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2013 IL App (4th) 130060-U

NOS. 4-13-0060, 4-13-0062 cons.

FILED
June 20, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| In re: M.M., a Minor, | ) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Macon County |
| v. (No. 4-13-0060) | ) | No. 10JA120 |
| CHRISTOPHER MARCH, | ) | |
| Respondent-Appellant. | ) | |
| ---------- | ) | |
| In re: M.M., a Minor, | ) | |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| Petitioner-Appellee, | ) | |
| v (No. 4-13-0062) | ) | Honorable |
| SHELLY JONES, | ) | Thomas E. Little, |
| Respondent-Appellant. | ) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The trial court's finding respondent parents were unfit is not against the manifest weight of the evidence.

(2) The trial court properly terminated the respondent mother's parental rights.

(3) The trial court's decision to terminate the respondent father's parental rights is against the manifest weight of the evidence.

¶ 2 In September 2012, the trial court found respondent parents, Shelly Jones and Christopher March, unfit parents to M.M. (born December 24, 2008). In January 2013, the trial court terminated their parental rights to M.M. Respondent parents appeal, arguing the fitness findings and the decision to terminate their parental rights were against the manifest weight of

the evidence. We affirm in part, reverse in part, and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 In September 2010, the State filed a juvenile petition alleging M.M. was neglected because she was not receiving necessary and proper care (705 ILCS 405/2-3(1)(a) (West 2010)) and her environment was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2010)). The State further alleged M.M. was abused because M.M. had a substantial risk of physical injury by other than accidental means (705 ILCS 405/2-3(2)(ii) (West 2010)). The State based these allegations on charges Shelly suffered severe mental-health and substance-abuse issues and had not complied with treatment. March was not the custodial parent.

¶ 5 According to a Department of Children and Family Services (DCFS) family service plan, dated November 2011, March was given legal custody of M.M. in October 2010. On June 28, 2011, March admitted using cocaine and alcohol while caring for M.M. A safety plan was put into effect, under which M.M. stayed with her maternal grandparents, Carol and Ed Jones. At the time, Shelly was residing with Carol and Ed. M.M. was not to be left unsupervised with either Shelly or March. On July 19, 2011, Carol admitted leaving M.M. unsupervised in March's and Shelly's care. This occurred after an incident in which March was arrested for domestic violence and Shelly alleged March was using illegal drugs. M.M. was placed in foster care on July 21, 2011.

¶ 6 On August 2, 2011, the trial court entered an adjudicatory order, finding M.M. neglected by both parents under section 2-3(1)(a). The court based its decision on respondent parents' mental-health, substance-abuse, and domestic-violence history, as well as a lack of progress while under court supervision. That same day, the court issued a dispositional order,

making M.M. a ward of the court and placing guardianship and custody with DCFS.

¶ 7 On May 7, 2012, the State filed a motion for a finding of unfitness and the termination of the parental rights of Shelly and March to M.M. The State made the following allegations of parental unfitness, in part: (1) respondent parents failed to maintain a reasonable degree of interest, concern, or responsibility as to M.M.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) Shelly was depraved in that she had been convicted of four felonies (750 ILCS 50/1(D)(i) (West 2010)); (3) respondent parents were habitually drunk or addicted to drugs for at least one year immediately before the start of the unfitness proceedings (750 ILCS 50/1(D)(k) (West 2010)); (4) respondent parents failed to make reasonable efforts to correct the conditions that were the basis for M.M.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)); (5) respondent parents failed to make reasonable progress toward M.M.'s return within nine months of the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (6) Shelly, then incarcerated, had been repeatedly incarcerated for criminal convictions, preventing her from discharging her parental responsibilities (750 ILCS 50/1(D)(s) (West 2010)).

¶ 8 In July and September 2012, a hearing on parental fitness was held. At the hearing, eight witnesses, including both parents, testified.

¶ 9 Elizabeth McGarry, the program manager for addictions at Heritage Behavioral Health Center (Heritage), testified she knew March from the substance-abuse programs at Heritage. March had "been involved with Heritage off and on over the last several years." March spent time in rehabilitation three times and had "other outpatient episodes of care." March "had previous events where there [were] successful periods of clean time and periods where he was actively using." He began a treatment program with Heritage in March 2012. He

successfully completed that program on June 19, 2012. Beginning in August 2010, March participated in drug testing. Until July 2011, March had both positive and negative drug tests. He had no positive tests since July 2011.

¶ 10 According to McGarry, "this time" March showed significant progress versus the other times he was treated. March "addressed a lot more issues" and "was much more serious." March stayed for "an extended period of time," almost 90 days in residential treatment. March began the program on his own. March also dealt appropriately with "several significant life events" that occurred while March was in residential care. McGarry opined March had changed his thinking and had addressed his addictive behaviors.

