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2014 IL App (5th) 140072-U

NOTICE
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NO. 5-14-0072

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> C.J.B., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Williamson County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 10-JA-19
)	
L.M.M.,)	Honorable
)	James R. Moore,
Respondent-Appellant).)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The trial court's finding of unfitness was not against the manifest weight of the evidence, and the respondent was not denied due process.

¶ 2 **BACKGROUND**

¶ 3 On June 20, 2010, while she was being held in the Jackson County jail on federal drug charges, the respondent, L.M.M., gave birth to C.J.B. The following day, the minor was placed into the care of the Department of Children and Family Services (DCFS). On June 23, 2010, alleging that the respondent was incarcerated and had previously had four other children removed from her care, the State filed a petition for adjudication of

wardship alleging that C.J.B. was a neglected minor in that his environment was injurious to his welfare. See 705 ILCS 405/2-3(1)(b), 2-13 (West 2010). The State's petition further alleged that the respondent's parental rights had been terminated with respect to three of her other four children and that she had "had an open service case since 2005 and [had] failed to cooperate with substance abuse treatment." On June 24, 2010, following a shelter care hearing, the trial court granted DCFS temporary custody of the minor, ordered DCFS to prepare an appropriate service plan, and continued the cause to July 15, 2010. See 705 ILCS 405/2-10, 2-10.1 (West 2010).

¶ 4 On July 15, 2010, the respondent appeared on writ and was appointed counsel. The trial court advised the respondent of the State's allegation that C.J.B. was neglected and further advised her of her rights. The trial court set the matter for an adjudicatory hearing on August 26, 2010, but the cause was later continued to September 16, 2010.

¶ 5 On August 16, 2010, DCFS filed its service plan for the respondent. The plan's stated permanency goal was that C.J.B. return home within 12 months. Noting that the respondent acknowledged that she lacked appropriate parenting skills, the plan directed her to complete a "hands[-]on parenting class" to enhance those skills. The plan also directed her to attend psychiatric counseling, submit to random drug testing, participate in a drug-relapse program, obtain a source of income, and provide suitable housing for C.J.B.

¶ 6 On September 16, 2010, the respondent appeared on writ, admitted the allegations set forth in the State's petition for adjudication of wardship, and agreed to the entry of an adjudicatory order finding that C.J.B. was a neglected minor. See 705 ILCS 405/2-21

(West 2010). Before entering the order, the trial court twice admonished the respondent that her failure to comply with the terms of DCFS's service plan could result in the termination of her parental rights as to C.J.B. On December 9, 2010, when the respondent again appeared on writ and agreed to the entry of a dispositional order giving DCFS guardianship of the minor (see 705 ILCS 405/2-23, 2-27 (West 2010)), she was again admonished that her failure to comply with the terms of the service plan could result in the termination of her parental rights.

¶ 7 On May 5, 2011, at a permanency hearing, the respondent did not appear, and her attorney advised the court that she was still in custody on federal drug charges. The trial court entered an agreed order that the permanency goal remain "return home," but C.J.B.'s guardian *ad litem* (GAL) noted that the respondent was "making little to no effort" to achieve that goal. On September 29, 2011, at a subsequent permanency hearing, the respondent did not appear, and the State advised the court that she had received a seven-year sentence on her drug charges and was "currently incarcerated in the federal correctional institution in Waseca, Minnesota." The State further advised that the respondent was nevertheless "able to have phone, *** Skype[,] and videoconferencing." When the respondent's attorney requested that she be allowed to participate in future hearings through some form of videoconferencing, the court advised that there were no courtrooms properly equipped to grant such a request and directed the respondent's attorney to find out what options might be available. At the State's request and over the objection of the respondent's attorney, the trial court entered an order with a new

permanency goal of placing C.J.B. in substitute care pending court determination on termination of parental rights. See 705 ILCS 405/2-28(2)(C) (West 2010).

¶ 8 On February 1, 2012, pursuant to the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)), the State filed a motion for termination of parental rights and for appointment of guardian with power to consent to adoption. The motion alleged that the respondent was an unfit parent on numerous grounds, including her failure to make reasonable progress toward C.J.B.'s return to her within nine months after he had been adjudicated a neglected minor. See 750 ILCS 50/1(D)(m)(ii) (West 2012).

