

No. 1-12-3187

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF ISAAH A., a Minor)	Appeal from the
)	Circuit Court of
Respondent-Appellee,)	Cook County.
)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 10 JA 00190
)	
OMOLABAKE A.,)	Honorable
)	Maureen Delehanty,
Respondent-Appellant.))	Judge Presiding

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirmed the trial court's finding that respondent was an unfit parent, where her trial counsel committed no ineffective assistance, the trial court committed no error in failing to consider the circumstances of her immigration detention when finding her unfit, and any error in failing to conduct a *Krankel* hearing was harmless.
- ¶ 2 In February 2012, the State filed a petition to terminate the parental rights of respondent,

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Omolabake A. (Ms. A.) as to her child, Isaiah, who was born on May 9, 2007¹. Following a fitness hearing, the trial court found respondent unfit. The trial court then conducted a best-interests hearing that resulted in the termination of respondent's parental rights. Respondent appeals, contending: (1) her counsel provided ineffective assistance during the fitness hearing; (2) the trial court failed to consider the unique circumstances of her immigration detention in ruling on the allegations of unfitness; and (3) the trial court erred by failing to conduct a *Krankel* hearing after respondent raised an allegation of possible ineffective assistance of counsel during the best interests hearing. We affirm.

¶ 3 On March 8, 2010, the State petitioned the trial court to adjudicate Isaiah a ward of the court and filed a motion seeking temporary custody. The adjudication petition alleged Isaiah was neglected based on a lack of necessary care, neglected based on an environment injurious to his welfare, and abused based on a substantial risk of physical injury. As a factual basis for each of the allegations, the adjudication petition alleged:

"Mother has three prior indicated reports for inadequate supervision, sexual risk of harm and risk of harm. Putative father has one prior indicated report for sexual molestation. Mother has two other minors that are not in her care or custody. On or about March 4, 2010, Mother left this minor in a car alone for at least forty-five minutes. Mother is currently incarcerated. Mother has not made a care plan for this minor. Putative father is currently incarcerated.

¹The State also petitioned to terminate the parental rights of Isaiah's father, Kevin R. On September 19, 2012, Mr. R. signed a final and irrevocable consent to adoption. The termination motion's allegations that he was unfit were withdrawn without prejudice. Mr. R. is not a party to this appeal.

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Paternity has not been established."

¶ 4 As later amended, the petition also alleged respondent has a history of substance abuse. On March 8, 2010, the trial court placed Isaiah under the temporary custody of the Illinois Department of Children and Family Services (DCFS).

¶ 5 On October 4, 2010, the trial court entered an adjudication order. The trial court made a finding that Isaiah was neglected based on an environment injurious to his welfare. As a factual basis, the adjudication order stated:

"Natural mother left minor unattended for 1 ½ hours while she shoplifted large amounts of liquor. Natural mother previously tested positive for marijuana and cocaine in August 2009."

¶ 6 The trial court entered a disposition order on October 28, 2010. The trial court adjudged Isaiah a ward of the court, found both parents unable to care for him, and placed Isaiah under DCFS guardianship.

¶ 7 On February 29, 2012, the State filed a motion for the appointment of a guardian with the right to consent to adoption (hereinafter the termination motion). The termination motion alleged both parents were unfit because they: (1) failed to maintain a reasonable degree of interest, concern or responsibility as to Isaiah's welfare, in violation of section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)) and section 2-29 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-29 (West 2012)); (2) failed to make reasonable efforts to correct the conditions that were the basis for Isaiah's removal and/or failed to make reasonable progress for Isaiah's return to them within nine months after the adjudication of abuse or neglect under the Juvenile Court Act, or after an adjudication of dependency under the Juvenile Court Act, and/or within any nine-month

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period after said finding, in violation of section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2012))² and section 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2012)); and (3) evidenced an intent to forego their parental rights as manifested by a failure for a 12-month period to (a) visit Isaiah; (b) communicate with Isaiah or with DCFS, although able to do so and not prevented from doing so by DCFS or by court order; and/or (c) maintain contact with or plan for Isaiah's future, although physically able to do so, in violation of section 1(D)(n) of the Adoption Act (750 ILCS 50/1(D)(n) (West 2012)) and section 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2012)).

¶ 8 The termination motion alleged Isaiah had been in his current foster home since June 13, 2011, that his foster parents wanted to adopt him, and that adoption by his foster parents was in Isaiah's best interests. The termination motion asked the trial court to find the parents unfit, to permanently terminate their parental rights, and to find that it was in Isaiah's best interests to appoint a guardian with the right to consent to his adoption.

¶ 9 On September 12, 2012, Isaiah's father signed a final and irrevocable consent to adoption. The termination motion's allegations that he was unfit were withdrawn without prejudice.

¶ 10 A hearing on respondent's fitness was held on September 19, 2012. Jacquelyn Moore testified she is a caseworker for Children's Home and Aid. She was assigned to Isaiah's case beginning in September 2010; her assignment ended in October 2011. At the beginning of September 2010, Isaiah was living at the home of his maternal grandmother. On September 9, 2010,

²At the fitness hearing, the State clarified that it was alleging respondent failed to make reasonable progress during the nine-month period immediately following adjudication: from October 4, 2010, to July 4, 2011.

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the maternal grandmother indicated she no longer wanted Isaiah to live with her, and so Ms. Moore "secure[d] a new placement for Isaiah"; Ms. Moore did not testify to whom she placed Isaiah with on September 9. Ms. Moore learned that respondent had been visiting with Isaiah "on a fairly consistent basis" while he lived with the maternal grandmother, but after September 9, respondent did not visit him on a fairly consistent basis.

¶ 11 Ms. Moore testified she met with respondent in September 2010 and explained to respondent she was the assigned caseworker responsible for helping her get Isaiah back. Ms. Moore gave respondent a phone number where she could be contacted. Ms. Moore asked respondent for her contact information, but respondent told Ms. Moore she could not provide a home address or the name of the person with whom she was staying. Respondent did provide a cell phone number, but at times her cell phone was "inoperable."

¶ 12 Ms. Moore testified she discussed with respondent the services she was required to participate in so as to be reunited with Isaiah. Those services were reflected in a client service plan generated in September 2010, and included: (1) inpatient drug treatment; (2) individual counseling; (3) domestic violence counseling; (4) parenting classes; and (5) random urine drops. Respondent indicated she understood the services that were requested of her for reunification with Isaiah, but she told Ms. Moore in September 2010 that she was in school and did not have time to complete inpatient drug treatment or to go for individual counseling. Between September 2010 and October 2011, Ms. Moore made referrals for respondent to participate in inpatient drug treatment, individual counseling, parenting classes, and domestic violence counseling, but respondent did not complete any of those services during that time period.