¶ 11 On cross-examination, McGarry testified March was always compliant and did not cause problems. When he arrived in March 2012, it appeared March "was very much ready to get clean." March "dove in and did a lot of good work."

¶ 12 McGarry testified she saw March with M.M. when visits occurred at Heritage. March was "very much attentive." The interaction was positive and healthy. M.M. was happy and excited to see March and seemed bonded with him. These observations were in passing, however. During March's recovery, he worked through his emotions about not having taken care of his daughter and not being there for her in the past.

¶ 13 McGarry further testified March, after graduating from Heritage, went to the Continuing Recovery Center (CRC) in Irving, Illinois. The program at that facility spanned six months to two years. McGarry did not know if family members could reside there with patients. McGarry believed patients could stay as long as they believed it was necessary for them to stay. A person is considered in remission if that individual did not consume alcohol or drugs in an

unconfined environment for six months.

¶ 14 Christine Byrd, a caseworker at Webster Cantrell Hall, testified she was the caseworker on this case since December 2011. As the caseworker, Byrd had access to the case notes and case file, that predated her involvement. According to Byrd, when she started the case, Shelly was already incarcerated. Byrd's contact with Shelly was limited.

¶ 15 Byrd testified, as of December 2011, March was required to complete a substance-abuse assessment, undergo a mental-health assessment, follow any recommendations arising from those assessments, obtain employment, and maintain suitable housing for him and M.M. At that point, the goal was to return home. In November 2011, March relapsed. When Byrd took over, they were starting the process again. At that time, March resided with friends and looked for employment. He performed odd jobs, but he also received unemployment until February 2012. March was providing negative drug screens.

¶ 16 According to Byrd, during this time, March attended groups three or four times per week at Heritage. If for any reason he had to miss a session, he attended a makeup session. March attended counseling. He was diagnosed with depression and prescribed medication, which he took. In February or early March 2012, he obtained a job at G&D Integrated and was doing well.

¶ 17 Byrd testified she received a voicemail message near the end of March 2012 from March. He stated he had a relapse and checked himself into rehabilitation. Heritage usually provides a 28-day program, but March stayed there almost 2 1/2 months waiting for an opening at CRC. March was cooperative and forthcoming about his plans and efforts. He had complied with everything he had been asked to do up until that point. However, while March stayed in

rehabilitation, he was not satisfying his housing or employment goals. Byrd believed, due to the lack of a definite discharge date, "we" did not feel it fair to M.M. to remain in the system that long without some kind of plan. After leaving CRC, services would have to begin again. March's progress on his service plan, until March 2012, was satisfactory, but, at the time of Byrd's testimony, his progress was not satisfactory.

¶ 18 Byrd testified she had contact with Shelly over the phone. In February 2012, Shelly requested visits with M.M. The first visit occurred on February 16, 2012. The visits were from 10 a.m. until noon every other Thursday. Visitation was the only service Shelly participated in. Shelly had not told Byrd about participating in parenting classes or obtaining a general-education degree. Shelly had not successfully completed a service plan.

¶ 19 On cross-examination, Byrd testified Shelly had not been provided a service plan from her. Byrd did not know where Shelly was located until February 2012. During the February 2012 phone call, Shelly did not ask for services. Shelly sent two letters to Byrd. In these letters, Shelly stated if M.M. could not be returned to her care, she wanted M.M. to be with M.M.'s maternal grandparents. When Byrd started the case, she learned Shelly was imprisoned and would serve five to seven years.

¶ 20 Byrd testified she would "pop in on visitations" between March and M.M. During those visits, March was "very appropriate" with M.M. March provided snacks, and worked on M.M.'s potty training. March was very affectionate and loving toward M.M. and would play with her. M.M. enjoyed seeing March. If March had not relapsed and continued complying with services, she would have possibly looked into extended overnight visits.

¶ 21 Lisa Fore, a caseworker assistant at Webster Cantrell Hall, testified she supervised

M.M.'s visits with Shelly. Fore picked up M.M. from day care and took her to the prison. Shelly demonstrated appropriate parenting skills. Shelly would redirect M.M. as needed. M.M. appeared happy to see her mother. She would also express her happiness to Fore.

¶ 22 Lindsay Sites, a foster-care supervisor with Webster Cantrell Hall, testified she was the direct supervisor on the case since September 2011. Sites testified the family was intact before entering foster care, and she believed "[t]here were legal issues related to *** domestic violence and substance abuse."

¶ 23 Sites testified, in July 2011, Shelly was required to work on domestic violence and substance abuse. Shelly's instability of housing and employment were also issues, but not the primary ones. Before Shelly became incarcerated, she did not progress at all. A full integrated assessment had not been completed. Sites did not know if Shelly received a service plan at the beginning of the case, because she was not the supervisor at that time. Shelly's projected parole date was February 20, 2015.