¶ 9 On February 9, 2012, when the respondent did not appear at another scheduled permanency hearing, the trial court was advised that the federal authorities would not bring her to court. Noting that there was a pending motion to terminate the respondent's parental rights, the trial court reset the permanency hearing for March 8, 2012, and the possibility of videoconferencing was again discussed.

¶ 10 On March 8, 2012, at the rescheduled permanency hearing, the respondent was "present on the phone by conference call." Over her attorney's objection, the trial court entered a permanency order continuing the goal of placing C.J.B. in substitute care pending court determination on termination of parental rights. The trial court discussed the permanency order with the respondent, and she acknowledged that she understood it. The court also discussed the State's motion to terminate her parental rights, and she acknowledged that she understood that, as well. After advising the respondent that she had the right to be present at the hearing on the State's motion to terminate, her unavailability due to her incarceration was addressed. The trial court advised the

respondent that its courtroom was not equipped for videoconferencing and that using a phone "on speaker" was the best available option. After giving the respondent time to confer with her attorney, she agreed that she had been afforded the "opportunity to fairly participate" in the rescheduled permanency hearing via speaker phone. The trial court then set the cause for a June 28, 2012, termination hearing.

¶ 11 On June 28, 2012, the respondent's attorney filed a motion to continue the previously scheduled termination hearing. The motion stated that after being diagnosed with multiple sclerosis, the respondent had been transferred from the federal prison in Waseca, Minnesota, to a federal medical facility in Fort Worth, Texas. The motion further stated that counsel was presently working with the federal authorities in Fort Worth regarding the respondent's ability to participate in the termination hearing "via telephone conference." The trial court subsequently entered an order continuing the permanency goal of substitute care and resetting the termination hearing for August 30, 2012. On June 28, 2012, C.J.B.'s father appeared and signed a final and irrevocable surrender of his parental rights as to the minor (see 750 ILCS 50/8 (West 2012)).

¶ 12 On August 22, 2012, the respondent's attorney filed another motion to continue the termination hearing. The motion alleged that the respondent's federal case had been remanded for resentencing and that there was "a reasonable likelihood that [the respondent] could be released from federal custody at the time of her resentencing." The motion advised that neither the State nor C.J.B.'s GAL had any objections to the requested continuance. The trial court subsequently reset the termination hearing for

October 25, 2012, and issued an order of *habeas corpus ad testificandum* to secure the respondent's presence.

¶ 13 On October 25, 2012, the parties appeared, and the respondent's attorney advised the trial court that the respondent was scheduled to be resentenced on November 2, 2012. The respondent's attorney noted that the parties were therefore in agreement that the termination hearing should be continued until after her resentencing. The State advised the court, however, that the federal authorities had brought the respondent back from Fort Worth for the termination hearing and that she was "upstairs" in federal custody. The State further advised that the federal authorities had stated that the respondent had only "one chance *** to be here" and that the respondent did not want to appear in court out of fear that her appearance would be interpreted as constituting her "one chance." Agreeing with the State's representations, the respondent's attorney added that the respondent had been warned that by "pushing this off," it was possible that she would have to later participate in the termination proceedings by phone only. The respondent thus "understood the risk" but wanted "to wait and find out" what her sentence was ultimately going to be. By agreement, the trial court set the cause for a November 15, 2012, status hearing. On November 15, 2012, the respondent's attorney advised the trial court that she had not yet been resentenced, and by agreement, the cause was continued to January 10, 2013.

¶ 14 On January 10, 2013, the respondent's attorney advised the trial court that the respondent had been resentenced and could possibly be released from federal custody as early as September 2013. By agreement, the cause was set for a May 30, 2013,

termination hearing. It was further agreed that unless "better technology [were] available at that time," the respondent would participate in the hearing via phone as she had previously done. On May 30, 2013, the prescheduled termination hearing was reset for an August 1, 2013, status hearing.

