

NOTICE
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2012 IL App (4th) 120390-U

Filed 9/18/12

NO. 4-12-0390

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	No. 10JA76
TAMMY PETERSON,	)	
Respondent-Appellant.	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly found respondent mother unfit for failing to make reasonable efforts to correct the conditions that were the bases for the removal of her child.
- ¶ 2 Respondent mother, Tammy Peterson, appeals the orders of the circuit court finding her an unfit parent and terminating her parental rights to D.P. (born April 5, 2007). Tammy contends (1) the trial court erred by finding she failed to make reasonable efforts to correct the conditions that were the basis for the removal of D.P. from her care, (2) the trial court erred by finding she failed to make reasonable progress toward D.P.'s return to her within nine months following adjudication, and (3) she was denied substantive due process when she was told at the dispositional hearing the permanency goal was to return home in 12 months while the opportunity to make reasonable progress toward D.P.'s return was limited to 9 months. We

affirm.

¶ 3

I. BACKGROUND

¶ 4

In November 2010, the State filed a petition for the adjudication of wardship, alleging D.P. was a neglected minor because her environment was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2010)). According to the petition, an investigator from the Department of Children and Family Services (DCFS), Becky Gengenbacher and Bruce Baker, a Quincy police officer, were sent to investigate a report of a child wandering in a trailer park. At approximately 2:30 p.m., Officer Baker met with individuals who reported they saw D.P., wearing only shoes and a pull-up diaper that smelled of urine, walking around the neighborhood approximately one hour earlier. The outside temperature was 45 degrees.

¶ 5

The State further alleged Officer Baker went to D.P.'s home. Ultimately, Officer Baker entered the residence and found Leon Peterson, Tammy's husband, asleep in the rear bedroom with the door closed. Leon is identified in the petition for adjudication of wardship as D.P.'s father, but the termination petition identifies Kenneth Gosson as the respondent father. Neither is a party to this appeal. Officer Baker had difficulty waking Leon. Leon appeared disoriented and said D.P. was in her bedroom. Gengenbacher arrived. Leon reported to Gengenbacher he had been released from a psychiatric unit at 11 a.m. Leon stated Tammy left at approximately 1 p.m., when Leon was lying on the couch. Leon checked on D.P. and then fell asleep. Leon "was not able to tell" Gengenbacher the medication he was taking.

¶ 6

According to the petition, the trailer was filthy. There was a strong odor and little room to walk without stepping on garbage, which included old food and dog feces. Dirty dishes were piled in the sink, and cigarette butts were on the floor. Full ashtrays and prescription

medication sat on the rear of the couch, within D.P.'s reach. Leon reported no hot water. In D.P.'s room, bags of clothing were "all over the floor," leaving no floor space for D.P. to play.

¶ 7 The State further alleged Tammy arrived home while Officer Baker and Gengenbacher were speaking to Leon. She "was very upset" when she learned DCFS was talking to D.P. Tammy stated someone was coming to fix the water heater and blamed D.P. for the mess in her room. When Gengenbacher tried to ask Tammy questions about Leon's condition, Tammy entered the trailer.

¶ 8 In December 2010, Tammy admitted the allegations in the State's adjudicatory petition. The trial court found D.P. neglected "and/or" abused under section 2-3 of the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2010)).

¶ 9 In November 2011, the State moved for the termination of Tammy's and Gosson's parental rights to D.P. In the petition, the State argued Tammy was an unfit parent on the following grounds: (1) Tammy failed to make reasonable efforts to correct the conditions that were the basis for D.P.'s removal from her (750 ILCS 50/1(D)(m)(i) (West 2010)), (2) Tammy failed to make reasonable progress toward D.P.'s return within the first nine months following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)), and (3) Tammy failed to make reasonable progress toward D.P.'s return during any nine-month period after the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)), specifically from December 16, 2010, to September 15, 2011, and from September 16, 2011, to June 15, 2012.

