

**NOTICE**  
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2014 IL App (5th) 130500-U

NO. 5-13-0500

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> M.C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 10-JA-49
	)	
D.B.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Presiding Justice Welch and Justice Spomer concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the State failed to present clear and convincing evidence that the respondent did not make reasonable efforts to correct the conditions that were the basis for removing the minor during the nine-month period following the adjudication of neglect, the judgment of the circuit court of St. Clair County is reversed.

¶ 2 The respondent, D.B., appeals from the judgment of the circuit court of St. Clair County terminating her parental rights to M.C. On appeal, D.B. argues that the circuit court's determination that she failed to make reasonable efforts to correct the conditions

that were the basis of M.C.'s removal was against the manifest weight of the evidence. For the reasons that follow, we reverse.

¶ 3 BACKGROUND

¶ 4 On June 1, 2010, the State filed a petition alleging that M.C., born on February 5, 2007, was a neglected minor in that the respondent had exposed M.C. to an environment which was injurious to his welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(1)(b) (West 2010)). Specifically, the State alleged that during a meeting at an office of the Department of Children and Family Services (DCFS), the respondent became agitated and punched her paramour three times in the face in front of her children.<sup>1</sup> The police were called and the respondent was arrested for domestic violence. At a shelter care hearing on the same day, M.C. was placed in the temporary custody of DCFS.

¶ 5 Following several continuances, the court held an adjudicatory hearing on January 18, 2011. In its adjudicatory order, the court found that M.C. was neglected as defined by section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2010)) in that he was subjected to an environment that was injurious to his welfare. The court based its finding on the respondent's having exhibited "irrational behaviors." In the dispositional order, the permanency goal was to return M.C. to the respondent within five months. Guardianship over M.C. was given to DCFS.

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<sup>1</sup> M.C. is the only child of the respondent subject to this appeal.

¶ 6 On June 21, 2011, the court entered a permanency order where it found that the respondent had "made reasonable efforts toward returning the minor(s) home." The permanency goal was to return M.C. to the respondent within five months.

¶ 7 On November 16, 2012, the State filed a petition for the termination of the respondent's parental rights and for the appointment of a guardian with the power to consent to an adoption. On November 26, 2012, the State filed an amended petition for termination of the respondent's parental rights. In that petition, the State argued that the respondent was an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) in that she failed (1) to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor (750 ILCS 50/1(D)(b) (West 2010)), (2) to make reasonable efforts to correct the conditions that were the basis of the removal of the minor from her (750 ILCS 50/1(D)(m)(i) (West 2010)), and (3) to make reasonable progress toward the return of the minor to her during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 8 A fitness hearing and a best-interest hearing were held on October 8, 2013. The State requested that the court take judicial notice of the court file. Over objection from the respondent's counsel, the court took judicial notice of the court file.

¶ 9 At the fitness hearing, Tarica Thomas testified for the State as follows. Thomas was employed with Lutheran Social Services (LSS) and was a foster care caseworker. The case came to LSS in March 2010 as "intact," meaning the respondent had custody of M.C. and services were provided in the home. Thomas became involved in M.C.'s case

in May 2010. The status of the case changed from "intact" following an incident on May 21, 2010, when the respondent had a "mental outburst" and struck her paramour three times in the face at a DCFS office. At that point, the case went from "intact" to having the respondent's children placed outside of the respondent's care.<sup>2</sup>

¶ 10 Thomas testified that the respondent was cooperative with LSS "with a forced hand on certain issues." DCFS made its first integrated assessment in March 2010, and a service plan was established based on that integrated assessment. The permanency goal of the first service plan was to have M.C. return home in five months. The service plan goals for the respondent were "housing, mental health, employment, [and] parenting classes." Thomas testified that the service plan had been updated several times and that the most recent service plan was established in April 2013. At that point, the State introduced the service plan from April 2013 into evidence, but did not introduce any of the prior service plans. Therefore, the majority of Thomas's testimony related to the service plan from April 2013.

¶ 11 Thomas testified that the respondent had had previous interactions with DCFS. In 1998, her infant was killed by a man who was presumably, although it is unclear from the record or the testimony at the hearing, the respondent's then-paramour. There was little testimony about this incident. Also, there was limited testimony about the respondent's

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<sup>2</sup> M.C.'s father, M.C. Sr., was briefly involved in the case in 2011, but had since ceased involvement and was thereafter defaulted.

two children who were removed from her care in Ohio. It appears that her rights were terminated as to those two children.