¶ 15 On June 27, 2013, at a permanency hearing, the respondent's attorney advised the trial court that the respondent had stated that her federal sentence had been reduced and that her new "outdate" was January 2014. The respondent also told her attorney that she was appealing her new sentence and could potentially be released earlier than January 2014. The trial court was further informed that C.J.B. had been placed with a family relative. At the conclusion of the hearing, the court entered an agreed order continuing the permanency goal of substitute care pending determination on termination of parental rights.

¶ 16 On August 1, 2013, the parties appeared for the prescheduled status hearing, and the trial court was informed that the respondent anticipated being released from federal prison in January 2014. On November 7, 2013, the parties appeared for another status hearing, and the trial court was informed that the respondent was set to be released from prison sometime between April and July 2014. By agreement, the court ordered that another status hearing be set for January 23, 2014, and that the termination hearing be continued to February 6, 2014. When the respondent's attorney inquired whether "the downstairs courtroom with Skype availability" would "be available" by February 6, 2014, the court stated that it "[s]hould be."

¶ 17 On December 5, 2013, the parties appeared for another permanency hearing, and the trial court entered an agreed order continuing the permanency goal of substitute care. When the upcoming termination hearing was discussed, the court indicated that it wanted to ensure that the respondent would be afforded the "highest level" of participation available under the circumstances. The court further indicated that it hoped that the "new courtroom" with "Skype ability" would be ready by then.

¶ 18 At the January 23, 2014, status hearing, the trial court noted that the new courtroom with Skype capability was "finished" but would not be ready for use by February 6, 2014. The court explained that there was a dedication ceremony for the new courtroom scheduled for February 7, 2014, that the courtroom would not "be used until after the dedication ceremony," and that technology training might also be a factor. The court nevertheless stated that its "intention" was to conduct the termination hearing via Skype, if possible. In response, the respondent's attorney stated that the information technology technician at the federal facility in Fort Worth had been in contact with court personnel in Williamson County. The respondent's attorney then read the following e-mail from the federal facility's technician:

" Please advise [the respondent's attorney] that my contact information is listed below. We do not use Skype under any circumstances. We will attempt to make a video connection with the court using our secure bridge in the central office for the purpose of court-ordered hearings. This means of communication does not allow for private attorney/client meetings. Please have the [information technology] person from the court contact me as soon as possible to set up a test so

that we can determine if the connection is possible. I'll do everything I can to facilitate the hearing via [video teleconference]. Thank you.' "

Referencing this information, the respondent's attorney requested a continuance until the necessary connections allowing for a videoconference were in place. Noting that the e-mail indicated that the video connection would not allow for private communications between the respondent and her attorney, C.J.B.'s GAL objected and noted that the proposed videoconference did not entirely "solve the problem." The GAL further noted that C.J.B. had been taken into DCFS custody in June 2010 and that the State's petition to terminate the respondent's parental rights had been pending for more than two years. The GAL argued that C.J.B. deserved permanency without further delay. The State and DCFS joined the GAL's objection to the respondent's motion to continue, with DCFS adding that there was case law indicating that participation by telephone would sufficiently protect the respondent's due process rights. Agreeing that proceeding with "audio only" would adequately protect the respondent's rights, the trial court ultimately denied the motion to continue. Stating that it had "worked hard to try to make this happen," the court indicated that it was in the best interests of the child to proceed with the technology that was currently and unquestionably available. The court further indicated that it would do all that it could to ensure that the respondent's participation at the termination hearing would be meaningful.

¶ 19 On February 6, 2014, the cause proceeded to a hearing on the State's motion for termination of parental rights and for appointment of guardian with power to consent to adoption. The respondent was "present on speaker phone" from the federal facility in

Fort Worth, and at the commencement of the hearing, the trial court ensured that she would be able to privately confer with her attorney during recesses in the proceedings.