¶ 10 The fitness hearing was held in March 2012. Timothy J. Baker, a clinical therapist at Transitions of Western Illinois, testified he performed outpatient therapy on children and adults. Tammy had been one of his clients at Transitions for the three previous years.

Tammy reported she had to deal with depression and anxiety.

¶ 11 Timothy testified he had a counseling session with Tammy on December 16, 2010. At that session, Tammy presented with anxiety and stress-management issues. Timothy's plan at that point was to reevaluate in a week or two to discuss how well she had done implementing the strategies they discussed. Tammy's "anxiety was at an all-time high" when they met again on January 6, 2011.

¶ 12 Tammy failed to show for her January 20, 2011, appointment, but the two had an appointment on March 23, 2011. Tammy was concerned about visitation, believing she was not getting adequate time with D.P. Tammy acknowledged "she needed to develop more consistency with regard to her improvements." Tammy missed counseling sessions scheduled on May 11, 2011, and June 21, 2011.

¶ 13 Timothy met with Tammy to complete an updated treatment plan on June 15, 2011. According to this plan, Tammy was to focus on parenting skills and accepting responsibility and focusing on "areas that present themselves to her life." The next session was on June 28, 2011. On that date, Tammy arrived aggravated and angry over "something that occurred involving an agency." Tammy missed appointments on July 5, August 30, September 13, October 4, November 3, and November 21, 2011. Timothy testified he continued to see Tammy and she had an upcoming scheduled appointment.

¶ 14 On cross-examination, Timothy testified Tammy's grooming, a continuing problem, improved considerably but "was sporadic" even though they discussed the importance of grooming in her service plan. In discussing parenting, he and Tammy would discuss the pros and cons and discuss ways to approach various situations.

¶ 15 Over time, Tammy's stress and anxiety reduced, but it had not been alleviated. Tammy told Timothy how she was managing her anxiety and stress, telling him she and her husband communicated more and took more time to think about situations before reacting or speaking. When asked whether Tammy had taken responsibility or ownership for her actions in D.P.'s removal, Timothy testified Tammy "wished the incident that occurred on that given time that brought DCFS into their [lives] did not occur, and she realized that if she would have been at home at that given time, it might not have happened."

¶ 16 Denise Hickox, formerly a parenting educator, testified, after parents completed a parenting class, she would meet with the parents for approximately four to five hours in the home to discuss specific issues that were problematic for the parents. In the classroom portion of the training, parents would attend four three-hour classes, to receive instruction on child development, punishment versus discipline, and self-esteem issues. Tammy participated in the parenting class and Hickox worked with her at the DCFS office.

¶ 17 Hickox testified Tammy passed the classroom portion of the parenting training. Hickox's first in-home session with Tammy was on March 10, 2011. The session occurred at the DCFS office because Tammy's trailer had been condemned. At the first session, Hickox and Tammy discussed her parenting weaknesses, environmental issues due to "a lot of people in and out of the home," and animals and feces on the floor. Tammy told Hickox about the incident when D.P. left the home while Tammy was out. Tammy said D.P. "was very spirited." D.P. would take things from closets and create a lot of mess in the home. According to Hickox, Tammy and Leon discouraged D.P. from going to the bedroom door while Leon was resting. Tammy told Hickox D.P. had been molested in the past and they did not want her to be shocked

or terrified if she opened the door and Leon was possibly undressed.

¶ 18 At that session, Hickox set some goals for the family such as addressing emotional issues and money-management concerns. Hickox testified Tammy told her they were living at a hotel across from DCFS, at \$465 per month. Tammy reported the two received \$779 per month.

¶ 19 Hickox met with Tammy and Leon on March 24, 2011. At this meeting, also held at DCFS, they discussed D.P.'s temperament. D.P. cried often and threw temper tantrums. Tammy disclosed Leon was not the biological father of D.P. but said the man who was "had numerous other children" and had nothing to do with D.P. She also discussed with Tammy and Leon about their ability to maintain a clean and stable environment for D.P. Tammy said their difficulty stemmed from the traffic in and out of their home. Tammy reported Leon needed time to go to his room and unwind "so that he feels like he *** won't do something that will be hurtful to another person." During this session, D.P. asked Tammy and Leon to play a game with her. Tammy was "not extremely excited to participate," but she did. Tammy and Leon had no plans for D.P. after the game. They started to color. D.P. became bored and stopped, but Tammy and Leon continued to color.