¶ 12 Next, Thomas testified that the respondent had achieved the parenting class goal in June 2011. She further testified that the respondent had a psychological evaluation and a psychiatric evaluation, and completed the goals of housing, and employment, but she did not give specific dates for those achievements. Thomas further testified that the respondent had not achieved the domestic violence goal because the program recommended that she was not a good candidate for the domestic violence portion of the program due to her ongoing mental health issues. The respondent was discharged unsuccessfully from counseling twice, once in August 2011. Thomas said that the respondent had cooperated with mental health counseling in the past.

¶ 13 On cross-examination, Thomas admitted that in June 2011 the respondent's counselor wrote that the respondent was making progress on her anger management. The counselor discharged the respondent from counseling due to the respondent's failure to address her grief related to the loss of her children; the respondent did not willingly quit counseling.

¶ 14 The respondent testified on her own behalf as follows. She got into a dispute with the father of one of her children at the DCFS office. She testified that M.C. was taken into custody by DCFS at that point. She obtained a psychological evaluation, attended counseling, and had had anger management counseling. She testified that her counselor told her that she had completed the anger management portion of her counseling, and the only other counseling she needed was for grief and loss related to losing her other

children. She did not quit going to counseling, but was closed out of counseling. The respondent further testified that she paid to have a domestic violence evaluation. After the evaluation, the respondent was told that domestic violence classes were not recommended for her.

¶ 15 On cross-examination, the respondent testified that she did not have a mental illness. Regarding the grief and loss, the respondent said that the counselor told her that she was not grieving the loss of her children enough. She was prescribed Prozac, but stopped taking it because the prescription ran out.

¶ 16 The State rested, and the respondent's attorney moved for a directed finding as to all three grounds that the State alleged in its termination petition. The State conceded that it did not present any specific nine-month period when introducing evidence but argued that at no point during any nine-month period did the respondent make reasonable progress toward the return of M.C. The State also argued that there were no requirements for any nine-month period for the "reasonable efforts" ground.

¶ 17 The court granted the motion for a directed finding as to the petition's first and third grounds: failure to maintain a reasonable degree of interest and failure to make reasonable progress. The court found that the State had proved by clear and convincing evidence that the respondent had failed to make reasonable efforts to correct the conditions that were the basis for removing M.C. from the respondent's care.

¶ 18 The case proceeded to a best-interest hearing, after which the court found that it was in M.C.'s best interest that the respondent's parental rights be terminated. As the

respondent does not appeal the findings of the court at the best-interest hearing, we do not discuss that hearing here.

¶ 19

#### ANALYSIS

¶ 20 On appeal, the respondent argues that the circuit court erred when it found her to be unfit for failing to make reasonable efforts to correct the conditions that were the basis of removing M.C. from her care. We agree with the respondent.

¶ 21 The Act establishes a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2012). First, the State must prove by clear and convincing evidence that the parent is unfit as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *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 can 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). Terminating a parent's rights is a serious matter and affects a fundamental liberty interest. *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 30.

¶ 22 The only ground that the court found that the State proved by clear and convincing evidence was that the respondent failed to make reasonable efforts to correct the conditions that were the basis for removing M.C. from her care. In analyzing the reasonableness of a parent's efforts to correct the conditions that were the basis for the removal of the minor, the circuit court uses a subjective assessment based upon the amount of effort that is reasonable for the particular respondent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). While section 1(D)(m)(i) of the Adoption Act does not include a nine-month period for determining the reasonableness of a parent's efforts, our supreme court has held that the nine-month period applies to this subsection, and that the relevant nine-month period for assessing the reasonableness of the respondent's efforts begins on the day of the adjudication of neglect. *In re D.F.*, 208 Ill. 2d 223, 231 (2003). Here, that time period was from January 18, 2011, to October 18, 2011. Thus, in determining whether the circuit court's finding of unfitness is contrary to the manifest weight of the evidence, we will consider only the evidence presented at the fitness hearing from that initial nine-month time period.