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¶ 13 Ms. Moore testified that on October 4, 2010, she was in court on this case and met with respondent. Ms. Moore again asked respondent for an address where she could be reached, but Ms. Moore did not provide her with one. Ms. Moore also reiterated the need to participate in the services reflected in the September 2010 client service plan. Respondent again stated she did not have time to complete the services because she was in school.

¶ 14 Ms. Moore testified respondent visited with Isaiah at Ms. Moore's office on November 5, 2010. Ms. Moore again asked respondent about completing the services listed in the September 2010 client service plan, and respondent again stated she did not have time to complete the services because she was in school. Ms. Moore asked respondent for documentation regarding her educational program, but respondent did not provide any such documentation, nor did she provide any type of school ID. Ms. Moore told respondent to provide proof that she was actually attending school, but she never provided such proof.

¶ 15 Ms. Moore testified that although respondent was entitled to weekly supervised visits with Isaiah, she stopped visiting him after November 5, 2010, and did not visit him again for the remainder of the time Ms. Moore was assigned to the case, which was until October 2011. Sometimes respondent called to confirm her visit, but then she would not show up.

¶ 16 Ms. Moore testified she performed a "diligent search" for respondent in December 2010 after respondent stopped showing up for her visits with Isaiah. Ms. Moore discovered respondent was in Cook County jail in December 2010. Ms. Moore did not attempt to reach respondent while she was in jail. At the end of December 2010, Ms. Moore did another "diligent search" and discovered respondent was no longer in the Cook County jail. Respondent's whereabouts were unknown to Ms.

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Moore until March 9, 2011, when she received a phone call from Isaiah's maternal grandmother stating that respondent was in jail in Wisconsin.

¶ 17 Ms. Moore testified she did not hear from respondent from March 2011 through August 2011. However, in August 2011, Ms. Moore received a phone call from a drug treatment facility asking if DCFS would pay for respondent's inpatient drug services. Ms. Moore replied that the permanency goal had been changed to termination of parental rights in August 2011 and, therefore, DCFS could not pay for the treatment. Ms. Moore later contacted the drug treatment facility to determine if respondent completed treatment there, but she never received a response.

¶ 18 Ms. Moore testified that during the period of time when respondent was not communicating with Isaiah, between November 2010 and October 2011, respondent did not send any cards, gifts, or letters to her agency to be forwarded to Isaiah. She also did not provide any financial support or contact Ms. Moore requesting copies of her client service plan. Although Ms. Moore's agency accepts collect calls from clients who are not in jail, and has voice mail that takes messages from clients, she never received any phone messages from respondent after November 5, 2010, inquiring about services or inquiring about how Isaiah was doing. Respondent also failed to leave a phone message after November 5, 2010, letting Ms. Moore know where she could be located. Ms. Moore attempted to call respondent at her cell phone number, but her phone was "off" from November 2010 to November 2011.

¶ 19 Ms. Moore testified that due to respondent's failure to come in for weekly visits after November 2010, and due to her lack of involvement in services set forth in the client service plan, Ms. Moore never recommended that respondent's visits with Isaiah be increased.

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¶ 20 On cross-examination, Ms. Moore testified respondent regularly visited Isaiah while he was staying with his maternal grandparents until September 9, 2010, and that respondent acted appropriately during the visits. During those visits, Isaiah would give respondent a hug and a kiss, they would play games, and she would bring "educational material" for him to practice writing his name and the letters of the alphabet. When the visits were about to conclude, Isaiah would have terrible tantrums during which he would hit, slap, kick and bite respondent. Respondent acted appropriately during these tantrums by grabbing him and attempting to give him time-outs.

¶ 21 Ms. Moore testified that all referrals for respondent's services were made before Ms. Moore was assigned to this case in September 2010. Ms. Moore could only request one urine drop from respondent because respondent's phone was usually inoperable and she could not be reached. When Ms. Moore asked respondent for her contact information in September 2010, respondent did not "refuse" to give the information, but rather she could not provide such information.

¶ 22 Ms. Moore testified that in December 2010, when she discovered respondent was in Cook County jail, she did not assist respondent in obtaining any services while in jail. Ms. Moore subsequently learned respondent had been in detention for immigration violations from April 2011 through August 2011.

¶ 23 On re-direct examination, Ms. Moore testified respondent never called or wrote to inform Ms. Moore of her detention for immigration violations. At some point between April 2011 and August 2011, respondent was moved to a different immigration facility, but respondent never informed Ms. Moore of that move.

¶ 24 The trial court admitted three service plans authored by Ms. Moore that were dated

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September 9, 2010, February 28, 2011, and September 21, 2011. In pertinent part, the September 9, 2010, service plan set forth the following services respondent needed to complete in order to be reunified with Isaiah: (1) inpatient drug treatment; (2) random urine drops; (3) individual therapy; (4) domestic violence counseling; and (5) parenting classes.

¶ 25 The February 28, 2011, service plan stated respondent had made unsatisfactory progress toward reunification with Isaiah. The service plan noted that "[d]uring this reporting period [respondent] has not engaged in substance abuse treatment. Until [respondent] engages in substance abuse treatment she can not complete identified reunification service. She was hospitalized at Jackson Park Hospital, she would not inform this worker why she was hospitalized. This worker asked that she get in contact once she is released. This worker has not had any contact with [respondent] since her last visit with her son held on 11-5-2010."

¶ 26 The September 21, 2011, service plan stated respondent still had made unsatisfactory progress toward reunification with Isaiah. The service plan noted that "[d]uring this reporting period the goal was changed to Substitute Care Pending Termination of Parental Rights on 8-2-11. [Respondent] has been incarcerated in Federal prison 12-10 to 8-11. This worker has not had contact with [respondent] since her last parent/child visit 11-5-2010. Since her release in 8-11 she has failed to contact the agency and/or to engage in reunification services or avail herself for parent/child visit. Since [respondent's] release the providers of the Women Treatment Center contacted Children's Home and Aid on behalf of [respondent] to [inquire] if DCFS would pay for services. [Respondent] is financially responsible for all services; the permanency goal is no longer return home therefore [DCFS is] no longer financially responsible effective 8/2/11."

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¶ 27 Respondent called Ciarra Torres as a witness. Ms. Torres was the Children's Home and Aid caseworker who took over from Ms. Moore in September 2011. When Ms. Torres took over the case, the only address she had for respondent was her mother's address. She sent mail there but never received a response. Ms. Torres then performed a "diligent search" for respondent in November 2011, which resulted in respondent contacting Ms. Torres later that month.