¶ 20 On cross-examination, Hickox testified on a May 2, 2011, visit she observed the parents play "Ring Around the Rosie" with D.P. Tammy also read a book to D.P., and Leon and D.P. played with Legos.

¶ 21 Brenda Bent was an employee of ADDIS Home Healthcare, which provides supervision of visits and the transportation of children. Bent began supervising visits between D.P. and Tammy on August 18, 2011. According to Bent, Tammy was expected to bring snacks

to visits, an extra set of clothes for the child, and activities for the child. Tammy was not permitted to discuss the court case. D.P.'s and Tammy's visits were scheduled on Mondays and Thursdays from 9:30 to 11:30.

¶ 22 The first visit between D.P. and Tammy occurred on August 18, 2011. At some point, Tammy and D.P. went to the restroom. D.P. became angry with Tammy and hit her. D.P. took off her underwear, shorts, and socks and threw it all. D.P. wanted a diaper. Tammy refused, telling D.P. she was too old for a diaper. D.P. hit Tammy. Tammy dressed D.P. and returned her to the room and told D.P. she would have to have a time-out. However, because it was at the end of the visit, the time-out was not imposed.

¶ 23 Bent supervised another visit on August 22, 2011. Tammy was late. Bent also provided in-home services in this case. On August 24, 2011, Bent met with Tammy and Leon at the home. She found paint chips on the window sills and holes in the bathroom floor. Bent also found clothing on the floor and cigarette butts in cans in the bathroom and on the floor next to the bed.

¶ 24 On August 29, 2011, she supervised a visit between Tammy and D.P. When Bent and D.P. arrived, Tammy approached to help D.P. exit the vehicle. D.P. said she did not want to see Tammy. She hit and kicked Tammy.

¶ 25 Bent testified she performed an at-home visit on August 31, 2011, with Tammy and Leon. No changes to the home had been made. Tammy indicated they had contacted the landlord, who said he would install a furnace. There were still open pipes and paint chips on the floor. Tammy told Bent she was thinking of moving to a new residence, which would cost an additional \$50 per month. Bent discussed the importance of hygiene, including taking a shower,

using deodorant, and wearing clean clothes.

¶ 26 On September 1, 2011, Bent supervised another visit. During this visit, Tammy told D.P. to help her pick up the room. D.P. refused and said she was putting her sandals on. When Tammy said it was time to leave, D.P. threw her shoes at Tammy. Tammy did not impose discipline. On September 6, during another visit, Tammy wanted to wash D.P.'s hands. D.P. did not want to do so; she started kicking the walls and screaming. Tammy picked up D.P. and washed her hands, but she did not discipline D.P. for her outburst. When the visit was over, Tammy did not ask D.P. to help clean the room, but told Leon to do so.

¶ 27 Bent testified, on September 7, 2011, she had another at-home meeting with Tammy and Leon. Tammy told Bent they were \$75 short on their rent that month. Tammy also told Bent they owed \$26.50 for cable. Bent observed cigarettes in the sink and dead bugs in the bathtub.

¶ 28 At a September 8, 2011, visit, Tammy informed Bent the family had a new pet—a one-year-old miniature dachshund. The dog had its shots and had been to the veterinarian. Bent discussed whether they had the money to care for the new dog. Tammy and Leon assured her they would not have any problems. At the end of the visit, Leon picked up the toys.

¶ 29 Bent testified, at the September 15, 2011, in-home visit, she had a discussion with Tammy and Leon about going to the public-aid office to seek some financial help because they were having a difficult time with budgeting. Tammy and Leon received \$100 from a local church for a deposit on an apartment. Bent testified Tammy and Leon had not made any changes to the apartment.

