son (750 ILCS 50/1(D)(f)(2) (West 2010)); (2) Upchurch was depraved in that he had been convicted of three felonies (750 ILCS 50/1(D)(i) (West 2010)); (3) both parents failed to make reasonable efforts to correct the conditions that were the basis for J.U.'s removal from them (750 ILCS 50/1(D)(m)(i) (West 2010)); (4) both parents failed to make reasonable progress toward J.U.'s return within nine months of the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (5) both parents were incarcerated at the time the petitions to terminate their parental rights were filed and, before incarceration, both had little or no contact with J.U., and the parents' incarceration would prevent them from discharging their parental responsibilities for J.U. for over two years after the termination motion was filed (750 ILCS 50/1(D)(r) (West 2010)).

¶ 8 B. Case No. 4-11-0783

¶ 9 On February 16, 2010, the State filed a juvenile petition alleging T.S. was a neglected and abused minor. According to the petition, T.S. was neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2010)) in that his environment was injurious to his welfare, and was abused under section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2010)), in that T.S.'s residing with Neylon and Upchurch created a substantial risk of physical injury. Specifically, the State alleged domestic violence occurred in T.S.'s home between Neylon and Neylon's paramour, Upchurch; both Neylon and Upchurch had

substance-abuse issues; Neylon had mental-health issues; and Upchurch had been convicted of the involuntary manslaughter of his infant son by smothering him with a pillow. T.S.'s father is not a party to this appeal.

¶ 10 In April 2010, the trial court entered both an adjudicatory and dispositional order, finding T.S. neglected under section 2-3(1)(b), making T.S. a ward of the court, and placing T.S.'s guardianship with DCFS. In its adjudicatory order, the court concluded both Neylon and T.S.'s father inflicted the neglect. The court based its decision on the following facts: domestic violence occurred between Neylon and Upchurch, Neylon had untreated mental-health issues, Upchurch had been convicted of involuntary manslaughter in the death of his infant son, and T.S.'s father was not involved with the child. In the dispositional order, the court concluded Neylon was unfit and unable to care for T.S. because she was incarcerated, suffered untreated mental-health issues, and had domestic-violence issues with Upchurch.

¶ 11 In February 2011, the State filed a petition to terminate Neylon's parental rights to T.S. In May 2011, the State filed a revised petition to terminate Neylon's parental rights. In that petition, the State alleged Neylon was an unfit parent on the following grounds: (1) she failed to make reasonable efforts to correct the conditions that were the basis for T.S.'s removal from her (750 ILCS 50/1(D)(m)(i) (West 2010)); (2) she failed to make reasonable progress toward T.S.'s return within 9 months of the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)); (3) she was incarcerated when the termination motion was filed, had been repeatedly incarcerated due to criminal convictions, and these repeated incarcerations prevented Neylon from discharging her parental responsibilities (750 ILCS 50/1(D)(s) (West 2010)); and (4) she was incarcerated at the time the petition to terminate her parental rights was filed and, before incarceration, she

had little or no contact with T.S., and her incarceration would prevent her from discharging her parental responsibilities for T.S. for over two years after the termination motion was filed (750 ILCS 50/1(D)(r) (West 2010)).

¶ 12 C. Case No. 4-11-0784

¶ 13 On March 12, 2010, the State filed a juvenile petition alleging N.S., T.S.'s younger sister, was a neglected minor. The State alleged N.S. was neglected on three grounds: (1) N.S. was not receiving the proper or necessary care for her well-being (705 ILCS 405/2-3(1)(a) (West 2010)); (2) her environment was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2010)); and (3) she was left without supervision for an unreasonable amount of time (705 ILCS 405/2-3(1)(d) (West 2010)). Specifically, the State asserted N.S.'s father had not seen N.S. since December 2009 and did not know N.S.'s location, N.S.'s maternal grandmother claimed she obtained guardianship of N.S. through the Macon County court but no court action had been found, both Neylon and N.S.'s grandmother were in jail, and the name or location of N.S.'s caretaker were unknown.