¶ 24 Sites testified she had regular and fairly frequent contact with March and he was identified as the return-home parent. In her last phone conversation with March, Sites told him since M.M. had been in prior intact services and in foster care since July 2011, the case needed to move forward to get permanency for M.M. Sites also emphasized March's relapse was not his first one. March stated he understood and took responsibility for his relapse. To find March had successfully completed the substance-abuse treatment goal, she would have liked to see a six-month period of sobriety. That was not, however, written in policy. March and M.M. always had good visits.

¶ 25 Steffannie Carlisle, a case assistant at Webster Cantrell Hall, testified she began

supervising visits between March and M.M. on April 9, 2012. From then until her testimony in September 2012, March missed only one visit. He missed that visit due to illness. Carlisle opined March was "very active" with M.M. March provided for M.M.'s emotional and physical needs during visits. According to Carlisle, March had left the CRC and resided in his own home.

¶ 26 March testified regarding his substance-abuse problems. He attended Heritage from March until June 2012. He then went to the CRC. At the time of his September 2012 testimony, he was residing in Decatur. He testified a stay of six months was required to be successful in the CRC program. He stayed at the CRC for six weeks.

¶ 27 March testified when he went to the CRC he started in the recovery program. He believed, as it was described to him, this program would be another phase of his development in recovery. When March arrived at the CRC, he found he had "a lot of down time," during which he worked on himself. According to the program criteria, he was not supposed to have employment until he was there three months, "but they had asked me to do a job and I went and worked for this farmer." March testified he attended all his meetings and complied with every rule. The program then became a "resistance program" for him. After March left the CRC, he sought further treatment at Heritage. At Heritage, March attended individual counseling sessions once every two weeks. Three days a week, he attended group counseling at Heritage. March testified he had no trouble with his recovery. March had a sponsor, with whom he talked regularly. March worked daily on the 12-step program. One of March's roommates was in recovery as well and had been sober for nine years. March notified DCFS regarding his roommates and DCFS had not yet responded regarding background checks.

¶ 28 March testified he found employment through Donnie's Homespun Pizza. His job

was to help open the business by providing construction and carpentry work. Once the business opened, March would work in the kitchen.

¶ 29 March testified he signed a one-year lease on a three-bedroom house. The caseworker had not visited his house. March testified he had twice called the caseworker to schedule an appointment. March joined a church. There, he started a group program called "Addicted to Jesus." He did service work through Alcoholics Anonymous (AA).

¶ 30 On cross-examination, March testified regarding what he meant by "resistance program." March was frustrated by the change in rules for him. For example, when he arrived, he was able to do laundry on certain days, but then the residents were later limited to one load a week. When he was asked to work for the farmer, he was changing clothes twice daily, and one load was insufficient. While at CRC, he attended meetings and 12-step groups. He thought the CRC staff would be more involved than they were in guiding him through his recovery. After talking with his counselor and his sponsor and praying on the issue, March believed he could recover anywhere. He did not believe the CRC program met his expectations. March decided to transition to Decatur.

¶ 31 The State introduced certified copies of Shelly's convictions. These included a 2008 burglary conviction, for which Shelly received a seven-year sentence of imprisonment. In 2005, she was convicted of possession of a controlled substance, for which Shelly received 18 months in prison. In a 1998 case, Shelly was convicted of theft over $300 but under $10,000, for which she was sentenced to three years' imprisonment. In a 1997 case, Shelly was convicted of forgery and also received a three-year prison sentence.

¶ 32 The State rested.

¶ 33 March called Carol Jones, M.M.'s maternal grandmother, to testify. Carol testified she knew March for five years. Carol knew of March's drug use, but noticed recent changes for the better in him. Carol testified she had observed March with M.M. many times. M.M. loved to see her father. March was attentive and loving.

¶ 34 On cross-examination, Carol testified, in the five-year period she knew March, March attempted "probably six times at least" to address his substance abuse. Carol believed this time March seemed more serious and "[v]ery much more focused."

¶ 35 Shelly testified on her own behalf. She entered DOC in November or December 2011; her projected parole date was February 2015. According to Shelly, she never received a service plan. Shelly had not talked to a caseworker. She had visitation once every two weeks. Shelly's only contact with DCFS or any of its agencies was with Fore, who brought M.M. to the visits. Neither Byrd nor Sites visited Shelly.

¶ 36 Shelly testified she completed an eight-week parenting course. At the time of her testimony, Shelly was "taking seeking safety group." Shelly went to AA every Sunday. She was starting to attend Narcotics Anonymous (NA) and attempting to participate in every group she could to better herself. Shelly testified she would comply with any services required of her if she were given a service plan.

