NOTICE
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Filed 3/9/12

NO. 4-11-0974

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: B.J., C.R., R.R., K.W., and J.L., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Greene County
v.	)	No. 04JA11
KARRIE LEE,	)	
Respondent-Appellant.	)	Honorable
	)	James W. Day,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment

ORDER

¶ 1 *Held*: The trial court's finding that it is in the children's best interest to terminate respondent's parental rights is not against the manifest weight of the evidence.

Respondent has forfeited her objection to defects in the permanency orders because she never made the objection in trial court, where the defects could have been corrected.

The trial court was correct to deny respondent's motion for a new fitness hearing, considering that respondent had stipulated to allegations that she failed to make reasonable progress during specific nine-month periods after the adjudication of neglect and no evidence of subsequently acquired parental competence could change the fact that, because of her previous failure to make reasonable progress, she conforms to the definition of an "unfit person" in sections 1(D)(m)(ii) and (m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii), (m)(iii) (West 2010)).

¶ 2 Respondent, Karrie Lee, appeals from an order in which the trial court terminated her parental rights to five children: B.J., C.R., R.R., K.W., and J.L. She argues that, for three reasons, we should reverse the order. First, she claims the court made a finding that was against the manifest

weight of the evidence when it found that terminating her parental rights would be in the children's best interest. See *In re S.M.*, 314 Ill. App. 3d 682, 687 (2000) ("A reviewing court will not disturb a trial court's determination [of a child's best interest] unless it is against the manifest weight of the evidence.") We conclude that the finding has support in the evidence and that the finding therefore is not against the manifest weight of the evidence.

¶ 3 Second, respondent contends that the permanency orders omitted some information required by section 2-28(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-28(2) (West 2010)). We assume, however, that if these omissions in the permanency orders disadvantaged respondent in any way, she (or her counsel) would have mentioned them in the trial court, where they easily could have been corrected. Because she never did so, she has forfeited this contention.

¶ 4 Third, respondent maintains that the trial court erred by declining her request to redetermine the issue of whether she was an "unfit person" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). We disagree. Respondent stipulated that she was an "unfit person" in that she failed to make reasonable progress during specified nine-month periods after the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii), (D)(iii) (West 2010). Absent any evidence that the stipulation was untrue, the trial court had no reason to allow respondent to withdraw the stipulation, and the court had no reason to redetermine the issue of fitness. Insomuch as respondent gained competency as a parent after the finding of unfitness, nothing prevented her from presenting evidence of that fact in the best-interest hearing. Although such evidence would be relevant to the children's best interest, it could not change the fact that respondent conforms to the statutory definition of an "unfit person" by reason of her failure to make reasonable progress during the nine-month periods in the past.

¶ 5 Therefore, we affirm the trial court's judgment.

¶ 6 I. BACKGROUND

¶ 7 A. Why the Children Were Removed From Respondent's Custody

¶ 8 Respondent is the mother of the five children who are the subjects of this appeal: B.J., born December 25, 1996; C.R., born November 30, 1998; R.R., born December 14, 2000; K.W., born February 19, 2002; and J.L., born April 29, 2003. William Chaplin is the father of B.J. Christopher R. is the father of C.R. and R.R. Jason L. is the father of K.W. and J.L.

¶ 9 In 2002, the family consisted of respondent, Jason, and four of the children (J.L. had not yet been born). In early 2003, the Illinois Department of Children and Family Services (DCFS) began a child-neglect investigation after respondent caught Jason engaging in sexual behavior with B.J.

¶ 10 Jason was convicted of sexually abusing B.J., and he was sentenced to imprisonment. In July 2004, he was released from prison. On September 8, 2004, after a DCFS investigator saw Jason getting out of a car with respondent and B.J. DCFS placed all five children in foster care.