¶ 14 In April 2010, the trial court entered a written adjudicatory order finding N.S. neglected because her environment was injurious to her welfare. The court concluded Neylon and Upchurch had domestic-violence and substance-abuse issues and cited Upchurch's involuntary-manslaughter conviction. The court further found N.S.'s father did not have custody and had not been involved in the rearing of N.S. In May 2010, the trial court entered a dispositional order, making N.S. a ward of the court and placing guardianship of her with DCFS.

¶ 15 In February 2011, the State filed a petition to terminate Neylon's parental rights to N.S. In May 2011, the State filed a revised petition to terminate Neylon's parental rights. In that

motion, the State alleged Neylon was an unfit parent to N.S. on the same grounds alleged in the petition to termination Neylon's parental rights to T.S.

¶ 16 D. The Fitness Hearing

¶ 17 The fitness hearing was held in June 2011. At the start of the hearing, the trial court adopted the recommended permanency goal of return home in 12 months for the father of T.S. and N.S. The State acknowledged T.S. and N.S.'s father had progressed to the point unsupervised overnight visits and extended visits should be permitted. The court granted DCFS discretion to permit those visits.

¶ 18 Regarding the fitness allegations against Neylon and Upchurch, the State presented the testimony of the caseworker Teri Barnett and both parents. Barnett, a foster-care case manager for Webster Cantrell Hall, testified she became the case manager for all three children in late September or early October 2010. Barnett testified the service-plan goals included parenting classes, visits, substance-abuse assessments, domestic-violence services, and, for Neylon, a psychiatric assessment. Neither parent participated in any service other than visits.

¶ 19 Barnett testified supervised visits occurred initially at the agency. Those visits stopped after March 20, 2010, when J.U. and T.S. were kidnapped. The visits then occurred at the county jail. Because of some problems with the jail visits, the visits with T.S. and N.S. were suspended and not reinstated. The visits with J.U. continued and "were a success." Barnett testified the visits with T.S. and N.S. stopped after T.S. began exhibiting negative behaviors during and after the visits. Barnett understood once the visits stopped, the negative behavior stopped. Once they were resumed, the negative behavior returned. The visits with T.S. and N.S. were then discontinued.

¶ 20 On cross-examination, Barnett testified the case originally started after reports of Upchurch's manslaughter conviction and Neylon and J.U.'s positive drug tests following J.U.'s birth. Barnett understood the county jail did not offer services. At the time of Barnett's testimony, Neylon was incarcerated in the Illinois Department of Corrections (DOC). DOC offered parenting classes, and Neylon was on the waiting list for parenting and "a couple of services." Neylon had one visit with J.U. while in the DOC, due to Barnett's misunderstanding about how many visits DOC would allow.

¶ 21 Barnett testified the January 2011 service plan for Upchurch did not include parenting or domestic-violence classes. The plan required Upchurch to get a mental-health assessment, a substance-abuse evaluation, and individual therapy, as well as obtain housing and employment. Because Upchurch was incarcerated at the county jail, those services were not available to him. Upchurch did have visits with J.U. and Barnett called those visits successful.

¶ 22 Barnett testified she met once with Upchurch when she became the case manager. Upchurch asked about J.U.'s well-being. He also suggested J.U. could live with some relatives, but Barnett was not provided specific names or details. Barnett testified Upchurch was concerned about the foster-care placement of the children because the foster parents were not relatives.

¶ 23 The State called Neylon to testify. Neylon was in custody in DOC for kidnapping her children. Neylon testified the State alleged, when her children were taken, Upchurch battered caseworkers with a pistol. Neylon was apprehended in Missouri. On January 7, 2011, Neylon was sentenced to seven years' imprisonment. Neylon's anticipated out date was September 20, 2013.

¶ 24 On cross-examination, Neylon testified she was at home when the kidnapping occurred. Neylon testified she "had been misled and manipulated by the DCFS workers, and the caseworkers [were] telling me there was nothing I could do as a parent to get my children back at the time, which left me helpless and hopeless in regards to my children." Neylon testified J.U. was less than one month old at that time, "so [she] was not in a good frame at the time." She did not feel like she had any other options. Neylon did not know anyone would get hurt. She did not know the plan. Neylon wanted her children.