¶ 37 According to Shelly, the visits with M.M. were great. M.M. ran up to her. The two drew pictures during the visits.

¶ 38 On cross-examination, Shelly testified she was in the Macon County jail for two months before she went to DOC. She had attempted rehabilitation five times. She successfully completed rehabilitation every time but one. Shelly had four felony convictions. The most

recent one, other than the one she was serving, was committed six years before. Between those convictions, Shelly struggled with her drug addiction.

¶ 39 In September 2012, the trial court found the State proved the allegations of parental unfitness by clear and convincing evidence. The court observed, while Shelly testified she completed a parenting class and attended weekly AA meetings, Shelly did not provide documentation to corroborate her testimony. Regarding March, the court observed, despite the case's opening in July 2010, the evidence shows March was unable to demonstrate a six-month period of sobriety in that time. The court emphasized March's testimony the minimum stay to be successful at CRC was six months, but March decided to leave the program after only six weeks because he felt he "could recover anywhere." The court stated March on six occasions attempted to "get clean." The court commended March for his efforts in attempting to conquer his addiction problems, but found March failed to maintain his sobriety as required by the service plan.

¶ 40 On January 14, 2013, a hearing on M.M.'s best interests was held. Sites testified she had acted as the direct supervisor of this family's case since September 2011, but had been providing case management for it since the end of October 2012. According to Sites, M.M. was doing well in her foster placement. The foster parents, paternal relatives of M.M., wanted to adopt her.

¶ 41 Sites stated she had not directly observed any visitation between M.M. and her parents. Sites only reviewed visitation notes, which indicated the visits went well and the interactions were positive.

¶ 42 Sites testified she could not say, if March and Shelly had more time, such as three

or six months, M.M. could be returned to them. Sites stated the main concern with returning M.M. to March was March's sobriety. In the previous six months, Sites believed March's sobriety was still in question. The main issue for Shelly was her incarceration. Sites opined the best option for M.M. was to be adopted by her foster parents.

¶ 43 On cross-examination, Sites testified Shelly had not had a visit with M.M. since just after the September 2012 fitness hearing. Both parents "were offered a final visit," which occurred in September or October 2012. This was "standard operating procedure," because "the case was coming to an end." Sites had not received any documentation showing Shelly complied with services. Sites knew Shelly complied with visits. Sites made no attempt to maintain contact with Shelly. Sites did not attempt to verify Shelly's participation in services, because there was an assigned caseworker. Sites did not provide a service plan to Shelly, but she understood caseworkers had done so.

¶ 44 Sites testified briefly regarding M.M.'s foster placement. M.M. was twice removed from this foster home. The first was as a voluntary respite period. The foster parents, "a very young couple," were having some marital issues. It was discussed with the foster parents that once DCFS was no longer involved, the foster parents would need some extra familial support. In the fall of 2012, there were approximately three weeks during which M.M. was removed from her foster home due to allegations of abuse. It was determined those allegations were unfounded. Sites stated there was a plan in place should removal or respite from the foster home become necessary. This plan was developed during M.M.'s first removal from the foster home.

¶ 45 Sites testified her main concern with March was his sobriety. March had clean

drug drops after his stay at Heritage and his time at the CRC. He had a clean drop in November 2012. Two drops were requested in December 2012. Those were missed. Missed drops were considered positive. Sites was unaware of any indication March had relapsed. Sites did not know whether March's sobriety was an issue because he missed those two drops.

¶ 46 According to Sites, she told March's counsel at the hearing in September 2012 there was a possibility M.M. could be returned to March. There was good communication in October and November. March's home was fine. March reported about his employment. Sites stated, however, March's "phone numbers [had] been kind of hit and miss." March had a landline at his home, but his cell phone was "in and out of service." In November, March promptly told Sites when he was unable to receive messages on his cell phone. In December, however, March did not inform Sites when his cell-phone service stopped.

¶ 47 According to Sites, when M.M. was removed from her foster home, other placement alternatives were not considered because M.M. had been with her current foster parents for a significant amount of time. The reason March was not deemed a proper placement for M.M. was because he did not have current drug drops.

¶ 48 Sites testified M.M. and her foster parents were attached to each other. Sites had done home visits since she took over as caseworker. Sites observed the interactions between the foster parents and M.M. and found M.M. to be very happy in the home. M.M. was well taken care of. Her appointments were up to date. All her needs were met.