¶ 20 Chelsea McMahon testified that she had been C.J.B.'s assigned caseworker during the first nine-month period following his September 2010 adjudication as a neglected minor. McMahon stated that C.J.B. had been removed from the respondent's care due to her incarceration. McMahon testified that there had been a service plan in place for the respondent during the first nine-month period following C.J.B.'s adjudication that required the respondent to obtain "[m]ental health counseling, substance abuse counseling, parenting classes, employment, [and] housing." McMahon testified that the respondent had not satisfactorily completed the service plan during the first nine-month period. McMahon testified that the respondent's service plan had been based on an assessment of the respondent's particular needs and past history, which took into account prior service plans involving her other children. McMahon indicated that mental health counseling had specifically been included because of the respondent's past "anger towards case workers." McMahon acknowledged that the respondent had been incarcerated during the nine months following C.J.B.'s adjudication and that she had completed a parenting course while in jail. She explained that the course did not "qualify" for purposes of the service plan, however, because it was not a "hands-on" parenting class. Due to her incarceration, the respondent had not obtained suitable housing or employment either, and she had not been employed prior to her incarceration. As a result, "everything was rated unsatisfactory." McMahon stated that she was aware that the respondent was still in prison.

¶ 21 Following the State's direct examination of McMahon, the trial court took a recess to allow the respondent to privately confer with her attorney. When subsequently cross-examined, McMahon acknowledged that she was not aware that prior to the respondent's incarceration, the respondent had been living with C.J.B.'s father, who had been financially supporting her. McMahon further acknowledged that it was impossible for the respondent to complete a "hands-on parenting class" while incarcerated. McMahon explained, however, that the respondent's service plan had been established when the respondent was in jail, and it was "unclear *** whether or not she would be going to prison." McMahon further indicated that the respondent's service plan had not been amended when it became apparent that she would remain incarcerated, because given "her prior history with her older children," DCFS "needed to assess her one-on-one interactions with her child."

¶ 22 Before the conclusion of the cross-examination, the respondent and her attorney were granted another recess to confer, and at the conclusion, the trial court ensured that the respondent had heard and understood McMahon's testimony. The State rested its case following McMahon's testimony, and at the State's request, the trial court took judicial notice of "all matters" in the court's file.

¶ 23 The respondent testified that she was presently incarcerated at the federal medical center in Fort Worth and had been transferred there from the federal prison in Waseca in April 2012. She further testified that from June 2010 through February 2011, she had been incarcerated at the Jackson County jail, before being transferred to Waseca. She stated that after giving birth to C.J.B. on June 20, 2010, she was allowed to spend 24

hours with him, before he was taken into foster care, and she was taken back to jail. The respondent acknowledged that she had subsequently received a service plan from DCFS, and she stated that she had tried to do everything that DCFS had wanted her to do, despite her incarceration. In May 2011, the respondent completed a 15-hour drug-education program while incarcerated at Waseca. While incarcerated at Waseca, she also completed a parenting class, was randomly tested for drugs, took classes to obtain her GED, and earned \$25 a month working for the prison. She did not provide dates for any of these events, other than indicating that she had started working for the prison in March 2011 and had started using the available services "as soon as [she] got there." The respondent testified that she had done all that she could have possibly done to comply with the service plan, given what had been "available at the time."

¶ 24 When cross-examined, the respondent acknowledged that she had not sent C.J.B. any of the money that she had earned while in prison. She was then granted a recess so that she could confer with her attorney. On redirect, the respondent testified that sometime around May 2011, she had contacted C.J.B.'s foster mother, Brandi Gillespie-Davis, and had offered to send her money to help with C.J.B.'s expenses. The respondent stated that Brandi had told her that doing so "was not necessary." Following redirect, the trial court took another recess so that the respondent could again confer with her attorney. Following the recess, the respondent rested her case, and C.J.B.'s GAL called Brandi to the stand.

¶ 25 Brandi testified that she was C.J.B.'s foster mother and had been caring for him since he was six months old. Brandi indicated that the respondent had never contacted

her offering monetary support for C.J.B. When cross-examined, Brandi acknowledged that the respondent was her cousin and that she had visited her at the Jackson County jail. She also acknowledged that she had received letters from the respondent, but she could not recall when she had received the letters. Brandi indicated that from September 2010 through June 2011, she had had no communications with the respondent.