¶ 25 Neylon testified the hospital reported she tested positive for cannabis after J.U.'s birth. No other drugs were in her system. J.U. was taken from her on February 10, 2010, when he was two days old. Neylon denied domestic violence was an issue for her: "I have no domestic violence on my records."

¶ 26 Neylon testified she was taken into custody on March 10, 2010. Neylon testified while she "was in county," she participated in counseling with Sharon Kay Brown about two or three times each week. The county jail offered Alcoholics Anonymous (AA) and substance-abuse classes, which she sought. Neylon testified she did not get a service plan until she was incarcerated, approximately in "April—around [the] 14th or the 20th." Neylon testified Kindra Smith, a caseworker, talked with her approximately two minutes about the initial service plan. Smith simply wanted Neylon to sign it.

¶ 27 Neylon testified when she was first incarcerated, she had 15-minute visits every Tuesday with all three children. After the first three visits, Neylon was told the children were sick and could not attend. Neylon believed six visits were missed before they resumed again. The visits, however, soon stopped again. Neylon believed she had, at most, 10 visits with T.S.

and N.S.

¶ 28 Neylon testified she had one hour-long visit with J.U. in DOC. Barnett attended that visit. Barnett did not ask Neylon about or explain what services were available at the DOC. Neylon testified each time she asked Barnett a question, Barnett responded she did not know or would have to get back to her.

¶ 29 Neylon testified she had to initiate the services on her own. Neylon was on the waiting list for anger management and for parenting classes. Neylon testified she was also on the waiting list for domestic-violence treatment and she sought counseling. The services were set to start in early July 2011. Neylon had a psychological evaluation and was diagnosed as bipolar. She was on medication, taking Depakote every morning. Neylon was employed, working second shift in the kitchen at the correctional facility, and on the waiting list for college courses for custodial maintenance.

¶ 30 Neylon testified DCFS did not make reasonable efforts to help her get her children back. Neylon said DCFS was "not fair at all."

¶ 31 Neylon testified she was a great mother. She had not been involved with DCFS until J.U.'s birth. Neylon owned her own home since she was 17. She was almost 24. Her children attended school and saw the same doctor until this situation occurred. Neylon testified her children went "without nothing." Neylon had one other criminal conviction. When she was 21, Neylon was convicted for aggravated battery of a woman who was her age.

¶ 32 The State also called Upchurch to testify. Upchurch testified he was incarcerated in DOC on a 15-year sentence for aggravated kidnapping, with an anticipated outdate of 2022. Upchurch testified the kidnapping charge was aggravated because "[t]hey said there was a

firearm involved." Upchurch denied doing any damage to caseworkers. Upchurch stated he had an involuntary-manslaughter conviction in the death of his son, and a previous conviction for theft and one for forgery.

¶ 33 Upchurch testified he could not get any services, except for AA and a mental-health assessment, while imprisoned. At Western Illinois Corrections, a DOC facility, Upchurch participated in AA.

¶ 34 On cross-examination, Upchurch testified he was taken into custody for aggravated kidnapping on March 11, 2010. He pleaded guilty to the offense. He pleaded guilty to all of his offenses. Upchurch planned to start a new life with J.U. in another state when he took J.U. from the caseworkers. Upchurch did not know a firearm was involved, while acknowledging he pleaded guilty to the offense. Upchurch testified others were involved in the offense. Upchurch stated he did not harm anyone during the offense but testified he did take J.U. from another. J.U. was not harmed.

¶ 35 Upchurch testified, while in jail, Smith gave him a service plan. He knew there were goals he needed to meet. To meet those goals, Upchurch signed up for AA and took counseling with Brown about mental-health issues. Upchurch was diagnosed with depression. Upchurch testified he attended three AA meetings before he had to go to segregation after having a fight with another inmate.

