

¶ 4

I. BACKGROUND

¶ 5 The State filed a petition for adjudication of wardship on April 19, 2011, alleging respondent neglected D.W. in that D.W.'s "environment [was] injurious to her welfare due to respondent mother's substance abuse." 705 ILCS 405/2-3(1)(b) (West 2010). The minor was detained in shelter care following a hearing on April 19, 2011, and placed in the care of the putative grandparents, where she remained throughout the proceedings. On June 13, 2011, respondent stipulated to the petition at the adjudicatory hearing, at which time the trial court found the minor to be "neglected." On August 1, 2011, following a dispositional hearing, the court granted guardianship to the Department of Children and Family Services (DCFS) with the consent to place the minor.

¶ 6 On August 2, 2012, the State filed a petition to terminate respondent's parental rights, alleging respondent (1) "failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child" and (2) failed "to make reasonable progress toward the return of the minor within nine months of the adjudication of neglect."

¶ 7

A. Fitness Hearing

¶ 8 On September 24, 2012, the trial court held a fitness hearing. Jeannie Faulkner testified she was respondent's DCFS caseworker from June 2011 through February 2012. According to Faulkner, respondent made no progress toward completing the service plan, which included (1) parenting classes, (2) domestic violence treatment, (3) substance abuse treatment, (4) individual counseling, and (5) cooperation with DCFS. Faulkner explained respondent would request services, then not complete those services.

¶ 9 Respondent was incarcerated intermittently in the Ford County and Champaign

County jails during Faulkner's tenure as caseworker. Faulkner testified respondent declined visitation with D.W. during her incarceration. Faulkner acknowledged the unavailability of substance abuse treatment and parenting classes for respondent in the Ford County jail.

However, she explained respondent could receive individual counseling while in jail.

Respondent told Faulkner the counselor visited respondent at the jail, but the counseling service had no record of any visits. Further, Faulkner testified she referred respondent for a psychological assessment in July 2011, but respondent was incarcerated by the appointment date.

¶ 10 In November 2011, after respondent's temporary release from custody, Faulkner made an unannounced home visit to respondent's home and discovered cannabis within the home. According to Faulkner, respondent never appeared for any drug screens. However, a January 2012 case summary reflects respondent completed drug screens on November 18, 2011, November 29, 2011, December 2, 2011, and December 8, 2011, all of which tested negative for illegal substances. Moreover, the January 2012 case summary shows respondent attended Alcoholics Anonymous meetings regularly.

¶ 11 In April 2012, respondent's case was transferred to Lutheran Social Services and caseworker Sel Gokturk. At approximately the same time, respondent received a sentence to the Illinois Department of Corrections (DOC), where she remained throughout the termination proceedings. Gokturk recommended respondent complete substance abuse and parenting classes while imprisoned. Gokturk verified respondent finished parenting classes in August 2012 while imprisoned in DOC.

¶ 12 Respondent testified she was imprisoned in DOC with a prospective release date of January 2013. She stated she attended an initial drug assessment while Faulkner was her

caseworker, which would have occurred during the summer of 2011. Respondent explained she was attending drug awareness classes while in DOC, which she anticipated completing the following week. She conceded she had not obtained a psychological report due, initially, to lack of transportation and, later, due to incarceration. While in DOC, respondent noted, she completed parenting classes as recommended by Gokturk. Respondent conceded that, although she engaged in parenting and substance abuse classes, she had not completed all the requirements of her service plan. She also agreed she was at fault for not completing the service plan.

¶ 13 Respondent testified her weekly visits with D.W. in August 2011 went well until Faulkner became seriously ill. After Faulkner was hospitalized, respondent received no visits with her child for approximately one month. When respondent resumed visits, she expressed concern over bumps and bruises on D.W.'s head and arms, but Faulkner attributed them to D.W. being a small child. Respondent agreed she declined visits with D.W. in the fall of 2011 while incarcerated in the county jail "because I didn't want my daughter seeing me like that," but respondent believed DCFS would make up those visits upon respondent's release. Once released in November 2011, respondent requested visits, but Faulkner failed to arrange any visits. Respondent also stated she obtained suitable housing with her mother, but DCFS did not inspect the home as expected. Respondent calculated she had been incarcerated for a total of nine months from August 2011 through September 2012, including time spent in DOC and county jails.