¶ 26 In its closing argument, the State maintained that it had proven its allegation that the respondent had failed to make reasonable progress toward C.J.B.'s return within nine months following his September 2010 adjudication as a neglected minor. Citing *In re J.L.*, 236 Ill. 2d 329 (2010), the State further maintained that when evaluating a parent's reasonable progress, "being in prison is not an excuse and does not stop the nine-month period [of] time." Agreeing with the State's position that the respondent's incarceration did not toll the applicable nine-month period, C.J.B.'s GAL argued that the evidence before the court demonstrated "a complete lack of progress" toward the return of the child within that time.

¶ 27 The respondent's attorney countered that the respondent loved C.J.B. and had done "everything in her power" to comply with the requirements of her service plan. Citing *In re F.S.*, 322 Ill. App. 3d 486 (2001), counsel maintained that by taking advantage of the limited services that had been available to her during her incarceration, the respondent had "made reasonable efforts given the circumstances," and her failure to strictly comply with DCFS's directives should not be held against her. Counsel further suggested that DCFS should have amended the respondent's service plan when it became clear that she was not going to be released from jail.

¶ 28 In response, the State noted that the issue before the trial court was not whether the respondent had made "reasonable efforts" but was whether she had made "reasonable progress" within the applicable nine-month period. The State further noted that the respondent's service plan had been specifically tailored to address her previously identified problems, including the problems she had exhibited with respect to her other children.

¶ 29 Noting that the relevant facts of the case were "substantially not in dispute," the trial court ultimately determined that the State had met its burden of proving the respondent's unfitness by clear and convincing evidence. The court stated that the question of law that it had to consider was whether the respondent's failure to comply with the requirements of her service plan should be excused due to her incarceration. Relying on *In re J.L.*, the court determined that the respondent's incarceration was not a valid basis for such an excusal. The cause then proceeded to a best-interests hearing.

¶ 30 Janel Chamness, the State's only witness, testified that she was C.J.B.'s current caseworker. Chamness indicated that C.J.B. had been in placement since the day after he was born and had been in the foster care of Brandi and her husband, William Davis, since he was six months old. Chamness indicated that C.J.B. would be four years old in less than four months. Chamness stated that C.J.B. has "adapted very well" in foster care and refers to his foster parents as his mom and dad. Chamness indicated that C.J.B. knew who the respondent was but did not yet understand the dynamics of the situation. Chamness stated that there were no problems that needed to be addressed with respect to his foster care "other than for him to be adopted." Chamness opined that it was in

C.J.B.'s best interests that he be adopted by his foster parents. Chamness indicated that C.J.B. already considered his foster parents' home "his home," and she opined that it would be "very traumatic" for him to be removed from the home.

¶ 31 Following the State's direct examination of Chamness, the trial court took a recess to allow the respondent to confer with her attorney. Thereafter, the respondent's attorney advised the court that the federal authorities in Fort Worth had stated that the respondent's allotted time to participate in the proceedings had expired. The federal authorities denied counsel's request for "five additional minutes," stating that the respondent had to return to her housing unit. In response, the trial court stated that it was "very upset" that the federal authorities were prohibiting the respondent's further participation but acknowledged that it was powerless to do anything about it. The respondent's attorney advised the court that the respondent had authorized counsel to proceed in her absence. Before being "required to hang up," the respondent acknowledged that the decision to remove her fell on the federal authorities and not the trial court.

¶ 32 When cross-examined, Chamness acknowledged that she had spoken with the respondent within the past year and had communicated with her through monthly letters. Chamness further acknowledged that the respondent loved C.J.B. and wanted "a chance" to get him back. When asked how learning that his foster parents are not his biological parents might someday affect C.J.B., Chamness opined that it would not be an issue if he had been "love[d] and nurtured his whole life." Chamness also testified that C.J.B.'s foster parents had stated that they were not going to hide him from the truth.

¶ 33 In its closing argument, the State noted that C.J.B. was nearly four years old and had never known his mother. The State maintained that there was "absolutely no reason to disturb [C.J.B.] from his current life" and that doing so could potentially harm him. Acknowledging that the respondent loved C.J.B., the State argued that the minor nevertheless needed the security of family and a "chance at happiness." The State thus asked the court to terminate the respondent's parental rights and allow C.J.B. to be adopted by his foster parents.