¶ 11 The State filed child-neglect proceedings in White County, and in October 2004, the circuit court adjudicated the children to be "neglected" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2010)) in that their environment was injurious to their welfare due to a substantial risk of sexual harm. *In re B.J.*, No. 4-09-0120, slip order at 2-3 (December 11, 2009) (unpublished order under Illinois Supreme Court Rule 23).

¶ 12 In November 2004, the court entered a dispositional order finding respondent to be unfit, unable, or unwilling to care for the children. The court awarded custody and guardianship of B.J., K.W., and J.L. to DCFS, and custody and guardianship of C.R. and R.R. to their father,

Christopher R.

¶ 13 Also in November 2004, the White County circuit court transferred this case to Greene County because respondent had moved in with her parents in White Hall.

¶ 14 In July 2005, the Greene County circuit court placed B.J. with her father, William Chaplin, in Pittsfield, in Pike County, and in January 2006, the court placed K.W. and J.L. in a traditional foster home with Donald and Bernadette Winnie in Fieldon, in Jersey County. *In re B.J.*, slip order at 3.

¶ 15 B. The Petition To Terminate Parental Rights

¶ 16 In February 2007, the State filed a petition to terminate respondent's parental rights. The petition alleged four grounds of unfitness: (1) she failed to make reasonable progress from November 2004 to August 2005, the initial nine-month period after the adjudication of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2006)); (2) she failed to make reasonable progress from August 2005 to April 2006 (which should have been May 2006), the second nine-month period after adjudication (see 750 ILCS 50/1(D)(m)(iii) (West 2006)); (3) she failed to make reasonable progress from April 2006 to December 2006 (which should have been January 2007), the third nine-month period after adjudication (see *id.*); and (4) she failed to make reasonable efforts to correct the conditions that had caused the children to be removed from her care (see 750 ILCS 50/1(D)(m)(i) (West 2006)). *B.J.*, slip order at 4.

¶ 17 C. The Finding of Parental Unfitness

¶ 18 On November 15, 2007, after a fitness hearing, the trial court entered an order finding that respondent was " 'an unfit person to have children for failing to make reasonable progress toward the return of the children during any of the 9-month periods as alleged in the [p]etition to [t]erminate

[p]arental [r]ights." *B.J.*, slip order at 4-5. According to the order, this finding was based on a stipulated hearing. *Id.* at 5.

¶ 19 The trial court also found Jason L. to be an unfit person. *B.J.*, slip order at 5. He eventually surrendered his parental rights to K.W. and J.L. *Id.*

¶ 20 D. A New Revelation of Sexual Abuse

¶ 21 In December 2007, Jason L. pleaded guilty to sexually abusing C.R. *B.J.*, slip order at 5. He committed this sexual abuse in June 2002, prior to his sexual abuse of B.J., but his sexual abuse of C.R. was not reported until 2007. *Id.* C.R.'s father, Christopher, was the one who reported the sexual abuse of C.R. *Id.* Jason again was sentenced to imprisonment, this time with an expected release date of 2013. *Id.*

¶ 22 E. The Initial Best-Interest Hearing

¶ 23 On January 23, 2009, the trial court entered an order denying the State's motion to terminate respondent's parental rights. *B.J.*, slip order at 11. Because "there existed a strong mother-child bond with each child" and because "the risk of harm had been removed from respondent's environment," the court decided that termination of respondent's parental rights would not be in the children's best interests. *Id.* at 18. Specifically, the court found that because (1) respondent had divorced Jason; (2) he was in prison, serving his sentence for sexually abusing C.R.; and (3) respondent had married someone else, "it was not likely that respondent would resume a relationship with Jason." *Id.* at 1. The State appealed, and we affirmed the trial court's judgment. *Id.* at 1-2, 20.

