

their mother, who had previously lost custody in 2004 after her paramour had sexually abused S.S., allowed a registered sexual predator to have access to the minors again. The petition further alleged that the minors were abused in violation of section 2-3(2)(ii) of the Juvenile Act (705 ILCS 405/2-3(2)(ii) (West 2006)), because their mother created a substantial risk of physical injury to the minors by allowing the registered sex offender to have unsupervised contact with them.

¶ 5 On December 8, 2008, the circuit court held a temporary custody hearing. After finding that there was overwhelming evidence supporting the removal, the court granted temporary custody to the Department of Children and Family Services (DCFS). The court ordered that DCFS was to investigate the need for services in alcohol abuse, domestic violence issues, and parenting skills. The court further ordered that a psychological evaluation be performed on Shelly. During the hearing, the court also appointed counsel for Shelly.

¶ 6 On January 29, 2009, Andrea Bagaglio, a caseworker with Lutheran Child and Family Services (LCFS), filed a dispositional report with the court. On February 4, 2009, the court held a hearing where Shelly stipulated to both an order of disposition and an order of adjudication. During the hearing, a goal was set for the children to return home in 12 months if all required conditions were met. The court also reminded Shelly that if she did not cooperate with DCFS and fulfill all the conditions then her parental rights would be terminated. The case was set for a permanency hearing.

¶ 7 On July 22, 2009, the court held the first permanency hearing. At that hearing, Shelly stipulated to an order that she had not made reasonable and substantial progress toward returning the minors home because there was still a psychological evaluation to be completed. The court also entered an order directing the psychological evaluation be expedited and completed by August 31, 2009.

¶ 8 On February 11, 2010, a second permanency hearing was held. The court reviewed the completed psychological evaluation. A stipulated order was entered that Shelly had made efforts toward returning the children home but had not made reasonable progress due to the uncompleted items of her service plan. The permanency goal remained unchanged.

¶ 9 On July 14, 2010, at the third permanency hearing, the court entered a stipulated permanency order that Shelly had not made reasonable and substantial progress toward returning the children home. The court also allowed Shelly's appointed counsel to withdraw and replaced him with new appointed counsel.

¶ 10 On February 10, 2011, a fourth permanency hearing was held. At the hearing, Crystal Nash, a caseworker from LCFS, testified that Shelly had met all previous goals but that additional goals had been recommended by DCFS. At that time, the new recommendations of completing a SAFE program that teaches parents about child predators and another psychological evaluation were not completed. Moreover, Ms. Nash testified that Shelly also needed to have at least a two-bedroom home for the children. The guardian *ad litem* (GAL) argued that this case was extremely worrisome because the children had previously been removed from Shelly's custody and only a short time after receiving them back, they had to be removed again because of Shelly's lack of security over the children. The court ordered that Shelly had not made reasonable and substantial progress toward returning the children home because she needed to complete the new recommendations. The court also kept the permanency goal at 12 months and set the case for another permanency review.

¶ 11 On March 7, 2011, a letter from Ms. Nash to DCFS was filed. The letter documented an interaction between Ms. Nash and Shelly. The letter stated that Ms. Nash had received information that Shelly had a new boyfriend and that Ms. Nash had made a surprise visit to her home. At first, Ms. Nash just reminded Shelly that she should not have any men inside the house. Ms. Nash documented that Shelly became agitated with her over this reminder.

Furthermore, the letter stated that on February 28, 2011, Ms. Nash had phoned Shelly to let her know that she knew that she was dating a man named Brian and told her that she had 24 hours to supply information on him for a background check. The letter stated that at this point, Shelly became irate with Ms. Nash and began to yell racial slurs at her. In the letter, Ms. Nash stated that unsupervised visits had been stopped and a status hearing was requested.