¶ 34 C.J.B.'s GAL also argued that terminating the respondent's parental rights was in the minor's best interests. The GAL noted that C.J.B. was in a loving home and had become attached to the foster parents who wanted to adopt him. The GAL further noted that it was still not known when the respondent would be released from prison. The GAL argued that C.J.B.'s life should not be "put on hold any longer" and that he should be given "a life as a little boy in a home where he's loved."

¶ 35 The respondent's attorney argued that the respondent loved C.J.B. and had done all that she could to get him back under the circumstances. Counsel further argued that if C.J.B. happened to be the respondent's "last child," it would be a "tragedy" that she would be denied the opportunity to "give him a good life."

¶ 36 Noting that C.J.B. had not seen his mother since the day he was born and had since been placed with caring foster parents who wished to adopt him, the trial court held that terminating the respondent's parental rights was in the minor's best interests. The court further noted that "it would indeed be traumatic to the child to make any change." The court subsequently entered an order terminating the respondent's parental rights to

C.J.B. and appointing DCFS guardian with the power to consent to adoption. The court also entered a permanency order with the permanency goal of adoption. On February 11, 2014, the respondent filed a timely notice of appeal.

¶ 37

DISCUSSION

¶ 38 On appeal, the respondent argues that the trial court erred in finding her unfit and denied her the due process right to meaningfully participate in the termination hearing. We disagree.

¶ 39

Unfitness

¶ 40 "Termination of parental rights is a two-step process." *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. "First, a trial court must find that the parent is unfit, and second, it must find that termination is in the best interests of the child." *Id.*

¶ 41 "The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship." *In re C.N.*, 196 Ill. 2d 181, 208 (2001). "Accordingly, proof of parental unfitness must be clear and convincing." *Id.* "In order to reverse a trial court's finding that there was clear and convincing evidence of parental unfitness, the reviewing court must conclude that the trial court's finding was against the manifest weight of the evidence." *Id.* "A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *Id.*

¶ 42 Section 1(D)(m) of the Adoption Act provides for a finding of parental unfitness upon a determination that a child's parent failed to make "reasonable progress toward the return of the child" within nine months after an adjudication that the child was neglected. 750 ILCS 50/1(D)(m)(ii) (West 2012).

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of 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 at 216-17.

"Reasonable progress may be found when the court, based upon the evidence, can conclude a parent's progress is sufficiently demonstrable and is of such a quality that the child can be returned to the parent in the near future." *In re K.P.*, 305 Ill. App. 3d 175, 180 (1999). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *Id.* "We note also that 'reasonable progress' is an objective standard that is not concerned with the parent's individual efforts and abilities." *In re D.D.*, 309 Ill. App. 3d 581, 589 (2000).

¶ 43 Here, C.J.B. was adjudicated a neglected minor on September 16, 2010, and the respondent's service plan, which was based on her specific needs and history, required her to attend psychiatric counseling, submit to random drug testing, participate in a drug-relapse program, obtain a source of income, provide suitable housing for C.J.B., and complete a "hands[-]on parenting class" to enhance her parenting skills. The evidence adduced at the termination hearing established that the respondent had failed to satisfactorily complete any of these requirements within the first nine months following C.J.B.'s adjudication. The evidence further established that she had failed to otherwise make "measurable or demonstrable movement toward the goal of reunification" during

that time. *In re K.P.*, 305 Ill. App. 3d at 180. The evidence thus supported the trial court's determination that the respondent had failed to make reasonable progress toward C.J.B.'s return within nine months after his adjudication. Although during her incarceration, the respondent admirably made efforts to improve her situation, those efforts were insufficient for purposes of her service plan.

