

JA-102 and 08-JA-103 had not been filed at the time notice of appeal was filed. In an order dated October 1, 2012, the circuit court indicated that a best-interest hearing would be held on October 4, 2012. With respect to 09-JA-320, the court entered an order terminating Natasha's parental rights on July 18, 2012, yet notice of appeal was filed two months prior, on May 17, 2012. On October 10, 2012, this court ordered that Natasha's counsel be granted 21 days to show cause as to why her three appeals should not be dismissed for lack of jurisdiction because no final order was entered before the notice of appeal was filed. This court also ordered that "said response shall be accompanied by a supporting record filed pursuant to Supreme Court Rule 328." No supporting record was filed with the response, and this court granted counsel 14 days to file a supporting record in an order filed on November 2, 2012. The supporting record was filed on November 20, 2012. However, transcripts of the proceedings on April 26, 2012, were not filed, and in an order dated December 3, 2012, this court gave the respondent 28 days to file the transcripts from the April 26, 2012, proceedings. Counsel then filed a motion for an extension of time on January 2, 2013, which this court granted on January 3, 2013. In an order dated January 28, 2013, this court dismissed 08-JA-102 and 08-JA-103 for lack of jurisdiction. The appeal for 09-JA-320 moved forward. Counsel filed another motion for extension of time which this court granted on February 22, 2013. The appellant's brief was filed on March 13, 2013, and the appellee's brief was filed on April 3, 2013. Thus, the delay in the filing of this order can be attributed to the jurisdictional issues that resulted from the premature filing of the notice of appeal.

¶ 5 On December 22, 2009, the State filed a juvenile petition, followed by an amended petition filed on December 23, 2009, and a second amended petition filed December 30, 2009. In the second amended petition, the State alleged that N.T. was an abused and neglected minor. The State alleged that N.T. was a neglected minor, as defined by section 2-3(1)(a) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(a) (West 2010)), in

that he was born with opiates and benzodiazepines in his blood or urine and that his parents did not provide the proper and necessary support because (a) his mother had an alcohol and substance abuse addiction that impaired her ability to care for N.T., (b) his father also had substance abuse addiction and was incarcerated, (c) his siblings were already in foster care and the mother had not made reasonable progress towards their return home,¹ (d) the mother failed to cooperate with recommended substance abuse treatment, (e) the mother tested positive for opiates at the time of N.T.'s birth, and (f) N.T.'s father could not provide proper care for N.T. because he was incarcerated. The State also alleged that N.T. was an abused minor, as defined by section 2-3(2)(ii) of the Act, in that his mother created the risk of physical injury to the minor by other than accidental means which would likely cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function because (a) the mother and her paramour engaged in domestic violence in the presence of N.T.'s siblings, (b) N.T.'s parents had an extensive history of domestic violence, (c) the mother had an extensive criminal history and was on parole at the time of the filing of the petition, (d) N.T.'s father had an extensive criminal history including crimes of violence as well as drug offenses, (e) the mother failed to cooperate with the Department of Children and Family Services (DCFS) and its recommendations, and (f) there was a report by the mother's parole officer that the mother was making and abusing drugs in the presence of one of her other children. The petition further alleged that N.T. was a neglected minor, as defined by section 2-3(1)(b) of the Act, in that his environment was injurious to his welfare because his mother did not take reasonable steps to protect N.T. from domestic violence.

¶ 6 Temporary custody was granted to DCFS. An adjudicatory order was entered on March 3, 2010. The circuit court found that the minor was abused or neglected as defined by section 2-3 of the Act in that he (1) suffered from a lack of support, education, or remedial

¹As indicated above, N.T.'s siblings are not part of this appeal.

care, (2) was in an environment injurious to his welfare, (3) was exposed to illicit drugs as a newborn, and (4) was in substantial risk of being physically abused. That same day, a dispositional order was entered, stating that Natasha must engage in substance abuse treatment, cooperate with DCFS, and successfully complete the service plans. DCFS retained custody of N.T. and was made his guardian.

¶ 7 A permanency order was filed on October 19, 2010, with the goal of "return home in 5 months." The order found that the mother had not made reasonable and substantial progress toward returning N.T. home and that she had not made reasonable efforts toward returning N.T. home. The court stated that the mother must successfully complete services contained in the service plan, continuously visit N.T., and maintain a sober lifestyle. The order further noted that the goal of "return home" had not been achieved because the mother had recently pled guilty to possession of methamphetamine, had overdosed, and had spent time in jail. The next permanency order, filed August 16, 2011, stated the same findings as the previous permanency order, and the goal was still "return home."