¶ 28 Ms. Torres testified that on December 15, 2011, she supervised a visit between respondent and Isaiah. The visit lasted two hours and went "great." Respondent asked Isaiah questions and they played games, and he responded well. At the end of the visit, they watched some videos on YouTube. Respondent acted appropriately during the visit, and Isaiah appeared to enjoy the visit. After the visit, though, Isaiah became unattached to his foster parents and his behavior started becoming violent both towards himself and to his foster parents. His behavior became very unstabilized. As a result, on January 24, 2012, Children's Home and Aid decided to stop in-person contact between respondent and Isaiah and to limit respondent's contact with Isaiah to letters, drawings and gifts. Respondent has since been in contact with Isaiah via emails and letters.

¶ 29 Ms. Torres testified that from September 2011 to the date of the hearing, several meetings were held between the Children's Home and Aid staff and respondent to discuss her need to complete services. Respondent "kind of disappeared" after a February court date and Ms. Torres later learned respondent had been incarcerated in March 2012 for violating her parole. After respondent was released from prison, she participated in a meeting with Children's Home and Aid staff and promised to "get herself back into one of the programs that she was in previously before."

¶ 30 On cross-examination, Ms. Torres testified respondent's visit with Isaiah on December 15,

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2011, was her first visit with him since November 2010. Ms. Torres learned that respondent had been in a substance abuse inpatient treatment program at Southwood Interventions from October to December 2011. Respondent did not successfully complete that program.

¶ 31 Ms. Torres testified she has consistently been able to reach respondent at her cell phone number. Respondent never requested that Ms. Torres assist her in finding community-based resources so she could complete the services necessary for reunification with Isaiah.

¶ 32 After Children's Home and Aid made the decision in January 2012 to stop in-person visitation between respondent and Isaiah, Ms. Torres tried several times to contact respondent and eventually scheduled meetings to discuss the visitation decision, but respondent cancelled. Then, from March 2012 to May 2012, respondent was incarcerated, so they could not hold the meeting.

¶ 33 On questioning by the court, Ms. Torres testified respondent called Children's Home and Aid in January 2012 to set up a visit with Isaiah. Ms. Torres scheduled a meeting with respondent on January 24, 2012, to explain to her that in-person visitation had been stopped. Respondent missed the meeting. Respondent subsequently sent letters to Ms. Torres, who gave them to the foster parents to give to Isaiah.

¶ 34 On re-direct examination by respondent's attorney, Ms. Torres testified respondent was incarcerated in March 2012 for violation of her probation for retail theft. Counsel asked Ms. Torres whether she was aware respondent "violated probation because of the fact that she was actually detained by immigration?" Objections to hearsay and beyond the scope of cross-examination were sustained. Counsel further inquired about whether Ms. Torres had spoken to respondent's probation officer to find out the reason for the probation violation, but the trial court sustained a hearsay

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objection.

¶ 35 The trial court took judicial notice of a urinalysis test report from January 9, 2012, indicating respondent had tested negative for all illicit substances.

¶ 36 During closing arguments, defense counsel argued that respondent's efforts and progress toward reunification with Isaiah were frustrated because "[s]he was actually incarcerated from the period of December 2010 until August 2011, due to being held initially for a probation violation and then later on by immigration." The trial court sustained an objection to this argument on the grounds of facts not in evidence.

¶ 37 The State argued in rebuttal that respondent's "own acts landed her in jail, Cook County jail, and then a federal jail, and then subsequent to that another Cook County incarceration."

¶ 38 On September 27, 2012, the trial court entered its ruling, finding that Ms. Moore's testimony was credible and reliable, and that respondent was unfit under sections 1(D)(b), 1(D)(m), and 1(D)(n) of the Adoption Act. In terms of section 1(D)(b), respondent's failure to maintain a reasonable degree of interest, concern or responsibility as to Isaiah's welfare, the trial court noted: respondent did not visit Isaiah between November 5, 2010, and December 15, 2011, although she did maintain some contact with Isaiah in the Spring of 2012 with emails and letters; respondent was discharged from one substance abuse treatment program, there was no evidence presented that she completed the other, and she never achieved any stability in housing, education, or employment; respondent did not contact Children's Home and Aid for long periods of time to inquire about Isaiah's well-being and she did not provide Isaiah any financial support; and there was no indication of respondent's interest in providing Isaiah with any moral training or guidance. The trial court

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concluded that the State proved by clear and convincing evidence that respondent was unfit under section 1(D)(b) for failing to maintain a reasonable degree of interest, concern or responsibility as to Isaiah's welfare.

¶ 39 As to section 1(D)(m)(i), failure to make reasonable efforts to correct the conditions that were the basis for Isaiah's removal, the trial court noted: respondent was referred to treatment, but refused, stating she was too busy with school; no documentation was presented that verified her attendance at school; and other than submitting to drug testing in January 2012, respondent did not do "anything in the service plan or anything else in the rest of her life to correct the conditions that caused [Isaiah] to be in care." The trial court concluded that the State proved by clear and convincing evidence that respondent was unfit under section 1(D)(m)(i) for failing to make reasonable efforts to correct the conditions that were the basis for Isaiah's removal.

¶ 40 As to section 1(D)(m)(ii), failure to make reasonable progress for Isaiah's return within nine months after the adjudication of abuse or neglect, the trial court noted that the relevant nine-month period was from October 2010 to July 2011. The trial court noted:

"The progress *** in July of 2011, which would have been the end of the nine-month period following adjudication, return home was not one iota closer on the horizon than it was on the date of October 4th, 2010, the date of adjudication. Substance abuse, clearly a significant reason the case came in, was never addressed, confronted. In fact, it was refused. There was zero compliance on any of the services contained in the service plan. And in my mind, the progress towards return home actually went backwards due to the incarcerations. [Respondent] raises incarcerations as the reason she was prevented from the services, but the

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case of *In re J.L.*, from the Illinois Supreme Court, is directly on point. Time spent in custody does not toll the nine-month relevant period. ***

But in addition to that, before she went into custody, during that period of time of October to the time she went into custody, she made it clear that she was too busy with school to do the recommended treatment, so before she was incarcerated, she did absolutely nothing towards any of the recommended services. She was given referrals and she refused. So there is nothing in the record to show that she availed herself of anything to enable herself to parent this child. So on ground M, I find the State has met its burden by clear and convincing evidence."