¶ 14 Respondent's mother, Belinda Nichols, testified respondent resided with Nichols until March 2012, at which time respondent received a DOC sentence. Nichols stated her home was a suitable residence for D.W., but DCFS never contacted her for a home inspection. Further,

Nichols testified to disrespectful behavior from Faulkner when respondent requested visits. Nichols explained DCFS refused to allow Nichols to participate in any visits. DCFS reports reflected Nichols had prior indicated reports from DCFS. In addition, a permanency report dated January 23, 2012, indicated Nichols' home had extensive interior ceiling damage leaving insulation, wires, and other hazardous materials exposed to the home environment. The report went on to indicate Nichols and respondent's sister frequently had boyfriends staying in the residence.

¶ 15 After hearing the evidence, the trial court found respondent failed to make (1) reasonable efforts to correct the conditions that were the basis for the removal of the child or (2) reasonable progress toward the return of the minor.

¶ 16 B. Best Interest Hearing

¶ 17 The trial court held a best interest hearing on December 10, 2012. The parties stipulated to the contents of the best interest report, which outlined the progress of D.W. and respondent. The report described D.W. as "happy and full of energy." The paternal grandparents were committed to providing care for D.W. as long as needed, and the caseworker expressed no concerns with the grandparents' ability to care for the minor.

¶ 18 The best interest report also documented respondent's progress with the service plan. On August 20, 2012, respondent successfully completed a parenting class while in DOC. She reportedly began drug education classes in DOC in July 2012. Prior to respondent's incarceration, she failed to appear for three separate substance abuse assessments in May 2011, August 2011, and December 2011. Further, respondent failed to complete domestic violence treatment, individual counseling, and a mental health assessment as recommended in the various

service plans.

¶ 19 During two DOC visits, the caseworker observed "good and proper interaction" between D.W. and respondent. D.W. "appeared to enjoy being with her mother" and respondent "appeared to be comfortable with caring for and attending to [D.W.'s] needs."

¶ 20 Reverend Patricia Demel, respondent's grandmother, testified she would oversee respondent's participation in services after respondent's release from DOC. Demel had already arranged a job for respondent, though Demel admitted the employer was still attempting to establish the business. Additionally, Demel arranged counseling services for respondent.

¶ 21 Respondent testified she expected to be released from DOC in January 2013 due, in part, to her participation in educational courses while imprisoned. She further presented certificates showing completion of substance abuse education and parenting classes. Through these courses, respondent explained, she learned how to be a better parent to her child. Respondent agreed to follow any and all rules imposed by DCFS if the trial court refrained from terminating her parental rights.

¶ 22 Following the best interest hearing, the trial court found it was in the best interest of D.W. to terminate respondent's parental rights. In support, the court noted the case was about to enter a third nine-month period in January 2013, but respondent had failed to complete the service plan. The court commended respondent on her progress while in DOC but found that was not enough to retain respondent's parental rights. The court stated:

"In fact, that's the argument. Give me a chance in the third nine-month period to see if I can do what needs to be done. That is not permanency. This child, for virtually all her life, has been given

permanency by people out there other than the parents. And there's no indication in the third nine-month period that [respondent] could make reasonable efforts or reasonable progress."

Moreover, the court did not believe respondent's plan upon release from DOC would be successful.

¶ 23 On respondent's request, the court directed the clerk to file a notice of appeal.

¶ 24 II. ANALYSIS

¶ 25 On appeal, respondent asserts the trial court erred by (1) finding respondent unfit and (2) terminating respondent's parental rights. We address these arguments in turn.

¶ 26 A. The Trial Court's Finding Regarding Fitness of Respondent

¶ 27 Respondent first contends the trial court's finding of unfitness was against the manifest weight of the evidence. The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. " 'A trial court's finding is against the manifest weight of the evidence if review of the record clearly demonstrates that the opposite result would be the proper one.' " *In re Stephen K.*, 373 Ill. App. 3d 7, 20, 867 N.E.2d 81, 94 (2007) (quoting *In re K.G.*, 288 Ill. App. 3d 728, 735, 682 N.E.2d 95, 99-100 (1997)). The trial court is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604.