¶ 8 On January 6, 2012, the State filed a petition for termination of parental rights. In the petition, the State alleged that Natasha was an unfit parent, as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)), because (1) she failed to make reasonable efforts to correct the conditions that were the basis for the removal of N.T., (2) she failed to make reasonable progress toward the return of N.T. to her within nine months after an adjudication of abuse or neglect, (3) she was depraved in that she had been convicted of four felonies under the laws of Illinois, three of which took place within five years of the filing of the petition seeking termination of parental rights, and (4) she was incarcerated at the time of the filing of the petition for termination of parental rights and had been repeatedly incarcerated as a result of her criminal convictions, preventing her from discharging her parental responsibilities for N.T.

¶ 9 N.T.'s father, Joshua T., surrendered his parental rights on April 26, 2012, and is not a party to this appeal.

¶ 10 A fitness hearing was held on April 26, 2012, as to Natasha. The court took judicial notice of the adjudication order, the dispositional order, and Natasha's four Madison County felony convictions and admitted into evidence Natasha's service plans. The State called a Hoyelton Youth and Family Services foster care case manager, Kimberly Knoch, who was assigned to Natasha's children. Knoch testified that she had been the caseworker since September 2011 and had reviewed all of the previous files in the case. N.T.'s older siblings were adjudicated neglected and abused on August 18, 2008. The first service plan was established on September 18, 2008. The tasks in that service plan included cooperating with DCFS, participating in substance abuse treatment, obtaining a psychological evaluation, going to counseling, demonstrating progress on the issue of domestic violence, and providing suitable housing and stabilizing a residence for six months. Knoch testified that the latest service plan was established on February 15, 2012, and contained the same tasks. Knoch testified that Natasha did not complete any of the established service plans and that Natasha's current service plan was rated unsatisfactory. The service plans were admitted into evidence. Those service plans were not made part of the record on review. Thus, any information this court reviewed regarding those service plans was through testimony elicited at the fitness and best-interest hearings.

¶ 11 Knoch next testified that the children were taken twice a month to see Natasha at the Lincoln Correctional Center. The interaction between Natasha and N.T. was positive. Knoch testified that her overall opinion as to Natasha's parental fitness was that she was unfit to parent N.T.

¶ 12 On cross-examination, Knoch testified that Natasha had been incarcerated since December 15, 2010. Her projected release date was June 15, 2012, approximately 45 days

from the date of the fitness hearing.

¶ 13 Natasha made a sworn statement. She admitted that she did not complete her service plans. She testified that having her children placed in traditional foster homes was a wake-up call and that she wanted one last chance to be able to take care of them.

¶ 14 The court found that the State proved by clear and convincing evidence that Natasha was unfit. The court specifically noted that N.T. had been in care since 2009 when it reached its determination.

¶ 15 A best-interest hearing was held on the same day. The State again called Kimberly Knoch. Knoch testified that N.T. was two years old. She testified that N.T. was born on December 9, 2009, and was placed into custody because Natasha tested positive for opiates and benzodiazepines and because he was a drug-exposed baby. N.T. was currently placed with a paternal cousin, Samantha S., and had been with her since March 11, 2010. Samantha desired to adopt N.T.

¶ 16 Knoch testified that N.T. had bonded with Samantha and referred to her as "mom." He had also bonded with Samantha's four-year-old daughter. Samantha was employed, and Knoch believed that Samantha could financially support N.T. N.T. had asthma, and Samantha was able to meet his medical needs. Knoch further testified that visitation between N.T. and his biological siblings took place twice a month when they visited Natasha at Lincoln Correctional Center and that if N.T. was adopted, visitations would still take place between him and his siblings. Knoch further testified that N.T. appeared to be bonded with Natasha. Knoch stated that it was in N.T.'s best interest that he stay in DCFS custody and be made free for adoption. The court admitted into evidence best-interest and permanency reports that Knoch prepared.

¶ 17 Natasha's counsel argued that N.T. should not be adopted given the fact that Natasha would be released from prison in 45 days.

¶ 18 The court found that it was in the best interest of N.T. that Natasha's parental rights be terminated because N.T. had been in care since he was born and that he had a good adoptive home in relative placement. The court entered an order terminating Natasha's parental rights on July 18, 2012. In that order, the court found that Natasha had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor, failed to make reasonable progress toward the return of the minor within nine months after an adjudication of abuse or neglect, failed to make reasonable progress toward the return of the child during any nine-month period following the adjudication of neglect, and failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor. This appeal followed.