¶ 12 Another incident occurred on April 22, 2011, and was documented in a contact note on May 3, 2011. The note was filed May 4, 2011. In the note, Ms. Nash recorded that she made an unannounced visit to Shelly's home for a parent visit. At the visit, Ms. Nash asked Shelly if she was still dating Brian. Shelly responded that they were merely friends. When asked if she was still associating with Brian, Shelly answered in the affirmative. Furthermore, Ms. Nash asked Shelly if she was aware that Brian had an order of protection against him and she answered again affirmatively. After being questioned, Shelly also explained that Brian told her that the order of protection was because he had allegedly molested his biological daughter. When asked why she thought it was okay to let him be around her children, Shelly responded that he had not been found guilty. Ms. Nash also told Shelly that she thought it was selfish of her to have an alleged molester around the children. Shelly then began to curse and yell racial slurs at Ms. Nash. Ms. Nash noted that she did not recommend that the children are returned home because Shelly is continuing to associate with an alleged sexual molester.

¶ 13 On June 15, 2011, the State filed a motion for the termination of parental rights and for the appointment of a guardian with the power to consent to adoption against all the natural parents of S.S., K.S., and B.B. under the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2010)). On July 28, 2011, a fifth permanency hearing was held. At that hearing, Ms. Nash testified that although Shelly had made progress and completed most of the service

plan, she no longer felt that the children should be returned home. Ms. Nash based her opinion on Shelly's recent association with an alleged child molester, her concealment of her new relationship, her last psychological report, and the fact that Shelly had yet to find suitable housing for the children. The court found that Shelly had not made reasonable and substantial progress toward returning the minors home, and the court changed the goal to substitute care pending termination of parental rights.

¶ 14 The court held termination proceedings on August 1, 2011, and August 4, 2011, to hear testimony. During the proceedings, the following testimony was heard. Ms. Nash, the caseworker, testified that the children had been taken into custody in December 2008 and that this was not the first time that Shelly had her children taken into care by DCFS. She testified that the children were taken back into custody because Shelly's paramour was a registered sex offender and was being allowed unsupervised access to the children. Ms. Nash testified that Shelly had completed many of the tasks of the service plan. However, Shelly still did not have suitable housing for the children, and even after counseling, Shelly had allowed an alleged sexual offender to be around the children and had concealed this from Ms. Nash. She also testified that her relationship with Shelly had become strained and that Shelly had several outbursts when Ms. Nash tried to retrieve information regarding the alleged sex offender.

¶ 15 During the testimony of Ms. Nash, the State asked that the court take judicial notice of the psychological evaluations of Shelly. Defense counsel vigorously objected many times but was overruled.

¶ 16 The State also called John Reeves, Jr., a DCFS child investigator, to testify. He testified that there had been several prior reports on Shelly over the years ranging from driving while intoxicated with the children to several reports of sexual offenders being around the children and more specifically the actual sexual molestation of one of the children

by one of Shelly's paramours.

¶ 17 The State also called Carrie Ackerman, a licensed social worker employed by the Bond County Health Department, to testify. She testified that Shelly was her client and that Shelly was referred to her to work on relationship issues but that after six months Shelly quit seeing her.

¶ 18 The State then called Shelly as an adverse witness. She testified that she was the natural mother of all three children and testified to the identities of the natural fathers. She further testified that she had a substance abuse problem and had been in an on-and-off violent relationship with B.B.'s father over the years. She also testified that she had allowed her paramour, a registered sex offender, to move in with her and the children and that later it was discovered that he had molested S.S. and possibly K.S. At first, Shelly chose to believe her paramour over S.S. and even continued to allow him access to the children until DCFS took them into custody the first time.

¶ 19 Shelly testified that she eventually regained custody of the children in 2006. After that, B.B. was born and Shelly was again involved in the violent relationship with B.B.'s father. B.B.'s father was later convicted of domestic battery and incarcerated. Shelly testified that in 2008, she began another relationship with another registered sex offender who moved in with her and the children. Shortly after, Mr. Reeves contacted Shelly about a DCFS report that was filed, and a case was opened. Shelly agreed to have no contact with the sex offender but did not keep this agreement and allowed him to spend the night again. At that time, the children were removed from Shelly.