¶ 49 Sites testified she discussed the missed drops with March after they occurred. The first missed drop was on December 11, 2012. Sites had been told by March he had a cell phone and it was active and she could use it as well as his landline. Sites left a message for March on

his cell phone, informing him he needed to do the drop on December 11. After Sites learned March missed the drop, she called him. March told her he was unable to receive messages. For the second drop in December, Sites left a message, she believed, on March's landline. March told Sites he could not go because of work. Since that last missed screen, they exchanged voicemail messages "off and on." Sites had been trying to schedule a home visit before the best-interests hearing. Sites believed March had "been working a lot" and was not receiving her messages. Sites also had vacation for part of a week and could not make "some kind of home visit." No drug screens after December 20, 2012, were scheduled.

¶ 50 Sites stated she was "almost positive" she left a message on March's landline. Sites stated she did not send in drug-drop requests unless she personally dropped off the drug screen request or left someone a message. She would not just fax it in.

¶ 51 Sites stated she was unable to schedule drug screens around March's work schedule. Heritage performed the drops on weekdays between 9 a.m. and 6 p.m. The caseworkers fax in their requests, and parents were "responsible for attending those drops as they can."

¶ 52 Sites agreed that March, besides missing the December 2012 drops, had done everything DCFS asked of him. March had suitable housing and stability.

¶ 53 The guardian *ad litem* asked Sites to describe with whom M.M. had the stronger bond. Sites stated she could only speak regarding the consistency component of the relationship. The relationship with her foster parents was consistent. M.M.'s relationships with both March and her foster parents were both very strong. M.M. referred to her foster parents as "mom and dad."

¶ 54 Carol Jones testified she visited with M.M. monthly for an hour. Shelly's son

Tyler resided with Carol during Shelly's incarceration. During her visits with Carol, M.M. was "[a]lways so happy." M.M. would run up to them at the start of the visits. She called Carol "mam" and her grandfather "pops." They had not visited with M.M. since October 2012. M.M. had not seen her half-brother during that time either.

¶ 55 According to Carol, M.M. was always sad at the end of the visit. She cried. M.M.'s room was the same as it was during M.M.'s first three years of life, when she and Shelly resided with Carol.

¶ 56 Carol testified March was "very determined, very focused on everything he [could] do" to get M.M. back. Carol visited Shelly weekly at DOC. Shelly expressed the desire to have M.M. back. Carol testified "none of us want to lose [M.M.]." Carol thought the foster parents would "not let [them] see [M.M.] as grandparents that love her." Carol had sent gifts for M.M.'s birthday and for Christmas. She had not spoken to the foster parents and had not seen them interact with M.M. She visited once at a birthday party for M.M. Carol prayed the foster parents would allow them to be a part of M.M.'s life.

¶ 57 Carol testified Shelly had a drug problem. Carol attended meetings with Shelly. She called Shelly an excellent person who was a good mother. Shelly attended programs and spoke positively. Carol believed Shelly was ready to deal with her addiction.

¶ 58 On cross-examination, Carol testified DCFS did not talk to her about taking M.M. Carol stated she would be willing to take her. Carol testified M.M. was bonded to March. He was always good and caring with her. Carol hoped M.M. would remain part of March's and Shelly's lives.

¶ 59 Shelly testified she had not seen M.M. for four months. Shelly's projected release

date was in August or September 2013. While incarcerated, Shelly participated in "[a]nything and everything" available in her unit to better herself for when she is released. She participated in parenting and was enrolled in Seeking Safety. Shelly attended AA every Sunday and NA every Tuesday. Shelly took a family law class and had registered for two others.

¶ 60 Shelly stated her relationship with M.M. was wonderful. They loved each other. Shelly acknowledged she would always be an addict, but she stated she did not have to use drugs. She was done with drugs. Shelly hoped M.M. would live with her and March. Shelly called March an excellent father. M.M. loved her father, and she was safe with him. March had been involved for M.M.'s entire life.

¶ 61 Shelly had concerns over M.M.'s current foster placement. M.M., when she was three, volunteered that her foster mother "spanked and spanked and spanked" her. Once, when a caseworker was helping M.M. in a bathroom, M.M. said to the caseworker, "Please don't spank me." At the end of visits, M.M. would, at times, ask to be taken to her "Mam's" house, instead of to her foster parents' home. Shelly testified, if March was not an appropriate placement, she wanted M.M. placed with Carol.

¶ 62 Shelly's counsel entered into evidence certificates showing Shelly attended a family law class, an eight-week parenting class, and she participated in the Seeking Safety program.

¶ 63 On cross-examination, Shelly testified she was not questioned as part of any investigation about M.M.'s spanking allegations. Shelly acknowledged, since she was in prison, she had not yet had access to controlled substances or alcohol for 16 months and she had not yet had an opportunity to apply what she had learned.