¶ 24 F. Permanency Orders

¶ 25 After we issued our decision in *B.J.*, the trial court held further permanency hearings. In a permanency order entered on February 1, 2010, the court set the goal of returning the children

home within 12 months. Although the order found that respondent had failed to make reasonable and substantial progress toward returning the children home, the order did not state, specifically, what respondent had to do to make such progress. The order included this preprinted language: "If the mother has *not* made substantial progress toward returning the minor home. The mother and the Department of Children and Family Services must take the following actions to justify a finding of reasonable efforts and progress"—and then, after a colon, there were three blank lines. (Emphasis in original.) Those lines were left blank.

¶ 26 It does not appear, however, from the transcript of the hearing held on February 1, 2010, that respondent's attorney, Thomas H. Piper, expressed any objection to leaving those lines blank. The topic of discussion in this hearing was what the permanency order should say. Instead of objecting to any vagueness in the permanency order as to what was expected of his client, Piper told the court: "We're simply saying we want a goal of return home within 12 and we would like the Department, during the interim, to provide services to my client to try to help her achieve fitness. That's all we're saying."

¶ 27 The next permanency order, entered on July 30, 2010, likewise stated the goal of returning the children home within 12 months, but this order found that respondent had made reasonable and substantial progress toward that goal.

¶ 28 The permanency order entered on February 9, 2011, maintained the goal of returning the children home within 12 months but this time found that respondent had failed to make reasonable and substantial progress. As for what respondent had to do to "justify a finding of reasonable efforts and progress," the order merely said: "Pending Psychological." The record does not appear to contain a transcript of the hearing held on February 2, 2011.

¶ 29 The final permanency order, entered on August 5, 2011, changed the goal to "[s]ubstitute care pending determination of termination of parental rights." The order said, "The above goal was selected and the other goals were ruled out because," and then there was a colon followed by three blank lines. On the first blank line, the trial court wrote the word "Best"—and nothing more. On the blank lines corresponding to "The mother and the Department of Children and Family Services must take the following actions to justify a finding of reasonable efforts and progress," the court wrote the words "Best Interest hearing is scheduled." It does not appear, though, from the transcript of the hearing held on August 5, 2011, that Piper objected to these defects or omissions in the permanency order.

¶ 30 G. The Competing Motions for a Redetermination of Fitness and Best Interest

¶ 31 On July 30, 2010, the State filed a motion for a new best-interest hearing. The State alleged it had "subsequent evidence" to support a finding that it would be in the children's best interest to terminate respondent's parental rights.

¶ 32 On August 11, 2010, respondent filed a motion for a new fitness hearing. She alleged that she had "complied with the service plans implemented by the Department of Children and Family Services" and that she was "now a fit parent."

¶ 33 Apparently, at about the same time, respondent filed a "Motion To Withdraw Stipulation of Unfitness" (the motion has no date stamp, but in the common-law record, it immediately follows the motion for a new fitness hearing). In this motion, respondent said: "On November 15, 2007, Respondent entered into a stipulation wherein the Court entered a finding that Respondent was 'an unfit person to have children for failing to make reasonable progress toward the return of the children during any of the 9-month periods as alleged in the petition to terminate

parental rights.' " Respondent requested to withdraw this stipulation. Alternatively, she requested the trial court to deny the State's motion for a new best-interest hearing.

¶ 34 On August 6, 2010, the trial court held a hearing on these competing motions. The Greene County State's Attorney, Matthew Goetten, brought along with him a transcript of the hearing held on October 26, 2007, in which respondent entered into the stipulations from which she now sought to withdraw. One of the stipulations, according to Goetten, was "[t]hat all of the service plans that applied to the specific dates in question in the petition would be entered into evidence." Goetten reminded the court:

> "*** Mr. Piper did stipulate to the entry of the service plans, first of all, and then as the allegations in the petition during the three separate nine months and, again, I'll just read from the record, 'As alleged in the petition during those three separate nine month periods, my client failed to make reasonable efforts or substantial progress in correcting the condition which caused the children to come into care.' "

Piper did not dispute Goetten's recounting of the record. Thus, it appears that, in the hearing of October 26, 2007, respondent not only stipulated to the admission of the service plans, but she also stipulated to the allegations of unfitness in the petition to terminate her parental rights.