¶ 44 Citing *In re F.S.*, the respondent maintains that because it was impossible for her to specifically comply with her service plan due to her incarceration, her lack of specific compliance should not be held against her. In *In re F.S.*, the respondent's child was removed from her care on findings that she had "a filthy home, a history of inadequate supervision and food, and a drug habit." *In re F.S.*, 322 Ill. App. 3d at 489. Accordingly, her service plan required her to attend parenting classes and obtain drug treatment. *Id.* While in jail, the respondent successfully completed a parenting skills class and participated in the jail's drug-treatment program, neither of which were approved by DCFS. *Id.* After she was released from jail and relapsed, the respondent enrolled herself in an intensive faith-based drug-treatment program. *Id.* at 489-90. The faith-based program was not approved by DCFS either, but it "actually helped" the respondent maintain sobriety. *Id.* at 491-92. Concluding that the respondent's participation in the faith-based program did not meet the requirements of the service plan because the program had not been approved by DCFS, the trial court nevertheless determined that the respondent had failed to make reasonable progress toward the return of her child and had further failed to make reasonable efforts to correct the conditions that led to the child's

removal. *Id.* at 490-91. On appeal, the appellate court reversed the trial court's finding of unfitness, holding:

"[The respondent] made reasonable efforts and achieved reasonable progress toward correcting the deficient parenting skills and the drug and alcohol dependencies that led to removal of [the child] from her home. The fact that she made her progress and met her obligations outside of DCFS programs cannot show that she failed to make progress or that she failed to substantially fulfill her obligations under the service plan." *Id.* at 493.

The appellate court further noted that although a respondent's failure to comply with a service plan is relevant, "such failure alone could not overcome evidence of reasonable progress toward correction of the conditions that led to the removal of the child." *Id.* at 492-93.

¶ 45 The respondent's reliance on *In re F.S.* is misplaced and does not support her contention that by completing "the only viable parenting course and only other services available to her," she demonstrated reasonable progress despite her failure to comply with the specific requirements of her service plan. *In re F.S.* stands for the proposition that reasonable progress can be achieved through methods other than those specifically mandated by DCFS, so long as the methods sufficiently address the respondent's particular needs and demonstrate substantial compliance with her obligations.

¶ 46 Here, when C.J.B. was removed from the respondent's care, she was being held on federal drug charges and had previously had four other children removed from her care. Her parental rights had also been terminated with respect to three of those four children,

and it was noted that she had "had an open service case since 2005." The respondent's service plan was based on her history with her other children, and based on that history, it was determined that she needed a hands-on parenting class so that her "one-on-one interactions with her child" could be evaluated. Additionally, psychological counseling was ordered due to her "anger towards case workers." The respondent's service plan was also directed at her history of drug abuse and her past failures to "cooperate with substance abuse treatment." Given his age, C.J.B. obviously needed appropriate housing and a means of support.

¶ 47 As previously stated, the respondent failed to satisfactorily complete any of the requirements of her service plan within the first nine months following C.J.B.'s adjudication. Unlike the situation in *In re F.S.*, however, the respondent's efforts were not discounted as failing to make reasonable progress because they were not approved by DCFS. They were discounted because they did not adequately address the respondent's specific needs in light of the conditions that led to C.J.B.'s removal and the conditions that precluded his return. Most notably, the parenting class that the respondent completed was not the equivalent of a hands-on parenting class, and the 15-hour drug-education class that she completed was not a drug-relapse program. Under the circumstances, it cannot be said that the respondent's efforts constituted substantial compliance with her service plan.

¶ 48 We can sympathize with the respondent's predicament. As the trial court rightfully observed, however, our supreme court has held that "in determining whether a parent has made reasonable progress toward the return of the child, courts are to consider

evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)," and "[t]here is no exception for time spent in prison." *In re J.L.*, 236 Ill. 2d at 340-41. "Whether this needs to be changed is a policy question more appropriately directed to the legislature." *Id.* at 343. In any event, the trial court's finding that the respondent was unfit due to her failure to make reasonable progress toward C.J.B.'s return within nine months after his adjudication as a neglected minor was not against the manifest weight of the evidence.

¶ 49

Due Process

¶ 50 The respondent next argues that the trial court denied her the due process right to meaningfully participate in the termination hearing by denying her request that the hearing be continued until the necessary connections allowing for a videoconference were in place. Noting that the court had "already continued the termination proceedings multiple times to accommodate the respondent" and had done all that was possible to ensure that that her participation at the hearing would be meaningful, the State counters that the respondent was not denied due process and that the court did not abuse its discretion by refusing to continue the cause any further. We agree with the State.