¶ 20 Shelly also testified that after B.B.'s father was released from prison that she had gone to see him and that he was arrested for violating the order of protection that she had against him. She then went to the court and asked that the order of protection be dropped so that she could have a relationship with him again.

¶ 21 Shelly also testified that she had completed some of her service plan but that she still has items that were uncompleted. She also testified that even after her counseling that she was unsure of what to look out for regarding sexual predators and her children. She also agreed that she had concealed her most recent relationship with an alleged sex offender and that she had lost her temper with her caseworker.

¶ 22 The State then called Chris Martin, a foster care supervisor employed by LCFS, to testify. He testified that Shelly had completed some of the services but not all of them. He further testified that there were concerns regarding her parenting ability, her ability to keep the children safe, and suitable housing. He also testified that there was recently a report of another alleged sexual offender being allowed access to the children by Shelly. He testified that Shelly concealed this information from her caseworker and refused to cooperate with her. Mr. Martin stated that he was concerned because Shelly continually allows these types of people to have access to her children. He added that he has concerns over Shelly's ability to control her aggression.

¶ 23 At the end of the State's case, the defense counsel renewed all of his objections that he had throughout the testimony. After the arguments, the court found that no reasonable progress had been made and that Shelly was proved by clear and convincing evidence to be an unfit parent.

¶ 24 At that time, the defense counsel made an oral motion for a bonding assessment. The State objected to the motion, arguing that it was just another delay and that the children deserved finality because they had been in limbo for over two years. The GAL stated that he also was against the bonding assessment. He argued that the children had been in the care of DCFS for a very long period of time and that this was not the first time. He stated that he did not believe that any further delay was in the best interests of the children. The court inquired as to the amount of time that would be needed and defense counsel stated that it

could take anywhere from two weeks up to 60 days to complete. The court chose to reserve ruling at that time.

¶ 25 Following the fitness hearing, a best-interest hearing was held, and the testimony was as follows. Ms. Nash testified that all three children were living with foster families. Two of the children, S.S. and K.S., were placed in the same home. She testified that the families are financially equipped to care for the children and that the children have become attached to their foster families. Both families were interested in adopting the children. S.S. had difficulty dealing with the idea of not returning home and had started counseling to help. Both sets of foster families also facilitate visitation with the other so that the siblings can still be involved in each other's lives. Ms. Nash also testified that the children have positive interactions with Shelly during visitations. The children had been in foster care for two years and eight months at the time of the hearing.

¶ 26 Shelly also testified at the hearing. She testified that she felt that she could do a better job if the children were returned to her. She also testified that she had quit drinking and using drugs but that she was still attending substance abuse counseling. Shelly also opined that both sets of foster parents were good people and were very good to her children. She also ultimately testified that she believed that the children had been doing better since they had been removed from her.

¶ 27 At the conclusion of the testimony, the court denied the motion for bonding assessment, stating that it was bad timing and that it would not have produced any new evidence apart from what had already been presented. Both the State and defense counsel presented arguments. The GAL also stated that he also believed that termination was in the best interests of the children. He focused on Shelly's disregard for the safety of the children and the fact that this is the second time that the children had to be removed due to Shelly's behaviors.

¶ 28 After the conclusion of testimony, the court ordered the termination of Shelly's parental rights regarding all three children. The court stated that this was a difficult decision because Shelly had followed through with much of the service plan but that she continued to make choices regarding her paramours that put the children at risk. The court specifically highlighted that Shelly had recently requested that the order of protection be dropped against B.B.'s father so that they could be together again even after all the domestic violence. The court then changed the goal to adoption. The rights of all three natural fathers were terminated as well. However, they are not parties to the instant appeal. Shelly has filed this timely appeal.