¶ 23 At the beginning of the fitness hearing, the State incorrectly advised the court that there was no required nine-month time period to show reasonable efforts. The State operated under this misapprehension of the law for the remainder of the hearing. The State conceded that it never presented evidence of any specific nine-month period, let alone the relevant nine-month period to show the reasonableness of the respondent's efforts. When specifically asked by the court about a nine-month period, the State said, "[W]ith the failure by the parent to make reasonable efforts to correct the conditions that

were the basis of the removal of the child from the parent, there are no requirements for any nine-month period under that element of the statute."

¶ 24 Thomas's testimony dealt largely with the service plan from April 2013, which was the only service plan presented at the fitness hearing. The only other pertinent evidence introduced by the State regarding the respondent's reasonable efforts during the relevant nine-month period, January 18, 2011, to October 18, 2011, was as follows: (1) the circuit court's permanency order, dated June 21, 2011, wherein the circuit court determined that the respondent had made "reasonable efforts towards returning [M.C.] home"; (2) a June 10, 2011, letter from the respondent's counselor to the LSS caseworker that said the respondent consistently attended counseling on a weekly basis, had made progress with addressing her grief and loss, had learned effective anger management, had been able to handle situations in a calm and controlled manner in clinical settings and in meetings, and had made progress with anger management strategies, but noted that the caseworker had said there had been problems in the area of grief and loss; (3) a certificate of completion dated June 30, 2011, for an eight-week parenting class; and (4) a narrative closing summary from a counselor dated August 24, 2011, that stated that the respondent had been in individual counseling for one year and had made progress with anger management, but that the counselor had heard from the caseworker that there had been no improvement in that area, that the respondent did not complete the grief and loss goal as it related to her other children, and that as a result of the respondent not addressing grief and loss, the respondent was closed as "unsuccessful" from counseling.

¶ 25 The June 21, 2011, permanency order, the only permanency order by the circuit court for the relevant period, found that the respondent had "made reasonable efforts toward returning the minor(s) home." The grounds of "reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent" and "reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor" are two separate and distinct bases for a finding of unfitness. *In re A.H.*, 223 Ill. App. 3d 536, 539 (1992). The language of the permanency order essentially combines section 1(D)(m)(i) of the Adoption Act, failure "to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent," and section 1(D)(m)(ii) of the Adoption Act, failure "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)(i), (ii) (West 2010). Thus, it is unclear from the permanency order whether the court found that the respondent made reasonable efforts to correct the conditions that were the basis for the removal of M.C. or whether she made reasonable progress to return M.C. to her.

¶ 26 The remaining relevant evidence reveals that the respondent consistently attended counseling during this time period and completed an eight-week parenting class. Her counselor said she had made progress with anger management. The basis of M.C.'s removal was the respondent's violent outburst at a DCFS office, and Thomas specifically testified that anger management and mental health were the reasons M.C. was removed from the respondent's care. The respondent attended counseling sessions for more than a year, including the initial nine-month period, to address her mental health issues. It is

true that the respondent was unsuccessfully discharged from counseling because she would not talk about grief and loss, but without a service plan or any other relevant evidence about whether she was required to address grief and loss, we cannot know if the respondent failed in this respect. We do not know, and the record does not reveal, if the respondent was even required to address grief and loss as part of her service plan from that time period. There is scant evidence to support the circuit court's determination that the respondent did not make reasonable efforts to correct the conditions that led to M.C.'s removal. Indeed, the only evidence the State introduced relevant to the respondent's efforts to correct the conditions that led to M.C.'s removal during the nine months following the adjudication of neglect was that she was discharged from mental health counseling because she failed to show a sufficient degree of grief over the loss of her other children. This falls well short of clear and convincing evidence that the respondent failed to make reasonable efforts to correct the conditions that led to M.C.'s removal, and the circuit court's finding is contrary to the manifest weight of the evidence.

¶ 27 As a final matter, we note that our reversal of the order terminating the respondent's parental rights does not affect the order finding M.C. to be neglected or the order making M.C. a ward of the court and granting custody to DCFS. We encourage the respondent to comply with her service plans and with LSS and DCFS or risk having her parental rights terminated.

¶ 28 **CONCLUSION**

¶ 29 For the foregoing reasons, the judgment of the circuit court of St. Clair County is reversed.

¶ 30 Reversed.