¶ 41 As to section 1(D)(n), the trial court noted the State alleged that respondent evidenced her intent to forego her parental rights as manifested by a failure for a 12-month period to visit Isaiah, to communicate with Isaiah or with Children's Home and Aid, and to maintain contact with or plan for Isaiah's future. The trial court noted respondent did not visit Isaiah for 13 months, from November 5, 2010, to December 15, 2011, and that although she was in custody for part of that time, she made no effort to contact Children's Home and Aid to let them know where she was and she did not send Isaiah any cards or letters. There was no evidence respondent "reach[ed] out" toward Isaiah after her release from custody in August 2011 until Children's Home and Aid contacted her in November 2011. The trial court stated:

"There is absolutely no evidence that between [November 2010 and December 2011], or during any period of time during this case, she planned for this child's future. A significant demonstration of this would have been that she bettered herself, enabled herself to be fit,

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willing, and able to parent him, to show something that she was making some forward movement in her life, but she did nothing in this regard. No evidence that she attended any child and family meetings, planned for the future of the child or the case, that she did any vocational training, any education documented, stable housing. Clearly and convincingly, I believe the State has met its burden on this ground as well."

¶ 42 The trial court commenced the best interests hearing immediately following the unfitness ruling. The State called Ms. Torres as its first witness. Ms. Torres testified Isaiah was five-years old at the time of the hearing and he was placed in his current foster home, with Heath and Thais C., in June 2011. Mr. and Mrs. C. also have a biological son, one-year-old Samuel, who resides with them. During each of her visits to the foster home, Ms. Torres found it to be a safe and appropriate place for Isaiah. Isaiah is very attached to both Mr. and Mrs. C, and he has a "great bond" with Samuel, who he considers to be like a younger brother. They play together often.

¶ 43 Ms. Torres testified Isaiah attends kindergarten on a consistent basis at Academy of Benedict. Isaiah has received weekly therapy since July 2011. The therapy was put in place due to Isaiah's multiple placement disruptions over the course of his life. The foster family has consistently ensured that Isaiah receives the recommended therapy.

¶ 44 Ms. Torres testified all of Isaiah's medical and emotional needs are met in his foster home. The foster family has a strong support system through family and friends, and Isaiah is comfortable and familiar with the family support system. Ms. Torres recommended that respondent's parental rights be terminated and that Isaiah be adopted by his foster family. Ms. Torres explained the basis for her recommendation:

"[T]he foster parents are great advocates for Isaiah, for his well-being, his safety. He has an emotional strong bond and attachment with the foster family and his extended foster family. They are very supportive of Isaiah. They are definitely engaged with Isaiah, especially in his services because he does have individual therapy, and they are very engaged with that. They just make sure that all of his needs are being met."

¶ 45 On cross-examination, Ms. Torres testified she observed the visit between respondent and Isaiah on December 15, 2011. Respondent and Isaiah played throughout the visit and they "did have a bond." When the visit was over, Isaiah cried because he wanted to go with respondent.

¶ 46 Ms. Torres testified the foster parents are Caucasian, while Isaiah is of Nigerian descent. To familiarize themselves with Nigerian culture, Mr. and Mrs. C. have read books on the subject and visited museums with Nigerian exhibits. Mr. and Mrs. C. have stated they would be willing to allow respondent to have continued contact with Isaiah if adoption takes place, and would allow Isaiah to visit with his biological siblings.

¶ 47 Mr. C. testified that after coming to live in the foster home in June 2011, Isaiah had "about two months of very severe difficulty, where he *** had a lot of out-of-control emotions and behavior, wasn't able to kind of follow simple requests." He was very defiant and would kick, hit, or bite Mr. and Mrs. C. They signed him up for counseling. The counselor saw Isaiah in her office and in the foster home, and she also observed him in his school. By late September 2011, Isaiah's behavior improved and he began to be able to control himself. He "had a very good Fall of 2011."

¶ 48 Mr. C. testified that after a visit with respondent in December 2011, Isaiah regressed and he again exhibited defiant behavior and had "out-of-control fits." Isaiah continued with counseling, and

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by late February or early March 2012, Isaiah's behavior had improved. Since then, he has done "pretty well, and he is kind of stabilized again, and is doing well in school. He is doing really well at home."

¶ 49 Mr. C. testified he will continue with Isaiah's counseling, as it is a "vital component of his kind of development and well-being [and] he has developed a great relationship with his counselor." Other than his current need for counseling, Isaiah does not need any other special services. Isaiah is doing very well academically and he is "very bright, very engaged, very creative."

¶ 50 Mr. C. testified Isaiah has an "amazing" relationship with 13-month old Samuel and is "sweet and gentle and wonderful with him." Isaiah has never displayed any outbursts toward Samuel. Mr. and Mrs. C. want to provide Isaiah with a permanent home.

¶ 51 On cross-examination, Mr. C. testified Isaiah goes to a school where he has African-American teachers and peers. The classes are small and offer "an incredibly nurturing environment" where he has a sense of belonging. Mr. and Mrs. C. speak with Isaiah's teacher every morning when they drop him off, and they communicate with the teacher every evening either in-person or through email.

¶ 52 With respect to developing Isaiah's cultural heritage, Mr. C. testified they have maintained "good connections with his biological family to the extent [possible]", have chosen an African-American doctor for him, and have introduced him to a 16-year-old African-American family friend who acts as a good role model.

¶ 53 Mr. C. testified he is a historian and had studied Nigerian history and, thus, he believed he was "well positioned" to talk with Isaiah about his cultural background. Mr. and Mrs. C. had

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recently taken Isaiah to an international cultural festival where representatives of different nations were present. Mr. C. testified they are "very open and desire him to have relationships with his immediate family." Mr. C. wanted to work with Isaiah's therapist to ensure that visits with Isaiah's biological family happen, although the therapist recommended that such visits happen gradually, and in a way that was clinically appropriate and in Isaiah's best interests. Mr. C.'s family was "Christian Protestant" and he was willing to educate Isaiah about the Muslim beliefs held by his biological family.

¶ 54 Following Mr. C.'s testimony, the trial court admitted a certificate showing respondent had completed 40 hours of domestic violence counseling in September 2011.

¶ 55 Respondent called Victoria A., Isaiah's maternal grandmother, as a witness. Mrs. A. testified Isaiah lived with her and her husband from September 2010 to November 2010. During that time, Mrs. A. observed visits between respondent and Isaiah that occurred approximately two times per week. Respondent would take Isaiah to the park and play on the swings, and she would take him to a nearby McDonald's. Mrs. A. testified that respondent is a "very loving mother" and that Isaiah had looked forward to their visits together.