¶ 35 Quoting *People v. Polk*, 115 Ill. App. 3d 1011, 1013 (1983), Goetten argued that, for two reasons, the trial court should deny respondent's motion to withdraw from the stipulations: (1) the motion was not " 'seasonably made,' " and (2) respondent had not made " 'a clear showing that the matter stipulated [was] untrue.' "

¶ 36 The trial court denied respondent's motion to withdraw her stipulation of unfitness.

The court also denied the State's motion for a new best-interest hearing. The court gave the State leave, however, to file a motion, within 21 days, "specifying in more detail the basis for the motion for best interest hearing."

¶ 37 On August 11, 2010, the State filed an amended motion for a best-interest hearing, in which the State identified the subsequent evidence it proposed to present in such a hearing. Paragraph 6 of the motion stated:

> "[T]he State has subsequent evidence to present to this Court to support a finding that it is in the best-interest of the children to terminate Respondent mother's parental rights. The evidence will include but is not limited to:
>
> a. Psychological evaluation of Karrie Lee performed by Judy K. Osgood, a licensed clinical psychologist, indicating a continued inability of Karrie Lee to adequately provide for and protect her children.
>
> b. [K.W.] and [J.L.]'s behavior issues following supervised visits with Karrie Lee.
>
> c. [K.W.] and [J.L.]'s emotional difficulties due to lack of permanency."

¶ 38 On August 25, 2010, the trial court granted a motion by respondent for an independent psychological evaluation. The court reserved ruling on the motions for a new fitness hearing and a new best-interest hearing.

¶ 39 In a docket entry dated April 25, 2011, the trial court noted it had "reviewed the two

psychological evaluations."

¶ 40 On May 3, 2011, the trial court denied respondent's motion for a new fitness hearing and granted the State's motion for a new best-interest hearing.

¶ 41 H. The Redetermination of the Children's Best Interest

¶ 42 The new best-interest hearing began on September 19, 2011, and ended on September 23, 2011. It consisted of a day and a half of testimony, mostly the testimony of Judy Osgood, a clinical psychologist for the State, and Manisha Punwani, a child psychologist for respondent.

¶ 43 1. *Osgood's Opinion*

¶ 44 On April 20, 2010, Osgood interviewed respondent and administered some tests, including intelligence tests. She also reviewed documentation from DCFS. On the basis of these sources of information, Osgood opined that respondent had "borderline intellectual functioning," a result consistent with reports that respondent had required special education at school. Osgood also diagnosed her as having features of post-traumatic stress disorder not otherwise specified, a parent-child relational problem, a partner relational problem, and a personality disorder with antisocial and dependent features.

¶ 45 Osgood explained in her report:

> "At age eight, Karrie reports she was sexually penetrated by her paternal uncle (twice). Karrie presents a chronic history of involvement with IDCFS surrounding her involvement with sex offenders and her failure to protect her children, consistent with Parent-Child Relational Problem and Partner Relational Problem.

Since March 2004, IDCFS has been involved with Karrie and her children subsequent to sexual abuse to her children by Jason [L.], Karrie's ex-husband. Karrie's children have remained in foster care. Karrie presents a pattern of continued involvement with sex offenders.

Karrie presents a pattern of chronic instability in her personal and interpersonal functioning including chronic parental failures consistent with Personality Disorder NOS with Antisocial and Dependent features. Subsequent to Jason's incarceration for sexual abuse to her children (including his admission to the crime), Karrie continued contact with him including several letters written to Jason while at IDOC. In her letters, Karrie repeatedly expressed her love for Jason, her plan to marry Josh[ua] [Slater] (and obtain money from him), then divorce Josh and use the money to help Jason upon his release from prison. Consistent with antisocial personality disorder, Karrie clearly exploited her husband Josh for his money and her own gain. In her letters, Karrie documented her plan to divorce Josh (which she did) and then reunite with Jason. In Karrie's letter to Jason, Karrie's ability and willingness to exploit others for financial and personal gain is clearly documented, consistent with antisocial personality disorder. Karrie does not present with any remorse for her wrongdoing including the harm she has created and inflicted on

> others (including her children as well as to Josh)."