¶ 30 Erin Baker, an advanced child welfare specialist with DCFS, was assigned to

D.P.'s case on November 7, 2010. The initial service plan for Tammy and Leon was prepared on November 5, 2010. There were six tasks relating to mental health, visitation, parenting, budgeting, hygiene, and cooperating with DCFS and court-ordered services.

¶ 31 Tammy's progress on this plan was evaluated on May 26, 2011. Tammy's progress was rated unsatisfactory as to mental health concerns. Tammy continued to blame others for D.P.'s removal from her care, for her financial struggles, and for her living situation. Tammy received a satisfactory rating on cooperation. Her rating for visitation was unsatisfactory due to the chaotic nature of the visits. D.P. controlled the visits. Tammy failed to discipline D.P. Tammy's rating for the parenting task was also unsatisfactory. Tammy participated in the parenting class, but she was unable to apply what she learned during the interactions with D.P. during the visits. Tammy received an unsatisfactory rating for hygiene. Because of odor, Erin testified "there were times that we would have to have the fan on in the visiting room." Erin testified the permanency goal set by the court was for D.P. to return home.

¶ 32 Tammy's budgeting tasks were rated unsatisfactory at an evaluation on June 2, 2011. Tammy and Leon were often behind on bills and made poor choices, such as selecting the highest cable package they could get despite DCFS's advice about choosing the least expensive cable option.

¶ 33 Erin testified from the opening of the case until January 2011, Tammy resided in a trailer on Crescent Lane in Quincy. From January 2011 until February 28, 2011, because they had no hot water, Tammy and Leon resided with the Price family in Clayton. Erin was unable to observe the conditions, because the Price family would not let her in. As of March 1, Tammy and Leon resided in the trailer again. Erin attempted a home visit on March 2, 2011, but no one

answered the door. Beginning March 9, 2011, Tammy resided in a cousin's trailer in the same neighborhood. She complained of "several cats" and a mess in that home. Erin testified she and Timothy stressed to Leon and Tammy their main concern was to find appropriate housing. As of March 10, 2011, Tammy and Leon were staying at a Days Inn, paid for by "Two Rivers." Erin described this as a one bedroom with a microwave and a bathroom. On May 12, 2011, Tammy reported a new address. She resided in a duplex apartment on Maple Street in Quincy. Erin saw the residence on June 3, 2011. There were three bedrooms and a kitchen area. There was a block where the threshold to the entryway would be. Erin believed this was a tripping hazard. In one of the rooms, Erin observed large paint chips in the windowsill. She found exposed pipes in the bathroom. Tammy reported having seen a cockroach there. From July 21, 2011, through September 4, 2011, Tammy stayed with a friend and her family, because there was no air-conditioning in her residence.

¶ 34 Two witnesses testified on Tammy's behalf: Stacy Melton, a licensed clinical social worker, and Cheryl Nosser, a landlord.

¶ 35 Melton is a consultant through Child and Family Connections, and met Tammy through early intervention when D.P. was 23 months old. Melton saw Tammy and D.P. "in an outpatient therapy-type setting," counseling Tammy through the pendency of the case until the present.

¶ 36 Melton testified she met with Tammy and Leon on November 9, 2010. Tammy was upset as D.P. had been taken by DCFS. Tammy took ownership of D.P.'s removal, stating she should not have left D.P. there. Melton and Tammy then worked on problem-solving and the things Tammy could do to keep D.P. safe. Tammy proposed placing the doorknob higher and

installing a lock at the top. They also discussed cleaning the house. Tammy took responsibility for the dog feces in the home and stated she had a "no-pet rule."

¶ 37 Melton testified she met with Tammy 16 more times through September 13, 2011. She opined hygiene issues were prevalent only in the summer, when it was hot and Leon and Tammy had no transportation. Melton testified the condition of their clothing was clean.

¶ 38 On cross-examination, Melton could not specify when the no-pet rule was put in place. Melton was aware the family "had a dog for a while."