¶ 56 Oaubisi A., Isaiah's maternal grandfather, testified that when Isaiah was living with them from September 2010 to November 2010, he observed visits between respondent and Isaiah. During those visits, respondent and Isaiah cuddled and bonded, and respondent taught Isaiah to read and write.

¶ 57 Respondent testified on her own behalf and stated that when she visited with Isaiah on December 15, 2011, he was not aggressive during the visit, but he became angry when it was time

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for respondent to leave him. She tried to soothe Isaiah, and she told him they would see each other soon. Respondent testified she loves Isaiah so much and wants him returned to her care.

¶ 58 Respondent testified there was a period of time, when Isaiah was out of her care, that she was "arrested by immigration." During that time-period, she thought respondent was staying with his paternal grandmother, Ms. Robinson. Respondent attempted to "reach out" to Isaiah by sending letters to Ms. Robinson. Respondent wrote "many times a week" and four of those letters came back as either being undelivered or returned to sender. Respondent stated she did not find out until August 2012 that Isaiah had been placed in a foster home.

¶ 59 Respondent testified that after her visits with Isaiah were suspended on January 24, 2012, and after she discovered he had been placed in a foster home, she wrote him cards, drew him pictures, and sent video messages all via the foster parents.

¶ 60 With respect to her completion of services, respondent testified:

"I have done everything that they've asked, even though everything won't be admitted into evidence. I've done parenting classes. I've done domestic violence. I've done drug treatment. They won't take everything into evidence.

Yes, I've been incarcerated. *** When I got arrested in March, from there I had to go through immigration. I sat there for a year. This is the nine months the court is trying to say I didn't visit him, I didn't see him, I didn't complete any services. Yes, I did. I wrote him. I called him. I sent him pictures, everything.

I came home. I visited him. They suspended my visitation. I tried to call agency after agency. I've called even other agencies through law services. I have called, and I've

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asked for help repeatedly. They're saying I'm not. ***

Then, in March, I got violated because I was in immigration. They gave me probation in originally March of 2010. Immigration had me. There was no way I can report."

¶ 61 The trial court then questioned respondent as follows:

"Q. You stated you called agency after agency after agency?

A. Correct.

Q. You met with Ms. Moore on October 4th, the day of trial, right?

A. Yes.

Q. She gave you the information on that date, right?

A. She gave me a packet, yes.

Q. So why would you call any other agency but that?

A. I'm saying I had called agencies when I wasn't getting answers. When I would call, I didn't always get answers from Ms. Moore. ***

Q. JCAP [the Juvenile Court Assessment Program] recommended that you do in-patient treatment?

A. Yes.

Q. Did you do the in-patient treatment?

A. Yes. And, Judge—

Q. When did you do it?

A. I know they told me I can't put the paper in, but I have it with me.

Q. Answer the question. When did you do the in-patient treatment?

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A. I completed it in January of 2011.

Q. January of 2011 you were in custody?

A. I did it in custody, yes.

Q. And we are now in September of 2012?

A. Yes.

Q. And this is—ok. I don't have anything else."

¶ 62 Respondent asked the court if she could "present the papers" that would provide "the proof of [her] treatment." Respondent claimed to have "the proof" that she had completed parenting and domestic violence classes, but "[t]hey won't let me turn it in."

¶ 63 The trial court then engaged in the following colloquy with defense counsel:

THE COURT: Counsel?

DEFENSE COUNSEL: Judge, the document that my client is referring to is dated January 5th, 2011, indicating that there was a residential program for 92 days. It says that she had recently been transferred to the Women's Justice Services to begin substance abuse treatment for 92 days, residential. Because I didn't have anything else substantial, like a certificate indicating that there was completion, I did not submit it for evidence.

THE COURT: And I'm sorry. This was in Cook County jail?

DEFENSE COUNSEL: Yes, that is correct.

THE COURT: And what is it that you have?

DEFENSE COUNSEL: It's from Haymarket Center. It's just a transfer notification initial report letter or document. It indicates that she was—that the number of days of

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treatment would be 92 days. Certificate of completion, it says, yes, residential, but it says that she was recently transferred to the Women's Justice Services to begin her services there. And because I did not have a letter of completion—

THE COURT: And I'm sorry, counsel. That's January—

DEFENSE COUNSEL: January 5th, 2011, that is correct. So I did not submit it for evidence because, obviously, we don't have a certificate of completion with the seal marked.

THE COURT: Okay.

DEFENSE COUNSEL: I mean, I can give you the last copy for your Honor to review if there is no objection from the other parties. But I understand, obviously, the discovery issues, and I was presented with this letter today.

ASSISTANT STATE'S ATTORNEY: Judge, we haven't even been afforded an opportunity to see it. I would, of course, have the same objections. This is in violation of discovery. We are through the trial. This wasn't provided before the trial. *** It wasn't provided at any point.

THE COURT: It's in conflict with Ms. Moore's testimony that when she checked Cook County jail in December, end of December 2011, that mother was no longer in Cook County jail.

DEFENSE COUNSEL: And I did have—I did show a document to the GAL. I did not plan on presenting it because of the fact that I did not have all of the information.

ASSISTANT STATE'S ATTORNEY: Judge, this report does say, 'This defendant has recently been transferred.' So if there is no information as to when the transfer was,

Judge, this is replete with foundational problems, discovery issues, and hearsay, so we are objecting.

DEFENSE COUNSEL: That was my belief that I did not have enough to—

THE COURT: I'm not going to allow it in. I don't know that it is reliable. We don't have a proper foundation for it.

DEFENSE COUNSEL: Thank you, Judge. I just wanted to bring that to your attention because my client was very adamant about this evidence being presented. So now that we have presented it, so that she knows that your Honor is not willing to accept that into evidence at this time."

¶ 64 The defense rested. During its closing argument, the State commented in pertinent part: "[T]he most recent document that was shown but not admitted shows a transfer, a recent transfer, and that's dated January 5th. I only address that—it's not in evidence, but that whole document was essentially read into evidence, and so I think it's germane to address it. It says, 'recently transferred.' We don't know what recently means, if it was a month ago, two months ago. Everyone defines recently in a different fashion. Mother didn't testify directly to what she completed and where. She just said in glorious terms that she did all these things. There's no specifics presented to this court ***. So there has actually been no solid evidence to rebut what we believe to be overwhelming evidence [from Mr. C. and Ms. Torres that] it's in Isaiah's best interest to terminate [respondent's] rights."