¶ 46 In her report, Osgood quoted these letters. On August 18, 2008, for example, respondent wrote to Jason:

> " 'Jason, Hey Im sorry you did what you did. My heart hurts everyday for you. But court did go good. I go back Sept. 18. But I really would like to remarry you after girls are home. I want you back so much baby. I cried all day over you and the kids. I will never let go of you. You're the love of my life."

¶ 47 On November 25, 2008, respondent wrote to Jason:

> " 'My heart hurts for so bad. I'm gonna try to gather money for you so when you get out I can make you happy. Josh getting 30,000 from army. 15,000 is going into my savings account he has not access to it. Its only in my name. his accounts are in my and his name. So Im a smart woman when comes to trying to make you happy.' "

¶ 48 Osgood notes that, "[o]n March 4, 2010, Karrie obtained a divorce from Joshua Slater[,] having declared an on again off again relationship with Nick Atwood since September 2009." In 2008, DCFS indicated Atwood for sexual penetration of a minor. Nevertheless, in March 2010, respondent was declaring her intention to marry Atwood. She minimized the finding of sexual penetration, arguing that Atwood's girlfriend was a willing participant (she was 16, and he was 19 at the time of the offense). She also minimized Jason's history of sexual offenses, saying that " 'she was an underage girl, but not a child.' " (In this context, it is unclear whom respondent meant by

"she": B.J. or C.R.)

¶ 49 So, it appeared to Osgood that respondent lacked insight into sexual abuse, even after respondent completed a sexual-abuse counseling program (she refused to participate in a second program), and Osgood's perception was that respondent was so preoccupied with her own needs that she was incapable of understanding her children's needs or the risk of having a relationship with a sex offender. In Osgood's opinion, respondent lacked the ability and the empathy to be a parent. Osgood writes in her report: "There is no indication Karrie has the ability and/or willingness to provide for her own care or safety, let alone her children. Karrie appears highly likely to continue her involvement with high risk paramours in which her potential financial gain and dependency appear to be salient factors."

¶ 50 2. *Punwani's Opinion*

¶ 51 Respondent's expert, Manisha Punwani, testified that when she interviewed respondent, B.J., K.W., and J.L. on January 12, 2011, respondent was pleasant but appeared anxious. The girls were excited to see respondent, and they showed affection to her. Respondent showed affection to the girls, interacting with them and directing and redirecting them. Punwani considered it to be a very positive visit.

¶ 52 Punwani was concerned, however, about "parentification." The children were under the impression that they were supposed to take care of respondent instead of *vice versa*. They reported they had taken care of respondent while living with her.

¶ 53 In Punwani's opinion, respondent had little insight into what would be needed, or the challenges she would encounter, in raising five children. Punwani concluded that, at this time, respondent lacked the ability to be a parent and to provide for the children emotionally, cognitively,

developmentally, and psychologically. Punwani recommended cognitive behavioral therapy, psychodynamic psychotherapy, and parenting therapy. The parenting therapy alone would consist of six to eight months of weekly sessions. It could take a year or possibly several years before respondent became a competent parent—if she ever became such. Until the recommended therapies were tried, there was no way to know if they would be successful.

¶ 54 3. *How the Children Are Doing in Their Foster Homes*

¶ 55 a. B.J.