¶ 39 Cheryl Nosser testified she was, at the time of her testimony, the landlord for Tammy and Leon. Nosser was not the landlord during the nine-month period following the adjudication of neglect.

¶ 40 At the close of the hearing, the trial court concluded Tammy missed 10 of 14 scheduled appointments with Timothy. The court concluded Tammy made some efforts, such as completing the parenting-skills program, but she failed to implement the information successfully. The court found the State proved all three allegations of parental unfitness by clear and convincing evidence.

¶ 41 That same day, the trial court heard evidence on D.P.'s best interests. The court entered an order terminating Tammy's and Gosson's parental rights to D.P.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 Tammy contends the trial court erred in finding she failed to make reasonable efforts to correct the conditions that were the basis for D.P.'s removal. Tammy argues she counseled with two therapists and took responsibility for D.P.'s removal; she completed the

parenting class and continued to meet with the parenting educator; and she attended her visits with D.P. and worked on budgeting issues. Tammy concedes during the initial nine-month period, she failed to make progress in stabilizing her housing or maintaining the environment, but she contends there was an improvement from the condition of the residence on the date of D.P.'s removal. Tammy argues, "[u]sing a subjective standard to judge [her] efforts, based on what she was able to do, this does show efforts."

¶ 45 According to the Adoption Act, a parent is an unfit person if the State proves any one or more of the grounds listed in section 1(D) (750 ILCS 50/1(D) (West 2010)). The State must prove such ground by clear and convincing evidence. *In re A.P.*, 277 Ill. App. 3d 592, 597, 660 N.E.2d 1006, 1010 (1996). Only one statutory ground need be proved to established parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006).

¶ 46 The parental-fitness findings of the trial court 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).

¶ 47 Whether a parent makes reasonable efforts to correct the conditions that were the basis for the child's removal, the ground listed in section 1(D)(m)(i), is judged within the nine-month period after the adjudication of neglect. *In re D.F.*, 208 Ill. 2d 223, 237-38, 239-40, 802 N.E.2d 800, 809-10 (2003). Reasonable efforts "relate to the goal of correcting the conditions that caused" the child's removal and are judged under "a subjective standard based upon the amount of effort that is reasonable for a particular person." *In re Daphnie E.*, 368 Ill. App. 3d

1052, 1066-67, 859 N.E.2d 123, 137 (2006).

¶ 48 We find the trial court's decision is not against the manifest weight of the evidence. The conditions that led to D.P.'s removal were inadequate supervision and the deplorable conditions of the home, which put D.P.'s health and welfare at risk. The nine-month period at issue spans December 15, 2010, until September 15, 2011. The record shows, as of the end of August 2011, Tammy was still living in a transient situation with paint chips on the windowsills, holes in the bathroom floor, clothing on the floor, and cigarette butts in cans on the floor. On September 7, 2011, cigarettes were on the sink and dead bugs were in the bathtub. As of September 15, 2011, these conditions had not been changed and the house had no heat. During this time, Tammy had eight changes of residency, including residing in a location that could not be checked and in another with exposed pipes in the bathroom. The issue of parental supervision had not been corrected. Tammy failed to implement any parenting skills. The history of this case is one of sporadic, unstable housing, substandard living conditions, missed appointments, bad judgment, and minimal efforts.

¶ 49 Tammy's reliance on the subjective standard is misguided. While the subjective standard accounts for the efforts of the particular person given their capabilities (see, *e.g.*, *In re Gwynne P.*, 346 Ill. App. 3d 584, 596, 805 N.E.2d 329, 339 (2004)), the record evidence fails to show the minor improvements in the condition of a residence amount to reasonable efforts on her part.

¶ 50 The trial court's decision on fitness may be upheld on this basis. We need not consider Tammy's other arguments. See *Donald A.G.*, 221 Ill. 2d at 244, 850 N.E.2d at 177.

¶ 51

III. CONCLUSION

¶ 52

We affirm the trial court's judgment.

¶ 53

Affirmed.