¶ 36 Upchurch was transferred from the jail to Graham Correctional Center. While there, he was diagnosed with bipolar and manic depression. He was prescribed medication. Upchurch believed he was more rational and more calm.

¶ 37 When asked about his thoughts on the kidnapping:

"I should have thought about things a little differently and, actually, tried to get down to the bottom of everything before I was misled and to figure out what was my part in my son's life I could do to get him back instead of going off the deep end.

* * *

I wish I would have just taken the time and just taken my time with it instead of not thinking, 'We're not going to get him back.' "

¶ 38 When asked about the involuntary-manslaughter conviction, Upchurch testified he had been accused of smothering his son with a pillow. Upchurch's son died while in Upchurch's arms. The child's mother said she saw Upchurch smother the child with a pillow while the child was sleeping. Upchurch denied smothering his child but was convicted after pleading guilty "to get my other two daughters back in my custody." According to Upchurch, the last time he saw his son alive, his son was lying on his chest while Upchurch was lying in his bed. When he awoke, his son was dead. Upchurch, when asked what he suspected caused his son's death, answered the following:

"The conditions that we were living in. He had bronchitis, pneumonia. We were living in a wet, moist basement with—that had dogs down there before—that we moved in the basement. So, moss was down in the basement and a lot of other things that make it hard from him to breathe with bronchitis, pneumonia."

Since Upchurch's release from prison on the involuntary-manslaughter conviction, his daughters

had not been returned to him.

¶ 39 On redirect examination, Upchurch testified he did not harm anyone during the kidnapping. Upchurch stated he had been told someone was hit in the face with a gun and someone was knocked down, resulting in a fractured pelvis, during the kidnapping, but he denied putting his hands on anyone. Upchurch testified he only took his son from the seat he was sitting in.

¶ 40 Neylon testified on her own behalf. She testified she regretted how the kidnapping occurred and that women were hurt. She testified, "However, I'm a mother, and I love my children and, with that being said, there was no mountain I wouldn't cross for my children." Neylon testified if she had "to take 50 million classes," she would for her children.

¶ 41 In July 2011, the trial court entered an order finding both parents unfit on the grounds set forth in the petitions to terminate their parental rights. In support, the court cited evidence from the record, including the following summary regarding the February 2010 kidnapping:

"Shortly after the case began in February, 2010, the parents were receiving visitation with the children that was being supervised by Webster Cantrell Hall representatives. On March 10, 2010, at the conclusion of one of those supervised visitations, the father and another man confronted agency representatives, and after battering those representatives with a pistol, forcibly kidnapped the children at gunpoint. Although the mother was not personally present at the time of the occurrence, she was implicated

in the crime and was arrested after having fled to Missouri. She later pled guilty to kidnapping, a Class 2 felony offense. *** The mother was sentenced to serve 7 years in the [DOC]. Her anticipated release date is September 10, 2013."

¶ 42 The trial court also noted the State provided certified records of Upchurch's felony convictions, which included theft from a coin-operated machine with a prior retail theft conviction in 2005, forgery in 2003, and involuntary manslaughter in 2006. The court found both Upchurch's testimony and Neylon's testimony not credible. The court further noted no evidence in the record corroborated Neylon's claims she participated in several programs offered by DOC and concluded, even if it had accepted the testimony, it would still find the progress not meaningful.

¶ 43 In August 2011, the best-interests hearing was held. Barnett first testified on the State's behalf. Barnett testified Neylon reported she participated in services in DOC and was on a waiting list for others. Barnett testified she asked for documentation but had not received any. J.U. and Neylon have had visits, but those visits did not go well. J.U. clung to Barnett. Barnett testified the best she could get him to do was give a "high-five" to Neylon.

¶ 44 Barnett testified the children had been in their foster homes since March 2010. J.U.'s foster-home placement was "an adoption resource."

¶ 45 Barnett testified the two older children experienced some effects as a result of the kidnapping. T.S. completed play therapy but continued to show symptoms of post-traumatic stress. Both T.S. and N.S. were bonded with their foster parents. They were also "getting along well with their father" and T.S. wanted to see him more often. Regarding their father, Barnett

testified, "We had a step back last week with him." Barnett stated they "had to slow down a little bit," but she agreed "things [were] still going forward."