¶ 56 B.J. has been in 11 foster placements in the last 7 years. (Evidently, she did not live with her father, Chaplin, very long. Punwani noted in her report that, according to respondent, Chaplin "has not been very actively involved in [B.J.'s] life and is a registered sex offender and his parental rights are currently being terminated.") The reason for so many placements is that whenever B.J. begins feeling close to the foster family, or begins trusting her foster parents, she begins misbehaving, and requests a different placement. This is preemptive action on her part: by rejecting her foster parents, she eliminates the risk that they will reject her. She has been undergoing individual counseling, in which she is making slow progress and starting to talk about the sexual abuse. She does not talk much about respondent. She has been in her current foster placement for about a year, and a therapist writes that B.J. "has started to process what it feels like and means for her to have remained in a placement for over a year with foster parents who have dealt with her behavior and not had her moved due to her behavior."

¶ 57 b. K.W. and J.L.

¶ 58 K.W. and J.L. have been with the same foster family for 4 1/2 years, and they have grown close to that family. They refer to their foster parents as "Mom" and "Dad."

¶ 59 After their visitation with respondent was increased in February 2010, K.W. and J.L. began acting differently. Their behavior deteriorated; they stole, lied, and cried easily and for no apparent reason. They are continually questioning the lack of permanence; they do not understand why they are in a constant state of confusion and uncertainty.

¶ 60 The Winnies would like to adopt K.W. and J.L.

¶ 61 d. C.R. and R.R.

¶ 62 C.R. and R.R. are living with their father, Christopher R.

¶ 63 4. *B.J.'s, K.W.'s, and J.L.'s Preferences*

¶ 64 B.J. and K.L. have expressed a desire to return to their mother. J.L. was too young to express a preference.

¶ 65 5. *Testimony By the Visitation Supervisors*

¶ 66 Janet Miller and Teal Cunningham supervised the visits between respondent and the children. Miller, who was B.J.'s visitation supervisor, testified that respondent visited B.J. regularly and consistently. According to Miller, respondent exercised parental responsibility during these visits, and she believed that respondent was capable of properly supervising B.J.

¶ 67 Cunningham was K.W.'s and J.L.'s visitation supervisor. She testified to the affection she had observed between respondent and these children. She believed that respondent had demonstrated good parenting skills.

¶ 68 6. *William Sharrow*

¶ 69 The State called respondent's current boyfriend, William Sharrow, for the purpose of eliciting his criminal history. He had served a prison sentence for burglary and for aggravated battery of a pregnant person. He was released in 2007. For the past two years, he had been with

respondent and had been employed. They intended to marry.

¶ 70 *7. The Trial Court's Decision*

¶ 71 On October 14, 2011, the trial court entered an order finding that terminating respondent's parental rights would be in the children's best interest. Accordingly, the court terminated her parental rights.

¶ 72 In its decision, the trial court said it found the testimony of the two experts, Osgood and Punwani, to be "persuasive." The court explained:

> "The reports of these two experts were, in the opinion of the court, quite similar. Dr. Osgood stated that Ms. Lee 'needs to be considered at high risk of harm to her children if left unsupervised in her care.' Dr. Punwani opined that 'At this time, Ms. Karrie Lee does not have the ability to care and provide emotionally, cognitively, developmentally, and psychologically for the children[.]' Dr. Punwani also added that 'Having the three girls live together under the same roof would (be) disruptive and emotionally disastrous. I doubt Karrie Lee has the capacity to manage this conflict and deal with it in a way that would promote a healthy living environment for all the three girls under one roof.' Other evidence at the best interest hearing essentially confirmed the mother's good supervised visits with the children and their affection for their mother but likewise showed good relations between the two younger children and their foster home placement."

¶ 73 After quoting the best-interest factors in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2010)), the trial court found it would be in the children's best interest to terminate respondent's parental rights.

¶ 74 This appeal followed.

¶ 75 II. ANALYSIS

¶ 76 A. The Children's Best Interest

¶ 77 1. *Respondent's Unwarranted Inference That the Trial Court Ignored Certain Evidence*

¶ 78 Respondent complains that, in its decision, the trial court "failed to discuss the significance" of Miller's and Cunningham's "observations of the visits and their opinions as to her parenting ability." She says the court "apparently gave no consideration to the testimony of the[se] witnesses concerning the mother's parenting during visitations, the strong affection and bond between mother and the minor children and the preference of the children, as reported by the Guardian-ad-Litem, to be reunited."