¶ 29

ANALYSIS

¶ 30 On appeal, Shelly argues that the circuit court erred in finding that she was an unfit parent. She also argues that the circuit court erred in admitting the psychological evaluations without affording her the opportunity to confront, question, and cross-examine the psychologists and in denying Shelly's request for a bonding assessment. Shelly also contends that the circuit court erred in determining that it was in the best interests of the children for her rights to be terminated. Lastly, Shelly argues that she was prejudiced by the ineffective assistance of counsel. We will address each contention in turn.

¶ 31 We first address Shelly's contention that the circuit court erred in finding her to be an unfit parent. We accord the circuit court's finding of parental unfitness great deference because the circuit court is in the best position to make factual findings and credibility assessments. *In re D.L.*, 326 Ill. App. 3d 262, 269 (2001). Therefore, the reviewing court defers to the trial court's factual findings and will not reverse the circuit court unless the factual findings are contrary to the manifest weight of the evidence. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *In re Reiny S.*, 374 Ill. App. 3d 1036, 1045-46

(2007).

¶ 32 The grounds that support a finding of unfitness are set out in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2008). Although section 1(D) sets out various grounds under which a parent may be deemed unfit, an unfitness finding may be entered if there is clear and convincing evidence to satisfy any one statutory ground. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In this case, the circuit court found Shelly unfit under section 1(D)(m)(iii) of the Adoption Act, which states that a ground for unfitness is "[f]ailure by a parent *** to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(iii) (West 2008).

¶ 33 Reasonable effort is judged by a subjective standard and is associated with the goal of correcting the conditions that caused the child's removal. *In re R.L.*, 352 Ill. App. 3d 985, 998 (2004). Moreover, "a court is duty bound to ensure that serious parental deficiencies of whatever nature have been corrected before the court permits one of its wards to be returned to that parent's custody." *In re L.L.S.*, 218 Ill. App. 3d 444, 464 (1991).

¶ 34 Here, the circuit court's finding is not contrary to the manifest weight of the evidence. Although the evidence shows that Shelly completed the counseling and programs set up for her, it was obvious through her actions that she had not learned how to implement what she had learned. Even after the counseling and beginning the SAFE program, Shelly let an alleged sex offender into her home and allowed him to have access to her children. Shelly's history of poor judgment in protecting her children was a central issue in these proceedings, and the evidence revealed that Shelly continued to allow a man in her house who could be of potential risk to her children even after being advised by her caseworker not to. Moreover, Shelly chose not to be upfront with her caseworker about the relationship as well. Shelly also chose to ask the court to remove an order of protection against B.B.'s father, who

had been imprisoned for physically abusing Shelly. B.B.'s father was an alcoholic who repeatedly abused Shelly in front of the children, and Shelly testified that she wanted the order of protection dropped so that they could be together again.

¶ 35 The record also reveals that Shelly had failed to find appropriate housing for the children and refused to sign up for public housing. A one-bedroom house is not appropriate living conditions for three children. The court pointed out that it was not an easy case because Shelly obviously loved the children, had attempted to complete the service plan, and visited the children frequently. However, the court ultimately found that Shelly's judgment often placed the children in situations where they were at risk and that Shelly's parenting skills were less than adequate. The court also pointed out that Shelly had not made just one mistake, but she continued to be involved in a series of huge mistakes which hurt the children. The evidence clearly revealed that Shelly's parental deficiency which got her children taken away was not corrected. Therefore, we hold that the evidence was clear and convincing to support that Shelly did not make reasonable efforts toward returning the children home and find no abuse of discretion on behalf of the circuit court.

¶ 36 We now turn to Shelly's argument that her due process rights were violated when the circuit court allowed her psychological evaluations to be admitted as evidence without affording her the opportunity to confront, question, and cross-examine the psychologists. Section 2-18(4)(a) of the Juvenile Act is the controlling statute here and states as follows:

"Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency

and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. *** All other circumstances of the making of the memorandum, record, photograph or x-ray, including lack of personal knowledge of the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility." 705 ILCS 405/2-18(4)(a) (West 2010).