¶ 64 March testified he had a relapse in March 2012, and he informed DCFS about this relapse. He did not attempt to hide it. March continued to participate in recovery programs. He had been reduced to "level one." He started the Heritage program as a level three, which involved residential treatment. At some point, he was moved to level two, necessitating 10 to 12 hours of group sessions each week. By the time of his testimony, he had been moved to level one, requiring one to two hours each week with a counselor and a monthly updated review. March also saw a doctor at Heritage once every three months. March's participation in the Heritage program was not court ordered. He initiated it on his own.

¶ 65 March further testified he was involved with AA. He participated in 12-step meetings 3 to 5 times each week. He was involved on almost a daily basis with people in recovery.

¶ 66 According to March, he signed a lease in September 2012 and had suitable housing for M.M. March stated he had changed his entire life. He was a better person and he prayed daily. He focused on his life and what he could do better each day for M.M. March testified he was employed and was, the day after his testimony, starting school at a community college for a degree in health information technologies.

¶ 67 March testified regarding the missed drops. Regarding the first one he missed, March "was in Rockford with recovery." He stated he apparently did not get the message. He had called Sites. March stated he had trouble with his cell-phone service. He paid a monthly service. He had not been working as much and had been playing catch-up financially. It was difficult for him to pay a monthly cell-phone bill. He had a home telephone number on record, and he did not receive a message there. March stated he was working on correcting his financial

problems.

¶ 68 Regarding the second missed drop, March testified he was working, doing some side work when Sites called. He learned of the missed call when he called Sites for the purpose of trying to schedule a visit and get some gifts to M.M. Sites stated she had called the house. March stated he did not receive a message on his landline regarding a drug screen. He had, up to that point, been "very compliant with going to every drug screen." At times, Sites had stopped by his house to drop off a request in his mailbox. He would immediately comply. In the last couple of weeks, the communication between the two had not been going very well. March admitted part of the problem was his cell phone, but he stated he had a landline as a backup. March testified the drops were at Heritage, where he went frequently.

¶ 69 March testified the visits with M.M. were wonderful. The two were "most definitely" bonded. March had concerns about the foster parents, March's nephew and his wife. March loved them and was grateful they took care of M.M. At his last visit in October 2012, Steffannie Carlisle served as the staff aide. M.M. ran from the car to March. The two began playing at the park. While doing so, March observed a red mark on M.M.'s lower back. Four times, "we" asked M.M. what happened. M.M. responded, "Mommy Holly spanked me."

¶ 70 March believed it was in M.M.'s best interest to be with her father. He could support his daughter. As an alternative, March wanted M.M. to be placed with Carol or M.M.'s godparents. March testified M.M. loved her half-brother "more than anything in this world."

¶ 71 On cross-examination, March testified he reinjured his foot while working at Heinkels Packing Company. He injured his foot in September 2012 and reinjured it in November. He was not receiving unemployment or disability. He applied for temporary disability

through the Department of Human Services. March testified he lived with some friends who were also in recovery.

¶ 72 When asked whether he spoke with investigators about the mark he saw on M.M.'s back in October 2012, March testified, in the beginning, he did not. March stated he originally called the "Department of Correctional Family Services" in Macon County and made a report. A report was made through Webster Cantrell Hall, and two investigators were "apparently" involved. An investigator from Moultrie County, where M.M. resided with the foster parents, called and spoke three to five minutes with March. The investigator asked when he noticed the mark and how he noticed it. March noted a caseworker aide was present when he observed the mark and she observed it too.

¶ 73 March testified he and a friend leased a three-bedroom house. It had a full basement and two bathrooms. Another man resided at the house at the time. March's bedroom was upstairs. He had a bedroom next to his set up for M.M. March testified he was addicted to narcotic substances, mainly cocaine and alcohol.

¶ 74 The trial court considered a best-interest report, authored by Sites and filed in November 2012, which states March "remained compliant overall with his services and communication with Webster Cantrell Hall." The main concern regarding March was his ability to maintain a drug-free lifestyle for M.M. March reported a relapse in November 2011 and one in March 2012. March self-admitted into Heritage on March 22, 2012. While staying at Heritage, March located a more long-term rehabilitation center, the CRC. He was transported there in June 2012. March told the caseworker he intended to stay at CRC for at least six months, and a successful completion of the program at CRC takes a minimum of six months.

March, however, checked himself out voluntarily. The author reported: "The reasoning behind this voluntarily, yet unsuccessful, discharge has not been made clear." March resided with three other young men on Decatur's west side. The author stated the home was clean, spacious, and appropriate. March established his employment. He had obtained full-time seasonal employment with Heinkel's Meat Packing Company. March continued to submit to random urine drug screens at Heritage. All screens were negative.