¶ 28 At the fitness stage, the trial court may consider a variety of grounds for reaching

a finding of unfitness, including whether the parent has made reasonable efforts or reasonable progress toward the return of the child to the parent. 750 ILCS 50/1(D)(m) (West 2010). The court may find "reasonable progress" when "the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003). The court should focus on the parent's "reasonable efforts" toward correcting the conditions that were the basis for the removal of the child from the parent during the initial nine-month period following the adjudication. *In re D.F.*, 208 Ill. 2d 223, 238-42, 802 N.E.2d 800, 809-11 (2003); 750 ILCS 50/1(D)(m) (West 2010).

¶ 29 Respondent argues her incarceration impeded her ability to complete the service plan; therefore, the trial court should have granted her more time to complete services. We disagree. With this argument, respondent fails to account for the initial nine months of the case, from June 2011 through March 2012, at which time she was not incarcerated in DOC. DCFS referred respondent to services on numerous occasions, but respondent failed to participate in those services. It was not until respondent's incarceration in the spring of 2012 that she decided to engage in parenting classes and substance abuse treatment, which would have been the beginning of a second nine-month period. In fact, respondent did not complete her substance abuse classes until after the fitness hearing. Though, as the trial court stated, respondent is to be commended for completing parenting and substance abuse classes, respondent had not made reasonable efforts or progress toward completing other elements of the service plan, such as engaging in domestic violence treatment or individual counseling.

¶ 30 Moreover, respondent's choice to engage in illegal activity placed her in a position

in which she was not able to complete the service plan, so it is disingenuous for her to argue incarceration is to blame for her inability to complete services. Additionally, respondent's incarceration prevented her from correcting the condition that brought D.W. into DCFS's care, specifically, maintaining an environment injurious to the minor's welfare. Even if the trial court granted respondent more time, the evidence does not indicate respondent would be in a position to have D.W. returned to her in the near future. The fitness hearing occurred in September 2012, at which time the earliest opportunity to return D.W. would be upon respondent's release from DOC in January 2013, an optimistic estimate considering respondent still had the majority of the service plan to complete.

¶ 31 Based on the foregoing, we conclude the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 32 B. The Trial Court's Finding Regarding the Best Interests of D.W.

¶ 33 Respondent also asserts the trial court erred in terminating her parental rights in the best interests of the minor. Once the trial court determines a parent to be unfit, the next step is to determine whether it is in the best interests of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interests of the minor. *Jaron Z.*, 348 Ill. App. 3d at 261, 810 N.E.2d at 126. The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Jaron Z.*, 348 Ill. App. 3d at 261-62, 810 N.E.2d at 126-27. "[T]he 'best interests of the child is the paramount consideration.' " *In re F.S.*, 347 Ill. App. 3d 55, 62, 806 N.E.2d 1087, 1093 (2004) (quoting *K.G.*, 288 Ill. App. 3d at 734-35, 682 N.E.2d at 99. The trial court can consider whether a parent has completed objectives of the

service plan as evidence of the parent's concern, interest, or responsibility. *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 124-25.

¶ 34 The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

"(a) the physical safety and welfare of the child, including food, shelter, health, and clothing; (b) the development of the child's identity; (c) the child's background and ties, including familial, cultural, and religious; (d) the child's sense of attachments ***; (e) the child's wishes and long-term goals; (f) the child's community ties, including church, school, and friends; (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (h) the uniqueness of every family and child; (i) the risks attendant to entering and being in substitute care; and (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2010).

¶ 35 Respondent argues her failure to complete the service plan did not negatively impact the minor. We disagree. Although the minor, less than two years of age, does not necessarily comprehend the nature of the proceedings, respondent's incarceration has prevented her from building a bonding relationship with the child. Instead, the evidence suggests the minor has bonded with her paternal grandparents, with whom she has lived for most of her life. The caseworker described D.W. as "happy and full of energy" and receiving all the appropriate care