¶ 79 We presume, however, that the trial court considered this evidence along with all the other evidence. "The court heard the testimony offered, and the presumption is it was duly considered ***." *Potter v. Gronbeck*, 117 Ill. 404, 409 (1886). See also *Lubin v. Goldblatt Bros. Inc.*, 37 Ill. App. 2d 437, 446 (1962); 2A Ill. L. & Prac., *Appeal & Error* § 463 (2012). Respondent has not rebutted this presumption. Just because the court did not discuss certain evidence in its decision and just because that evidence did not result in a favorable outcome for respondent, it does not follow that the court ignored that evidence. We are aware of no requirement that a court's decision exhaustively discuss each and every item of evidence. And the court was entitled to

disagree with respondent about the weight that Cunningham's and Miller's testimony deserved. The court could have considered Osgood and Punwani to be better qualified than Cunningham and Miller to assess respondent's parenting abilities. "It is not the function of the reviewing court to reweigh the evidence or reassess the credibility of the witnesses." *In re C.P.*, 191 Ill. App. 3d 237, 244 (1989).

¶ 80 2. *The Trial Court's Decision That Punwani's Recommended Therapies Were Not Worth the Wait*

¶ 81 Respondent asserts that, although Punwani "made various recommendations of services and treatments which could address the mother's issues," the trial court "took no consideration of those recommendations." Respondent acknowledges our deferential standard of review, under which we should refrain from reweighing the evidence or reassessing the credibility of the witnesses (see *C.P.*, 191 Ill. App. 3d at 244), but she insists that she really is not asking us to *re*weigh or *re*assess Punwani's recommendations, because, according to her, the trial court never weighed and assessed those recommendations in the first place: "it is clear that the trial court simply ignored the recommendations of Dr. Punwani," she says. She argues that "[g]reat deference to the findings of the trial court cannot explain the court's unwillingness or failure to implement Dr. Punwani's recommendations."

¶ 82 Actually, great deference to the trial court can explain the court's decision not to go along with Punwani's recommendations. And just because the court did not share respondent's view that Punwani's recommendations were worth a try (in the sense of putting the case on hold, to see if the recommended therapies eventually yielded results), it does not follow that the court ignored those recommendations.

¶ 83 The trial court had to decide the course of action that was in the children's best interest. "Once the trial court has found the parent to be unfit, all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 339 (2009). The therapies that Punwani recommended were not a sure bet. They could have taken years, and ultimately they could have come to nothing; and all the while, the children would have been in a state of uncertainty. The court could have reasonably decided that this gamble would have been inconsistent with the children's best interest. In addition to considering the child's familial ties, including his or her ties to the biological parents (705 ILCS 405/1-3(4.05)(c) (West 2010)), a court has to consider "the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures." (705 ILCS 405/1-3(4.05)(g) (West 2010)). The term "parent figures" has a wider meaning than "biological parents"; it also can mean foster parents. In this case, the court could have reasonably decided that the children's need for permanence and stability outweighed familial ties. Being in a continual state of confusion and uncertainty was stressful and damaging to K.W. and J.L., lessening the consolation and security they derived from their relationship with the Winnies.

¶ 84 3. *"Lumping the Children Together"*

¶ 85 Respondent finds fault with the trial court's decision in that it "lumps together" B.J., C.R., and R.R. with K.W. and J.L., even though K.W. and J.L. are the only ones who "have a pre-adoptive home." Respondent argues that, "except as to the psychological evidence," there is "[a]bsolutely no evidence as to why it would be in [B.J.'s, C.R.'s, or R.R.'s] best interest to terminate [her] parental rights."