¶ 65 In her closing arguments, defense counsel argued there was a bond between respondent and Isaiah and that it would not be in Isaiah's best interest for that bond to abruptly end. Counsel argued:

"[Respondent] has indicated that she has made some mistakes. The bottom line is that she did serve some time in immigration. She did serve time for a parole violation. And that time period that she served obviously led to her not having some contact with Isaiah. But even then, even after all the time period that elapsed between the time where she was placed in custody by immigration and the Cook County Department of Corrections, and the time in which she had the visit, December 15th, 2011, that bond still existed. That shows you, that demonstrates the fact that [respondent] had a strong bond with her child because even though that time elapsed when she had her visit in December of 2011, the minor still wanted to return home to her. They still had a great visit."

¶ 66 The trial court terminated respondent's parental rights, noting that Isaiah was in a positive, nurturing and loving home with his foster parents. The trial court recognized the foster parents' advocacy for Isaiah at school and with counseling and specifically noted Mr. C. showed an "empathy for and an understanding of this child and his needs." The court acknowledged Isaiah has a bond with respondent, but also noted that reunification efforts "have utterly failed." The court stated it "did not find [respondent's] testimony credible because it conflicted very much with the evidence that [the court] did hear. She, in her comments [to the court], came across as identifying herself as a victim, 'they put me into jail, they didn't return my calls.' There was an utter lack of any responsibility for anything over the course of this case." The court ruled that it was in Isaiah's best interests to terminate respondent's parental rights and to appoint a guardian with the right to consent to his adoption.

¶ 67 Respondent appeals only the finding of unfitness. She raises no issue regarding the trial

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court's finding that Isaiah's best interests are served by terminating respondent's parental rights.

¶ 68 The Juvenile Court Act provides a two-stage mechanism whereby parental rights may be involuntarily terminated. 705 ILCS 405/2-29(2) (West 2012). Under this bifurcated procedure, there must be a threshold showing of parental unfitness based on clear and convincing evidence and then a subsequent showing that the best interests of the child are served by severing parental rights. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000).

¶ 69 The trial court's determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *Id.* Therefore, the appellate court defers to the trial court's factual findings, and will not reverse the trial court unless the factual findings are against the manifest weight of the evidence. *Id.* A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented. *Id.*

¶ 70 Parental unfitness is determined with reference to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). The State must prove by clear and convincing evidence at least one statutory ground of parental unfitness. *In re M.J.*, 314 Ill. App. 3d at 655. On review, if there is sufficient evidence to satisfy any one statutory ground, we need not consider other findings of parental unfitness. *Id.*

¶ 71 Section 1D(m) of the Adoption Act establishes parental unfitness based on:

"Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an

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adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act, or (iii) 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 under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act." 750 ILCS 50/1D(m) (West 2012).

¶ 72 "Reasonable *efforts* and reasonable *progress* are two different grounds for finding a parent unfit in section 1(D)(m). Reasonable efforts relate to the goal of correcting the conditions that caused the removal of the child from the parent [citation] and are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person [citation]. In contrast, reasonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent. [Citation.] At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. [Citation.] The benchmark for measuring a parent's progress under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives in light of the condition that gave rise to the removal of the child and other conditions which later become known and would prevent the court from returning custody of the child to the parent. [Citation.] Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." (Emphasis in original.) *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006).

¶ 73 In the present case, we consider whether the trial court erred in finding respondent was an

unfit parent based on her failure to make reasonable progress toward the return of Isaiah within nine months after the adjudication of neglect, specifically, from October 4, 2010, to July 4, 2011.

¶ 74 The September 2010 service plan set forth the following services respondent was required to complete for reunification with Isaiah: (1) inpatient drug treatment; (2) random urine drops; (3) individual therapy; (4) domestic violence counseling; and (5) parenting classes. Respondent's case worker, Ms. Moore, testified at the fitness hearing that in September 2010, she discussed with respondent the services she was required to participate in so as to be reunited with Isaiah. Respondent replied that she understood the services she was required to complete but that she did not have time to complete them because she was in school. In October and November 2010, Ms. Moore met with respondent and reiterated the need for her to complete the services set forth in the September 2010 service plan. Each time, respondent replied she did not have time to complete the services because she was in school. Ms. Moore testified she asked respondent for proof of her attendance at school, but respondent failed to provide such proof.³

¶ 75 Thus, at the start of the nine-month period for measuring her progress toward reunification, respondent signaled her lack of interest by claiming she could not perform the required services due to her time in school and by failing to respond to Ms. Moore's requests for proof that she was

³We note that at a permanency hearing held on February 2, 2012 (seven months prior to the fitness hearing), the trial court admitted a document which respondent's counsel purported to be "a detail of the classes that [respondent's] been taking—that she's registered for at Kennedy King." The document, which is contained in the record on appeal, does not contain a list of respondent's registered classes, but rather states that as of January 4, 2012, respondent had been charged \$1,535.39 for tuition and other fees for the Fall 2010 term at the City Colleges of Chicago. The document further reflected that respondent had not yet paid any of the \$1,535.39. The document provides no proof of respondent's attendance at classes.

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actually attending classes. Respondent further signaled her lack of interest in performing the required services necessary for reunification by failing to give Ms. Moore a home address, a name of the person with whom she was staying, or a cell phone number that was continually operable, thereby preventing Ms. Moore from being able to request more than one urine drop because respondent could not be reached.

¶ 76 Respondent continued to express her disinterest in progressing toward reunification by failing to visit Isaiah after November 5, 2010, although she was entitled to weekly supervised visits. Respondent would sometimes call to schedule a visit, but then not show up. After respondent stopped visiting with Isaiah, Ms. Moore searched for her and discovered that respondent was in Cook County jail in December 2010. Ms. Moore testified that at the end of December 2010, she again searched for respondent and discovered she was no longer in the Cook County jail; however, respondent failed to contact Ms. Moore regarding her location, and she failed to visit with Isaiah. Respondent's location was unknown until March 9, 2011, when her mother called Ms. Moore and stated respondent was now in jail in Wisconsin. Ms. Moore subsequently learned respondent was detained for immigration violations from April 2011 through August 2011, and that at some point during that time period she was moved from one immigration facility to another. Respondent continued her pattern of lack of communication with Ms. Moore by failing to notify Ms. Moore either of her initial detention for immigration violations or her subsequent transfer to a different immigration facility.

¶ 77 Respondent continued to show her disinterest in progressing toward reunification with Isaiah by failing to send any cards, gifts or letters to Ms. Moore's agency to be forwarded to Isaiah during

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her time in jail and in immigration detention. Respondent acknowledges that, unlike immigration detention which did not offer rehabilitative services, she could have participated in drug treatment, parenting classes and psychological services while in Cook County jail, thereby complying with the September 2010 service plan and making progress toward reunification with Isaiah; however she never made any inquiry of Ms. Moore regarding said services and she did not complete inpatient drug treatment, individual counseling, parenting classes or domestic violence counseling from October 2010 through July 2011.