"This provision permits such certified records to be admitted at trial without the additional foundational requirements of the business records exception to the hearsay rule." *In re Yasmine P.*, 328 Ill. App. 3d 1005, 1010 (2002). The hearsay exception contained in section 2-18(4) of the Juvenile Act shall apply to termination proceedings brought under the Adoption Act (750 ILCS 50/1(D) (West 2010)). *In re S.J.*, 407 Ill. App. 3d 63, 68 (2011).

¶ 37 Moreover, the court has held that "the medical records of the respondent, which were created as a direct result of the ongoing juvenile proceeding and relate to a condition which is also directly related to the proceeding, satisfy the statutory requirement of 'relating to a minor' and are, therefore, admissible." *In re M.S.*, 210 Ill. App. 3d 1085, 1095-96 (1991).

¶ 38 Here, Shelly's psychological evaluations were admitted into evidence at the fitness hearing over her attorney's objection. We agree that the evaluations were properly admitted. The psychological evaluations were made as a direct result of the proceedings. Moreover, the evaluations are related to whether Shelly could properly protect the children from sexual predators and could make safe decisions regarding her children. Therefore, the evaluations are specifically tied to Shelly's fitness as a parent. Evidentiary proceedings under both the Juvenile Act and the Adoption Act are relaxed and the plain language of the statute allows that evidence otherwise inadmissible be allowed in a fitness hearing against a parent. Therefore, the circuit court did not err by allowing the psychological evaluations to be admitted into evidence without testimony from the psychologist.

¶ 39 Shelly's next argument is that the circuit court erred in denying her request for a bonding assessment. A bonding assessment is meant to determine if preserving the parental relationship is in the best interests of the children. The bonding assessment was requested after the court found that Shelly was unfit and before the beginning of the best-interests hearing. The State objected, arguing that the bonding assessment should have been requested earlier and that it felt that it was being used as a tactic to delay. The State also argued that S.S. was even in counseling due to separation issues. The GAL also stated that the minors had been in foster care for a very long time and that this was not the first time that they had been in foster care. He stated that delay in any form was not in the best interests of the children and that they deserved resolution and permanency. Shelly's counsel stated that it would take from two weeks to more than 60 days to get a bonding assessment completed. The court ultimately denied the request because of the timing of the request and because it did not feel that it would produce any evidence that had not been already been brought in the best-interests hearing.

¶ 40 Here, we defer to the circuit court, which was in the best position to judge whether this assessment was appropriate. There is no statute that requires that a bonding assessment be granted, and absent some evidence of abuse of discretion, we will not overturn the circuit court's decision of what is in the best interests of the children. We find that there was enough evidence presented that the children had been in foster care for a lengthy amount of time and that no further delay was needed. Juvenile proceedings are expedited so that children can have finality in their futures as soon as possible, and this decision is in harmony with that goal. Therefore, the circuit court did not err in denying the request for a bonding assessment.

¶ 41 We now address Shelly's argument that the circuit court erred in determining that termination of her parental rights was in the best interests of the children. "Once a trial court

finds a parent unfit under one of the grounds of section 1(D) of the Adoption Act, the next step in an involuntary termination proceeding requires the court to consider whether it is in the best interests of the child to terminate parental rights, pursuant to section 1-3(4.05) of the [Juvenile] Act (705 ILCS 405/1-3(4.05) (West 2008))." *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). The State bears the burden of proof by a preponderance of the evidence that termination of a parent's rights is in the child's best interests. 705 ILCS 405/2-29(2) (West 2008); *In re D.T.*, 212 Ill. 2d 347, 366 (2004). We review a best-interests determination by evaluating whether the decision is contrary to the manifest weight of the evidence. *In re S.J.*, 368 Ill. App. 3d 749, 755 (2006).