¶ 46 On cross-examination, Barnett testified Neylon tried to interact with J.U. on visits. Barnett testified all three children resided in the same foster home. The goal at that time for the older children was to return to their father. Although she had been given discretion to permit overnight visits and weekends with the father, those had not yet occurred. As for J.U., the foster parents were an adoptive placement. Barnett testified the foster parents of J.U. and the father of N.S. and T.S. have expressed the intent to allow the children to visit and interact if the goal of returning N.S. and T.S. to their father was achieved. Barnett testified Neylon had not seen T.S. or N.S. since probably October or November 2010.

¶ 47 Barnett also testified she had not had contact with Upchurch since he entered the correctional facility. Barnett stated he had not contacted her and she had not initiated any contact with him. Upchurch suggested a placement alternative for J.U. Barnett contacted that individual, who told Barnett the children's current placement was best for them because that was what they knew.

¶ 48 Neylon testified on her own behalf. Neylon testified her release date was September 10, 2013, but it could be sooner if she took some classes. Neylon testified she had been taking parenting classes since July 11, 2011, and would receive her certificate soon. Neylon testified she had a counselor at Lincoln and she had taken and completed "tech math," a college course. Neylon intended to take all other classes that were offered during her time in Lincoln. She was to begin anger management at the end of September.

¶ 49 Neylon testified regarding her visits with J.U. Neylon believed J.U. knew her and

who she was. She testified it was probably a little difficult for J.U. because she was incarcerated and it would take time for him to adapt to the surroundings. Neylon testified she had only three visits with J.U. while in Lincoln and that was not enough time for J.U. to adapt to her and allow her to pick him up and hold him. During the visits, J.U. walked around and she gave him toys. Most of the time, Barnett "pretty much just [held] him." J.U. "crie[d] a lot." Barnett "[e]very so often" attempted to get J.U. to bond with Neylon.

¶ 50 Neylon testified she believed T.S. and N.S. could bond fairly quickly with her if her parental rights were not terminated. Neylon testified she believed she would be able to parent her children successfully upon her release. She testified she did not lose her skills to care for her children. Neylon testified she "just had a setback." She wanted her children so badly, she was not thinking clearly. Before the kidnapping occurred, Neylon was the sole support for her children and everything had been going well.

¶ 51 Neylon testified she sent N.S. to St. Louis on February 6, 2010, to stay until J.U. was six weeks old. She did not send T.S., because he was in school at that time.

¶ 52 Upchurch testified on his own behalf. While imprisoned, Upchurch took classes and regularly spoke with his counselor in an attempt to get visitation with J.U. Upchurch had been taking Zyprexa to treat depression but stopped due to the side effects. Upchurch intended to take classes to effectuate a transfer to a facility closer to J.U. He was scheduled to begin AA and parenting classes at the end of September 2011. Upchurch testified he had not attempted to contact anyone involved with the case to set up visitations, because he did not have contact information and no one contacted him. Upchurch opined the best interest for J.U. was to remain with T.S. and N.S. He wanted their father to adopt J.U.

¶ 53 The best-interests report, authored by Barnett, indicated all three children resided together in the same placement since March 2010. The children were "doing well in this placement" and their needs were met. Both T.S. and N.S. exhibited "some lasting emotional trauma," but their "caregivers [were] helping to ensure that healing continues." Both foster parents were committed to the children's permanency, "whether it be to work with parents for the children to be returning home or for these children to become a permanent part of their family."

¶ 54 The trial court granted the State's petitions to terminate Neylon's parental rights to J.U., T.S., and N.S. and to terminate Upchurch's parental rights to J.U.

¶ 55 The consolidated appeals followed.

¶ 56 II. ANALYSIS

¶ 57 A. Fitness Determination

¶ 58 A parent is an unfit person if the State proves any one or more of the grounds listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). Parental unfitness must be proved by the State by clear and convincing evidence. *In re A.P.*, 277 Ill. App. 3d 592, 597, 660 N.E.2d 1006, 1010 (1996).