¶ 19

ANALYSIS

¶ 20 On appeal, Natasha argues that the circuit court erred when it found that she was unfit for failure to make reasonable efforts to correct the conditions that were the basis for N.T.'s removal because she was incarcerated for part of the nine-month adjudicatory period and such incarceration kept her from obtaining the services she needed to comply with the service plans. She also argues that, contrary to the court's findings, she did maintain a reasonable degree of interest, concern, or responsibility as to N.T.'s welfare because she had regular visitation with him while incarcerated. In its termination petition, the State did not allege that Natasha had failed to maintain a reasonable degree of interest, concern, or responsibility as to N.T.'s welfare or that she failed to make reasonable progress during any nine-month period after the end of the initial nine-month period following the adjudication of neglect. Consequently, the circuit court erred in finding Natasha to be an unfit parent on these bases.

¶ 21 The Act establishes a two-step process for involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2010). First, the State must prove by clear and convincing evidence that the parent is an unfit parent as defined by section 1(D) of the Adoption Act

(750 ILCS 50/1(D) (West 2010)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1114 (2002). A finding is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, and not based on the evidence. *In re Tiffany M.*, 353 Ill. App. 3d at 890. The State need only prove one statutory ground to show that a parent is unfit. *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003).

¶ 22 When considering whether a parent has made reasonable efforts to correct the conditions that were the basis of the removal of the children, the court uses a subjective test based on the amount of effort that is reasonable to a particular person. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). By contrast, when a court considers the reasonable progress a parent has made towards reunification with the children, it uses an objective test. *Id.* at 1067. The court, in that scenario, considers the parent's compliance with service plans and court directives in light of the conditions that gave rise to the children being removed in the first place as well as other conditions that became known to the court later and would prevent it from allowing the children to be reunited with the parents. *Id.* Reasonable progress exists when the court can conclude that it will be able to order the reunification of the parent and child in the near future. *Id.* When determining whether the parent has made reasonable progress, the court must limit its consideration of the evidence to the nine months following the adjudication. *In re D.F.*, 208 Ill. 2d 223, 243 (2003).

¶ 23 Here, N.T. was adjudicated neglected on March 3, 2010. Testimony at the fitness hearing was unclear as to when Natasha was first incarcerated. Knoch stated that she was

incarcerated on December 15, 2010. However, the court later appeared to correct that testimony and said that she was incarcerated in September of 2010. Regardless of when Natasha was incarcerated, incarceration does not toll the statutory time period to show reasonable progress. *In re J.L.*, 236 Ill. 2d 329, 343 (2010). Regarding whether Natasha made reasonable progress towards reunification, Natasha did not complete any of the service plans, incarcerated or not, a fact which she admitted when she gave her sworn statement at the fitness hearing. N.T. was placed into care when he was born because he had drugs in his urine or blood. In a permanency report dated August 5, 2011, a caseworker noted that Natasha had overdosed on illegal substances approximately three times in the past year. Natasha was clearly still under the influence of drugs, and the court did not err when it found that Natasha had not made reasonable efforts to correct the condition, namely, substance abuse, that initially caused N.T. to come under care. Therefore, the court's finding that Natasha was unfit is not against the manifest weight of the evidence.

¶ 24 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the children's best interests that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2010). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interests of the children. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). The State must prove, by a preponderance of the evidence, that termination of the parent's rights is in the best interest of the minors. *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004). The court must consider the factors set forth in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2010)), when determining the best interest of the minors. A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 25 In this case, Knoch testified that N.T. was in a loving, relative placement foster home.

He had bonded with his foster mother as well as his foster mother's daughter. Samantha S. was employed and able to support N.T. N.T. was also able to have visits with his biological siblings, and Knoch anticipated that such visitation would continue if Samantha was able to adopt him. By contrast, Natasha was incarcerated. Prior to her incarceration, she was unable to maintain stable housing and was addicted to illegal substances. Knoch testified that regular visitation with her children had only occurred while Natasha was incarcerated. Natasha argues that she would soon be released from prison. However, the case regarding N.T. has gone on for three years without any progress on Natasha's part and no permanency for N.T. Thus, the circuit court's finding that it was in N.T.'s best interest that Natasha's parental rights be terminated was not against the manifest weight of the evidence.

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 28 Affirmed.