¶ 75 According to the report, M.M. was a bright, happy, and healthy three-year-old. M.M. resided with paternal cousins in relative foster care. M.M. resided with these foster parents since the case was opened, but she moved to another "relative's home for approximately a month in February 2012 in order to allow the foster parents time to deal with family issues." From October 5 through October 26, 2012, M.M. was placed out of the foster parents' home again due to an allegation of abuse. The allegation was deemed unfounded and M.M. was returned. "For precautionary measures," an in-home visit was made with the foster parents and they were reeducated "on the importance of consistency and appropriate discipline within their home." Since the September 2012 hearing, M.M. had changed child-care arrangements. M.M. had some defiance and behavior problems at school, consisting of hitting other children. The agency would refer M.M. for play therapy.

¶ 76 The trial court further considered a January 2013 addendum to the best-interest report. According to the addendum, the monitoring agency made "attempts at contacting [March] on both phone numbers, in order to request random drug drops and to schedule home visits," but those attempts were unsuccessful. Two attempts by Sites to make unannounced home visits to March's residence were unsuccessful. In addition, M.M.'s behavior of hitting other

children had subsided and no further reports of aggression had been received.

¶ 77 March's counsel informed the trial court March was willing to do a drug screen that day. The trial court refused the offer.

¶ 78 The trial court found the State proved by a preponderance of the evidence it is in M.M.'s best interest that the parental rights of Shelly and March be terminated. The court did not explain its reasoning.

¶ 79 This appeal followed.

¶ 80 II. ANALYSIS

¶ 81 A. Fitness Determination

¶ 82 Under the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2010)), a parent is unfit if the State proves any one or more of the grounds listed in section 1(D) (750 ILCS 50/1(D) (West 2010)) by clear and convincing evidence. *In re A.P.*, 277 Ill. App. 3d 592, 598, 660 N.E.2d 1006, 1010 (1996). Only one statutory ground need be proved. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). Here, the trial court found both parents unfit on multiple grounds, including respondent parents failure to make reasonable progress toward M.M.'s return within nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 83 Because trial courts view witnesses and their demeanor at fitness hearings, their fitness decisions are entitled to great deference. *A.P.*, 277 Ill. App. 3d at 598, 660 N.E.2d at 1010. This court will not overturn a finding on parental fitness unless that finding is against the manifest weight of the evidence, which means "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d

908, 913 (2005).

¶ 84 We begin with the respondent parents' arguments the trial court erroneously found them unfit for failing to make reasonable progress toward M.M.'s return within nine months of the adjudication of neglect. Reasonable progress is determined based on an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). It requires, at a minimum, measurable or demonstrable movement toward the objective of returning the child to the parent's custody. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). "[T]he benchmark for measuring a parent's 'progress' *** under section 1(D)(m) *** 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 which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001). A court will find progress reasonable when it can find it will be able to return the child in the near future because the parent will have complied fully with the court's directives. *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011) (citing *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 85 Shelly argues she made reasonable progress, given the fact she did not receive a service plan and did not know what she was required to do. Shelly emphasizes she attended classes in DOC and sought visitation with M.M.

¶ 86 The trial court's decision as to Shelly is not against the manifest weight of the evidence. Shelly had not corroborated her testimony she attended and completed certain classes at DOC by providing documentation showing she completed such services. There is no evidence

showing Shelly progressed as a parent and, given she would not be released from prison for some time, there is no indication M.M. could be returned to her custody in the near future. See *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387).

¶ 87 March also argues the trial court improperly found he failed to make reasonable progress toward M.M.'s return. March contends the record shows he made a measurable and demonstrable movement toward the goal of M.M.'s return home. March emphasizes he completed all of the tasks required of him and checked himself into rehabilitation. March further highlights his visits with M.M. went well and the agency was considering increasing his visits to extended overnights.

¶ 88 The trial court's finding March failed to make reasonable progress toward M.M.'s return in the initial nine-month period after the adjudication of neglect was not erroneous. The neglect adjudication occurred on August 2, 2011. The nine-month period extended until May 2, 2012. At the end of March 2012, March reported a relapse. He voluntarily checked into rehabilitation on March 22, 2012, and he remained in rehabilitation at the end of the nine-month period. Given March's multiple failed attempts at sobriety and the testimony a period of six months of sobriety was necessary to consider one sober, the trial court did not err in concluding M.M. could not be returned to March in the near future because he would not have complied fully with the court's directives. See *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387).

¶ 89 The trial court thus did not err in finding Shelly or March unfit on the ground of a lack of reasonable progress (750 ILCS 50/1(D)(m)(ii) (West 2010)). The court's decision was

not improper on this ground, and we need not consider the other bases for the court's parental fitness findings (see *Donald A.G.*, 221 Ill. 2d at 244, 850 N.E.2d at 177).