¶ 59 The trial court found Neylon unfit on three grounds listed in section 1(D), in regard to all three children: (1) Neylon failed to make reasonable efforts to correct the conditions that were the basis for the children's removal (750 ILCS 50/1(D)(m)(i) (West 2010)); (2) Neylon failed to make reasonable progress toward her children's return within nine months of the neglect adjudications (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (3) Neylon was incarcerated at the time the petitions to terminate her parental rights were filed and, before incarceration, she had little or no contact with the children and her incarceration would prevent her from discharging

her parental responsibilities for over two years after the termination petitions were filed (750 ILCS 50/1(D)(r) (West 2010)). In regard to N.S. and T.S., the court further found Neylon was unfit because she was incarcerated when the termination motions were filed, she had been repeatedly incarcerated due to criminal convictions, and these repeated incarcerations prevented Neylon from discharging her parental responsibilities (750 ILCS 50/1(D)(s) (West 2010)).

¶ 60 The trial court also found Upchurch unfit on the same three grounds it found Neylon unfit as to J.U. The court further found Upchurch unfit on two additional grounds: (1) Upchurch had been convicted of the involuntary manslaughter of his infant son (750 ILCS 50/1(D)(f)(2) (West 2010)), and (2) Upchurch was depraved (750 ILCS 50/1(D)(i) (West 2010)).

¶ 61 Because the trial court, at hearings to determine a parent's fitness, is able to view witnesses and their demeanor at trial, its fitness decisions are entitled to great deference. *A.P.*, 277 Ill. App. 3d at 598, 660 N.E.2d at 1010. We will not disturb a finding on parental fitness unless that finding is against the manifest weight of the evidence, which means "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 62 We begin with Neylon's argument the trial court erroneously found her unfit for failing to make reasonable progress toward the return of her children within nine months after the neglect adjudications. Neylon maintains her progress was reasonable. Neylon emphasizes her testimony showing she participated in counseling and AA at the county jail, she was on the waiting list for anger-management, parenting, and domestic-violence classes, and she was employed. Neylon also stresses she undertook a psychological examination and was diagnosed as bipolar, for which she was taking medication.

¶ 63 Reasonable progress is determined based on an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604-05 (2004). Reasonable progress necessitates, at a minimum, measurable or demonstrable movement toward the objective of returning the child to the parent's custody. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). The benchmark for determining whether a parent's progress is reasonable under section 1(D)(m) includes the parent's compliance with court directives and service plans in light of the condition giving rise to the child's removal and other conditions that later become known and would prevent the court from returning custody to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001). Progress is reasonable when a trial court can conclude it will be able to order the return of the child to parental custody in the near future because the parent will have complied fully with the court directives. *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011) (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 64 The trial court's decision is not against the manifest weight of the evidence. The court initially concluded Neylon's testimony regarding her "progress" lacked credibility as she failed to provide any corroboration for her alleged participation in the services. The court thus concluded Neylon had made no progress. The record does not establish the court's credibility determination is erroneous and, therefore, it is not clearly evident Neylon's progress was reasonable.

¶ 65 Moreover, the trial court alternatively concluded, even if Neylon's testimony was credible, her progress was not reasonable. This finding is supported by the record. First, Neylon had not begun certain services, but was on waiting lists. Neylon also provided no testimony

showing any real progress had been made. She did not establish what she learned during her alleged participation in the services or how she progressed as a parent. In addition, Neylon did not show her children could be returned to her in the near future. See *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387). Neylon's anticipated release date was in September 2013. Given the amount of time Neylon must serve and the limited resources while imprisoned, the court properly concluded Neylon's children could not be returned to her in the near future.

¶ 66 The trial court did not err by finding Neylon unfit on a ground listed in section 1(D) (see 750 ILCS 50/1(D)(m)(ii) (West 2010)). Only one statutory ground need be proved to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). We need not consider whether other bases for the court's findings regarding Neylon's fitness are proper.