¶ 42 The factors to be considered in deciding the best interests of the child are the child's physical safety and welfare, the child's background and ties (including family, culture, and religion), the need for permanence, including familiarity, stability, and continuity with parental figures and other relatives, risks related to substitute care, and preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2008); *In re Deandre D.*, 405 Ill. App. 3d 945, 953-54 (2010). The court may also focus on other important considerations such as "the nature and length of the child's relationship with his present caretakers and the effect that a change of placement would have upon the emotional and psychological well-being of the child" (*In re Brandon A.*, 395 Ill. App. 3d 224, 240 (2009)) and the likelihood of adoption (*In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002)). "[D]uring a [best-interests] hearing, the court focuses upon the child's welfare and whether termination would improve the child's future financial, social, and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002).

¶ 43 In the case at bar, the evidence revealed that the children have all been in foster care for more than two years and that two of the children had previously been in foster care due to a prior incident. All of the foster parents have expressed willingness to adopt the children.

Two of the children are placed together in the same home. The record supports that both foster families involved are financially capable of providing for the children and that the children have adjusted well to the families. The caseworker testified that all the children seem to be flourishing and happy in their placements. The foster families also facilitate visitations between all three children so that they can spend time together as siblings.

¶ 44 Moreover, Shelly testified that the children loved their foster families and were all doing very well. She further testified that she did not yet have housing that was appropriate for the children. The GAL argued that the evidence was overwhelming that Shelly's decisions were not in the best interests of the children and that he believed that returning the children to Shelly would be further putting them at risk. After all the testimony the court explained that it had considered all the evidence and had come to the conclusion that it was in the best interests of the children to terminate the parental rights.

¶ 45 These children, who have been in foster care for most of their lives, deserve to be able to move on and have a future. It is obvious that Shelly is still attempting to learn how to make proper decisions to protect these children. Therefore, we find that the circuit court's decision to terminate Shelly's parental rights was in the best interests of the children.

¶ 46 Lastly, Shelly argues that she was prejudiced by ineffective assistance of counsel. We review claims of ineffective assistance under the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To determine whether a defendant has been given ineffective assistance of counsel, the defendant must show (1) that counsel's representation fell below an objective standard of reasonableness (*People v. Edwards*, 195 Ill. 2d 142, 163 (2001)) and (2) that it is reasonably probable that the case was prejudiced by counsel's unprofessional error and that the outcome would have been different absent counsel's errors. *Id.* at 687. The defendant bears the burden of overcoming a strong presumption in favor of finding that counsel's advocacy was effective. *People v. Richardson*, 401 Ill. App. 3d 45, 47 (2010).

¶ 47 In the instant case, Shelly maintains that her counsel was ineffective for failing to request a rehearing of the temporary custody hearing, for stipulating that she had failed to make reasonable progress, and for failing to object to the admissibility of the psychological evaluations during the permanency hearings. The record reveals that Shelly was represented by two different appointed attorneys during the proceedings. The State concedes that Shelly represented herself at the temporary custody hearing and that counsel was not appointed until the end of that hearing.

¶ 48 However, the record shows that Shelly did not request counsel until the end of that hearing, and the evidence was so overwhelming against her that the outcome of that hearing would not have been different. Moreover, it is not ineffective assistance of counsel *per se* to make a stipulation on behalf of a client. Shelly fails to explain how the outcome would have been different had counsel not stipulated to the orders. Furthermore, the record shows that during one of the hearings counsel did object to the court's finding of unreasonable effort. Even if there was error, these orders were not accorded much weight during the termination proceedings and would not have affected the termination of Shelly's parental rights.

¶ 49 Shelly's argument that counsel was ineffective for failing to object to the admissibility of the psychological evaluations in the permanency hearings also fails. Since we have determined that the evaluations were properly admitted, no error was committed by counsel's failure to object. Therefore, we conclude that Shelly was not prejudiced by ineffective assistance of counsel.

¶ 50 **CONCLUSION**

¶ 51 For the foregoing reasons, we affirm the circuit court's order terminating Shelly K.S.'s parental rights over S.S., K.S., and B.B.

¶ 52 Affirmed.