¶ 90 B. Best-Interests Finding

¶ 91 After a finding of parental unfitness, a trial court's focus shifts to the child's best interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). A "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Before a court may terminate parental rights, the State must prove by a preponderance of the evidence termination of those rights is in the child's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. When deciding what is in the child's best interest, the court must consider a number of statutory factors, including the child's physical safety and welfare, the child's background and ties, the child's sense of attachments, and the child's need for permanence. See *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)). This court will not overturn the termination of parental rights unless the court's decision is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961, 835 N.E.2d 908, 914 (2005).

¶ 92 Both parents contend the best-interests findings were against the manifest weight of the evidence. We find no error in the trial court's termination of Shelly's parental rights. Shelly has been in prison a large portion of M.M.'s life. She continues to remain in prison. Shelly cannot provide a stable or loving home life in the foreseeable future.

¶ 93 As to March, we find "the correctness of the opposite conclusion is clearly evident from a review of the evidence" (*In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005)), and his parental rights should not have been terminated.

¶ 94 At the best-interest hearing, Sites testified March had met all of the goals except proof of his sobriety. Apparently, March failed to satisfy this goal by missing two random drug screens in December 2012. There was no other evidence March was using and no testimony to other missed drops. The circumstances under which these drugs screens were missed were credibly explained by Sites and March. Sites knew defendant had trouble with his cell-phone service in November, but chose to contact March only on the cell-phone in December despite knowing he had a land line as well. For the second drug screen, Sites called only March's landline and could at best testify she believed she left a message there. During this time, the two also seemed to have difficulty communicating. They were exchanging voicemail messages, and Sites had a vacation.

¶ 95 March did not have a history of missed drops or a history of attempts to hide alcohol or drug use. March's lack of sobriety became known to the agency in November 2011 and March 2012 because of March's self-reporting. March did not hide his failures to comply with the service plan and the court's directives. He reported his failures and sought help. McGarry, the program manager for addictions at Heritage, testified in July 2012, March was much more serious and had addressed his addictive behaviors this time. In January 2013, despite the missed screens, March's status at Heritage, was "level one," meaning he no longer needed intensive treatment. There were no findings by the trial court at the fitness hearing or the best-interest hearing that March lacked credibility.

¶ 96 The record further shows March left CRC early but this does not undermine his efforts toward sobriety or proof of his sobriety. March's involvement with CRC was not mandated by the trial court or DCFS. March entered the CRC program on his own initiative and

left only because it did not meet his expectations. March was required to be sober. Whether he chose to become sober at the CRC or through his involvement in a variety of programs is irrelevant so long as he met the goal of being sober. Not completing the CRC program successfully is not determinative. In addition, the agency's approach to the CRC is contradictory. As shown by Byrd's testimony, the agency questioned March's involvement with the CRC because his admission prevented him from satisfying his housing and employment goals. Later, however, the agency, the State, and the trial court used his decision to leave the CRC voluntarily against him, even though his progress since leaving CRC has been meaningful.

¶ 97 In addition, the record shows there are some doubts regarding the stability offered by M.M.'s foster parents. M.M. was placed with her foster parents on July 21, 2011. After only about six months of care, these "very young" foster parents needed time to work on marital problems and M.M. was removed from their care for one month. In October 2012 questions of abuse arose and M.M. was removed from their care for approximately three weeks. Although ultimately deemed "unfounded," the allegations, which included allegations agency staff heard M.M.'s statements, were sufficient to remove the child from the foster home and require follow-up action by DCFS.

¶ 98 By all accounts, M.M. and her father shared a strong bond. March met M.M.'s needs and engaged her in activities. In these circumstances, it is not in the best interest of M.M. to have her relationship with her father terminated. Other than the two missed drug screens in a 10-day period, the record shows March made meaningful progress toward sobriety, and he obtained employment and housing.

¶ 99 We further note we are troubled with the application of the "standard operating

procedure" of providing a last visit after a finding of unfitness to a parent who, at the time such procedure was implemented, had complied with services and, according to Sites's own testimony, was still considered a potential placement for M.M. This procedure placed March at a disadvantage in the best-interest hearing, tipping the scales toward termination. It placed the trial court in the position of weighing M.M.'s bond with March, when M.M. had already been separated from March for approximately four months, against M.M.'s bond with her foster parents, whom she saw every day. In addition, this procedure denied Sites, the caseworker who provided the agency's opinion to the court regarding M.M.'s placement, the opportunity of viewing any of March's and M.M.'s interactions before concluding M.M. should be denied a relationship with her father.

¶ 100 III. CONCLUSION

¶ 101 We affirm the trial court's judgment finding respondent parents unfit and the decision terminating respondent mother's parental rights to M.M. We reverse the decision terminating respondent father's parental rights to M.M. and remand for further proceedings.

¶ 102 Affirmed in part and reversed in part; cause remanded.