¶ 78 Ms. Moore testified that due to respondent's failure to come in for weekly visits after November 5, 2010, and due to her lack of involvement in services set forth in the September 2010 client service plan, Ms. Moore never recommended that respondent's visits with Isaiah be increased. The February 28, 2011, and September 21, 2011, client service plans admitted into evidence corroborated Ms. Moore's testimony that respondent failed to visit with Isaiah after November 5, 2010, and failed to engage in the reunification services set forth in the September 2010 client service plan.

¶ 79 Based on these facts, we cannot say respondent made any measurable movement toward the goal of reunification within the relevant nine-month time period of October 4, 2010, to July 4, 2011. Thus, the trial court's finding that respondent failed to make reasonable progress for that nine-month period was not against the manifest weight of the evidence.

¶ 80 Respondent argues the trial court should have considered that her time in immigration detention, during which she was not offered any rehabilitative services, tolled the nine-month period during which reasonable progress must be made. *In re J.L.*, 236 Ill. 2d 329 (2010) is controlling.

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In *J.L.*, the issue was whether time spent in prison tolled the relevant nine-month period set forth in section 1(D)(m)(iii) of the Adoption Act, which states a parent may be found unfit where she failed "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 ***." *Id.* at 339-40 (quoting 750 ILCS 50/1(D)(m)(iii) (West 2008)).

¶ 81 The supreme court held that incarceration in prison did not toll the nine-month period. *J.L.*, 236 Ill. 2d at 340. The supreme court noted that the primary objective in construing a statute is to give effect to the intent of the legislature, and that the most reliable indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. *Id.* at 339. The supreme court noted that the language of section 1(D)(m)(iii) clearly and unambiguously makes no exception for time spent in prison when determining whether the parent failed to make reasonable progress toward the return of the child during the relevant nine-month period. *Id.* at 340. Noting that "[w]here the language is clear and unambiguous, courts may not read into it exceptions that the legislature did not express," (*id.*) the supreme court held that "time spent incarcerated is included in the nine-month period during which reasonable progress must be made under section 1(D)(m)(iii)." *Id.* at 343. The supreme court stated, "[w]hether this needs to be changed is a policy question more appropriately directed to the legislature."⁴ *Id.*

⁴As a second basis for its holding, the supreme court noted that the legislature "was well aware of the possibility that a parent subject to termination proceedings would be incarcerated," as the legislature expressly referenced incarceration in sections 1(D)(r) and 1(D)(s) of the Adoption Act. *Id.* at 340. The supreme court further noted that the legislature included no express exception for incarcerated parents in section 1(D)(m)(iii), and the court held that when the legislature includes particular language in one section of a statute but omits it in another section of the same act, the court will presume that the legislature has acted intentionally. *Id.* at 341. Accordingly, the supreme

¶ 82 The present case involves section 1(D)(m)(ii) instead of 1(D)(m)(iii), but the language of the two sections are similar. Section 1(D)(m)(ii) provides that a parent may be found unfit where she fails "to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(ii) (West 2012). The language of section 1(D)(m)(ii) clearly and unambiguously makes no exception for time spent in immigration detention in determining whether the parent made reasonable progress toward the return of the child during the relevant nine-month period. Pursuant to *J.L.*, we may not read into section 1(D)(m)(ii) an exception that the legislature did not express and, therefore, we hold that time spent in immigration detention is included in the nine-month period during which reasonable progress must be made under section 1(D)(m)(ii). See also section 20a of the Adoption Act, 750 ILCS 50/20a (West 2012) ("It is in the best interests of persons to be adopted that this Act be construed and interpreted so as not to result in extending time limits beyond those set forth herein.").

¶ 83 Respondent argues her trial counsel provided ineffective assistance at the fitness hearing by: failing to call respondent as a witness to testify about her completion of services and the letters she sent to Isaiah while in immigration detention; failing to introduce a letter indicating respondent had participated in an inpatient substance abuse treatment program while in jail in January 2011, which would have shown her progress toward reunifying with Isaiah and which would have impeached Ms. Moore's testimony that she "diligently" searched for respondent in December 2010 and had discovered respondent was no longer in jail; failing to introduce evidence regarding the

court held that it would be "inappropriate" to infer the legislature intended to include an exception for incarcerated parents in section 1(D)(m)(iii). *Id.* This second basis for the supreme court's holding is not applicable here and need not be further analyzed.

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circumstances of respondent's immigration detention and the lack of opportunity to pursue services while in immigration detention; and failing to cross-examine Ms. Moore about her failure to contact respondent while she was in immigration detention.

¶ 84 Section 1-5(1) of the Juvenile Court Act (705 ILCS 405/1-5(1) (West 2012)) provides that minors and their parents have the right to be represented by counsel in juvenile proceedings. *In re Ch.W.*, 399 Ill. App. 3d 825, 828 (2010). Illinois courts apply the standard utilized in *Strickland v. Washington*, 466 U.S. 668 (1984), to gauge the effectiveness of counsel in juvenile proceedings. *Ch.W.*, 399 Ill. App. 3d at 828. Under the two-prong test set forth in *Strickland*, respondent must show first, that "counsel's representation fell below an objective standard of reasonableness" (*Strickland*, 466 U.S. at 688), and second, that she was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

¶ 85 To prevail on her claim of ineffective assistance, respondent must satisfy both prongs of the *Strickland* test. If we can dispose of respondent's ineffective assistance claim because she suffered no prejudice, we need not address whether her counsel's performance was objectively reasonable. *In re K.O.*, 336 Ill. App. 3d 98, 111 (2002).

¶ 86 With respect to respondent's claim that her counsel was ineffective for failing to call her at the fitness hearing to testify that she completed the services set forth in the September 2010 client services plan and that she had sent Isaiah letters during the relevant nine-month period of October 4, 2010, to July 4, 2011, we note that respondent testified at the best interests hearing that she had sent Isaiah letters and "done everything that they've asked" during the nine-month period, including

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parenting classes, domestic violence counseling, and drug treatment. The trial court specifically found that respondent's testimony was not credible, and that it conflicted with the testimony provided by Ms. Moore, whom the trial court *did* find credible. Based on the trial court's finding at the best interests hearing that respondent was not credible, there is no reasonable probability that the result of the fitness hearing would have been different had she been called to testify there regarding her alleged completion of services and sending of letters.