¶ 86 According to the psychological evidence, however, respondent lacks the capacity or the will to take care of her children and to keep them safe. Osgood writes in her report: "There is

no indication Karrie has the ability and/or willingness to provide for her own care, let alone her children," given her propensity to establish relationships with "high risk paramours in which her potential financial gain and dependency needs appear to be salient factors." Osgood further observes in her report: "Consistent with a personality disorder, Karrie presents chronic instability in her personal functioning including frequent homelessness and sporadic unemployment." Osgood notes that respondent is "living with the grandparents of her boyfriend [(Nick Atwood)] who is a sex offender."

¶ 87 When determining a child's best interest, a court should consider "the physical safety and welfare of the child, including food, shelter, and clothing." 705 ILCS 405/1-3(4.05)(a) (West 2010). The court could have reasonably given great weight to that factor in the present case.

¶ 88 B. Defects in the Permanency Orders

¶ 89 Section 2-28(2)(G) of the Juvenile Court Act of 1987 (705 ILCS 405/2-28(2)(G) (West 2010)) provides that "[i]n selecting any permanency goal, the court shall indicate in writing the reasons why the goal was selected and why the preceding goals were ruled out." Also, section 2-28(H) provides that "[i]f the permanency goal is to return home, the court shall make findings that identify any problems that are causing continued placement of the children away from home and identify what outcomes would be considered a resolution to these problems." Respondent argues that the permanency orders that the trial court entered on February 1 and July 30, 2010, and on February 9 and August 5, 2011, failed to comply with these provisions of the statute.

¶ 90 Nevertheless, as the State observes, respondent never objected to any deficiency in the permanency orders when the trial court entered the orders. If respondent had objected, the deficiencies could have been corrected. Consequently, respondent has forfeited her contention that

the permanency orders are defective. Arguments made for the first time on appeal are forfeited. *Peal v. Lee*, 403 Ill. App. 3d 197, 211 (2010). The principles of forfeiture apply to proceedings under the Juvenile Court Act of 1987. *In re H.D.*, 343 Ill. App. 3d 483, 489 (2003).

¶ 91 C. The Trial Court's Refusal To Hold a New Fitness Hearing

¶ 92 Respondent maintains that the trial court erred in denying her motion for a new fitness hearing. She reasons that, in cases such as hers, in which the trial court finds a parent to be unfit but nevertheless finds (at least initially) that it would not be in the child's best interest to terminate parental rights, the parent would be helpless unless he or she were granted the opportunity to prove that, in the interim between the fitness hearing and the best-interest hearing, he or she had become a competent parent.

¶ 93 A parent could present such evidence, however, in the best-interest hearing. Although such evidence of subsequently acquired parental competence would be relevant to the child's best interest, it could not affect the finding of unfitness if the finding was based on a failure to make reasonable progress in the past. See 750 ILCS 50/1(D)(m)(ii), (m)(iii) (West 2010). If a parent stipulates that, during specific nine-month periods after the adjudication of neglect, he or she failed to make reasonable progress, nothing that happens after those nine-month periods could possibly change the fact that the parent is, by statutory definition, an "unfit person." Even if, afterward, the parent became an exemplary parent, he or she still would conform to the statutory definition of an "unfit person" by reason of failing to make reasonable progress during the nine-month periods in the past. Nevertheless, if subsequently to those nine-month periods, the parent becomes a competent parent, evidence of this newly acquired competency surely will be relevant to the determination of the child's best interest. The parties agree that, under section 2-28 of the Juvenile Court Act of 1987

(705 ILCS 405/2-28 (West 2010)), custody of the child can be restored to a parent, despite a previous finding of unfitness, if "the minor can be cared for at home without endangering his or her health or safety" and if "it is in the best interest of the minor" to do so.

¶ 94 III. CONCLUSION

¶ 95 For the foregoing reasons, we affirm the trial court's judgment.

¶ 96 Affirmed.