¶ 67 Next, we turn to Upchurch's arguments the trial court's decision finding him an unfit parent are against the manifest weight of the evidence. We begin with Upchurch's contention the court erroneously determined he was depraved.

¶ 68 Section 1(D)(i) creates a rebuttable presumption a parent is depraved if that parent has been convicted of at least three felonies "and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2010). According to case law, for purposes of section 1(D)(i), an individual who possesses an "inherent deficiency of moral sense and rectitude" is depraved. *In re J.B.*, 298 Ill. App. 3d 250, 254, 698 N.E.2d 550, 552 (1998).

¶ 69 Upchurch admits the State proved he had three felony convictions within the

relevant time period and admits the presumption of depravity is proved. Upchurch contends he provided evidence that rebuts the presumption he is depraved. Upchurch cites his testimony, in which he explained the death of his infant son was due to living conditions and his guilty plea was based solely on his goal of having his two daughters returned to his care. Upchurch also cites his efforts while imprisoned to comply with service goals.

¶ 70 The trial court's decision finding Upchurch depraved is not against the manifest weight of the evidence. While Upchurch did testify in an effort to explain his involuntary-manslaughter conviction as well as his aggravated-kidnapping conviction, the court did not have to believe him and accept such evidence. The record shows the court explicitly found Upchurch's testimony not credible. Given the fact Upchurch's testimony is contradicted by his pleas to these offenses, the court's credibility finding is not contrary to the evidence. The rebuttable presumption was not overcome. Instead, the conclusion Upchurch possessed an inherent deficiency of moral sense and rectitude is supported by Upchurch's guilty pleas, in which he admitted (1) responsibility for the death of an infant and (2) kidnapping the children from caseworkers with a weapon.

¶ 71 The trial court did not err in finding Upchurch an unfit parent. Having affirmed the court's decision on this ground, we need not consider the propriety of the other bases for the court's fitness determination. See *Donald A.G.*, 221 Ill. 2d at 244, 850 N.E.2d at 177.

¶ 72 B. Best-Interests Finding

¶ 73 After a finding of parental unfitness, a trial court shifts its focus to the child's interests. In re D.T., 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). A "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving

home life." D.T., 212 Ill. 2d at 364, 818 N.E.2d at 1227. At a best-interests hearing, before a court may terminate parental rights, the State must prove by a preponderance of the evidence it is in the child's best interests those rights are terminated. See D.T., 212 Ill. 2d at 366, 818 N.E.2d at 1228. We will not overturn a decision terminating parental rights unless it is against the manifest weight of the evidence. T.A., 359 Ill. App. 3d at 961, 835 N.E.2d at 914.

¶ 74 Both parents contend the best-interests findings were against the manifest weight of the evidence. Neylon stresses her testimony she had been enrolled in parenting classes and would soon obtain her certificate for that class. She also emphasizes her testimony she was taking a college course and would also take anger-management class. Upchurch stresses the fact he met with a counselor and was considering attending AA and parenting classes.

¶ 75 The trial court's conclusion is not against the manifest weight of the evidence.

¶ 76 Upchurch was sentenced to 15 years' imprisonment and, even if eligible for any good-time credit, would not be able to offer security or parenting for J.U. until J.U. is in his teens.

¶ 77 Regarding Neylon, the evidence shows the children were very young when initially removed from Neylon's care in February and March 2010: T.S. was four years old, N.S. was two years old, and J.U. was just a few days old. T.S. and N.S. had not visited with Neylon since October or November 2010. J.U.'s visits in Neylon's prison lasted one hour and occurred once a month. According to the evidence, Neylon will be imprisoned until September 2013. In contrast to Neylon's inability to provide security or stability to her children, the foster parents have provided for the children's needs and were committed to continuing to do so. The foster parents also offered permanency and provided an adoption alternative for J.U. The foster parents

also offered permanency to T.S. and N.S., as they continued to work with their father.

¶ 78

III. CONCLUSION

¶ 79

For the stated reasons, we affirm the trial court's judgment.

¶ 80

Affirmed.