¶ 87 With respect to respondent's claim that her counsel was ineffective for failing to introduce a letter at the fitness hearing indicating she had participated in an inpatient substance abuse treatment program while in jail in January 2011, we note that respondent referenced this letter during her testimony at the best interests hearing. Following her testimony, counsel explained to the court that the letter in question was from Haymarket Center dated January 5, 2011, that it only indicated respondent recently had been transferred to the Women's Justice Services to begin a substance abuse treatment program that was to run for 92 days, and that there was no certificate indicating respondent had completed the program. During closing arguments, the Assistant State's Attorney stated that counsel had essentially read the January 5 letter from Haymarket Center into evidence, and that the letter only indicated respondent had been "recently" transferred to the Women's Justice Services, without specifically indicating the date she was transferred; on appeal, neither party argues that defense counsel misread the letter or misrepresented its contents and, therefore, we consider the letter as it was read into the record by counsel. We note that, as read into the record, the letter does not specifically indicate when respondent was transferred to Women's Justice Services to participate in the substance abuse treatment program, nor does it indicate that respondent had actually begun

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participating in the program. We further note that, even if respondent did begin the substance abuse treatment program at Women's Justice Services on or around January 5, 2011 (the date of the letter), the program would have run for 92 days into April 2011, however respondent likely could not have completed it because she was in jail in Wisconsin as of March 9, 2011, during the 92-day period. As there is no evidence respondent participated in or completed the substance abuse program with Women's Justice Services during the relevant nine-month period of October 4, 2010 to July 4, 2011, we cannot say that there is a reasonable probability that the result of the fitness hearing would have been different had the January 5, 2011, letter been introduced therein. In particular, we note that in finding respondent unfit, the trial court specifically noted two other instances when respondent had participated in, but failed to complete, substance abuse treatment programs. As the trial court found respondent's mere participation in two substance abuse treatment programs, without successfully completing them, was insufficient to show her fitness, we cannot say there is a reasonable probability that respondent's transfer to a third substance abuse treatment program sometime around January 5, 2011, with Women's Justice Services without any evidence confirming her participation in or completion thereof would have caused the court to find her fit for reunification with Isaiah.

¶ 88 With respect to respondent's claim that her counsel was ineffective for failing to introduce evidence at the fitness hearing regarding the circumstances of her immigration detention and the lack of opportunity to pursue services while in immigration detention, which would have served to toll the relevant nine-month period during which reasonable progress toward the return of the child must be made, we have already held earlier in this order that respondent's time in immigration detention did not toll the nine-month period. As respondent's time in immigration detention did not toll the

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nine-month period, counsel was not ineffective for failing to introduce evidence regarding said detention, nor is there a reasonable probability that the result of the fitness hearing would have been different had said evidence been introduced.

¶ 89 Respondent claims her counsel was ineffective for failing to impeach Ms. Moore's testimony at the fitness hearing that she diligently searched for respondent in December 2010, and for not cross-examining Ms. Moore regarding her failure to contact respondent while she was in immigration detention. However, such impeachment and cross-examination would not have changed the fact that respondent failed to keep Ms. Moore apprised of her whereabouts and status during her incarceration and immigration detention, failed to keep her appointments to visit with Isaiah even before her incarceration and immigration detention, and failed to comply with the September 2010 service plan during the relevant nine-month period of October 4, 2010, to July 4, 2011. On these facts, there is no reasonable probability that the result of the fitness hearing would have been different even with said impeachment and cross-examination.

¶ 90 Respondent also argues her counsel was ineffective for failing to present evidence at the fitness hearing of: her communications with Isaiah after August 2011; her attendance at 40 domestic violence parenting classes with a completion date of September 2011; and a service plan dated March 2012 which indicated respondent had entered an inpatient program at Southwood Interventions in October 2011 where she participated in parenting classes, groups and domestic violence therapy, and had entered a program at My Sister's Keeper in January 2012, where she engaged in anger management, life skills, parenting classes, relapse prevention, and drug classes. However, all of this evidence was of respondent's communication with Isaiah and participation in

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services *outside* the nine-month period at issue here of October 4, 2010, to July 4, 2011, and, thus, was not relevant to whether respondent made reasonable progress toward reunification *during* October 4, 2010, to July 4, 2011. See *J.L.*, 236 Ill. 2d at 341 ("in determining whether a parent has made reasonable progress toward the return of the child, courts are to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)."). Even if said evidence of respondent's contact with Isaiah and participation in services *outside* the relevant nine-month period of October 4, 2010, to July 4, 2011, had been introduced at the fitness hearing, there is no reasonable probability that the trial court would have found respondent made reasonable progress *during* said nine-month period and, thus, the result of the fitness hearing would not have been different.

¶ 91 In sum, all of respondent's claims of ineffective assistance fail for lack of sufficient prejudice, as there is no reasonable probability that, but for counsel's allegedly unprofessional errors, the result of the fitness hearing would have been different.

¶ 92 Next, respondent argues she raised a "colorable claim of ineffective assistance" during the best interests hearing, when she informed the trial court that her counsel was refusing to present the January 5, 2011, letter from Haymarket Center indicating her participation in inpatient substance abuse treatment. Respondent contends the trial court erred in failing to hold a hearing on her claim of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). In *Krankel*, the defendant there filed a *pro se* posttrial motion alleging his trial counsel was ineffective for failing to investigate or present an alibi defense. *Id.* at 187. The trial court denied the motion without appointing new counsel to assist defendant. *Id.* at 189. The supreme court remanded the

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matter for a new hearing on defendant's *pro se* motion with appointed counsel other than his originally appointed counsel. *Id.*

¶ 93 Following *Krankel*, the supreme court clarified that newly appointed counsel is not automatically required in every case where a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). Rather, "when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *Id.* at 77-78.

¶ 94 Respondent here argues that the trial court in a child protection matter should conduct the same *Krankel* inquiry and hearing on a respondent's *pro se* allegations of ineffective assistance of counsel as for a criminal defendant under similar circumstances. Respondent contends the trial court erred here in failing to conduct such an inquiry and hearing on her allegations of ineffective assistance of counsel.

¶ 95 We need not determine this issue because, as we held earlier in this order, there is no reasonable probability the result of this case would have been different had the January 5, 2011, letter from Haymarket Center been admitted, where there was no evidence presented confirming respondent's participation in or completion of inpatient substance abuse treatment. Accordingly, respondent's claim of ineffective assistance is without merit and, therefore, any failure to conduct a *Krankel* hearing here (even if such a hearing was applicable) was harmless.

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¶ 96 For the foregoing reasons, we affirm the circuit court.

¶ 97 Affirmed.