¶ 51 "A parent's interest in maintaining a parental relationship with her child is a fundamental liberty interest protected by the due process clause of the fourteenth amendment." *In re C.J.*, 272 Ill. App. 3d 461, 464 (1995). A parent also has a statutory right to be present at a termination hearing. 705 ILCS 405/1-5(1) (West 2012). It is well established, however, that "lawful incarceration necessarily makes unavailable many rights and privileges of the ordinary citizen." *In re C.J.*, 272 Ill. App. 3d at 464. The

parent's right to be present is thus not "absolute," and "her presence is not mandatory." *In re M.R.*, 316 Ill. App. 3d 399, 402-03 (2000). Nevertheless, the right to be heard in a meaningful manner is a fundamental requirement of due process (*People v. R.G.*, 131 Ill. 2d 328, 353 (1989)), and a parent must be given the opportunity to meaningfully participate in the termination hearing so that she can challenge the State's case against her (*In re C.J.*, 272 Ill. App. 3d at 465). Due process is "flexible," however, and "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

¶ 52 The parties agree that in determining whether the procedures followed at a termination proceeding satisfied due process, we must consider and balance the three factors set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which are:

"(1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *In re M.R.*, 316 Ill. App. 3d at 402.

"We review the issue of whether [a] respondent's procedural due-process rights were violated *de novo* as the allegations involve only questions of law" (*In re Todd K.*, 371 Ill. App. 3d 539, 541 (2007)), but "[t]he trial judge's decision to deny a continuance will not be reversed absent an abuse of discretion" (*In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999)). Provided that a respondent is given a meaningful opportunity to participate in

the termination hearing, the "exact method of participation" is also a matter within the trial court's discretion. *In re C.J.*, 272 Ill. App. 3d at 466.

¶ 53 With respect to the first *Mathews* factor, it is undisputed that the respondent has a significant liberty interest in maintaining her parental relationship with C.J.B. *In re M.R.*, 316 Ill. App. 3d at 402; *In re C.J.*, 272 Ill. App. 3d at 465. A mother has a "fundamental liberty interest in the care, custody, and control" of her child. *In re A.M.*, 402 Ill. App. 3d 720, 723 (2010).

¶ 54 With respect to the second *Mathews* factor, we find that the procedures employed in the present case "offered little or no risk of an erroneous deprivation" (*In re M.R.*, 316 Ill. App. 3d at 402), and that despite the respondent's suggestion that she should have been permitted to both see and hear the witnesses, a videoconference would not have added to the probative value of the termination proceeding. The respondent was able to participate via phone and through her attorney, and throughout the hearing, the trial court took measures to ensure that her participation was meaningful.

¶ 55 On appeal, the respondent suggests that she was unable to hear much of what had occurred during the hearing, but the record does not support this suggestion. On the few occasions that the respondent indicated that she could not hear, the trial court either "re-
place[d] the phone" so that she could hear or had the witness "speak up." Then, whatever had been said or asked had been repeated. We note that under similar circumstances, it has been held that "as a matter of law[,] *** the trial court did not violate the respondent's due process rights because of his telephonic participation in the fitness hearing." *In re A.C.*, 354 Ill. App. 3d 799, 805 (2005). We also note that at the March 8, 2012,

permanency hearing, where the respondent had also been present by phone, she acknowledged that she had been afforded the opportunity to fairly participate. Additionally, when the respondent was brought back from Fort Worth in October 2012 for the then-scheduled termination hearing, she refused to appear, knowing that her future participation might have to be by telephone only.

¶ 56 The respondent also complains because she "was forced away from the telephone" before the conclusion of the best-interests portion of the termination hearing. This was beyond the trial court's control, however, and the respondent authorized her attorney to proceed in her absence. "In the best-interests stage of a termination proceeding, due process does not require standards as strict as at the unfitness stage." *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80. Moreover, the only portions of the hearing that the respondent missed were her attorney's cross-examination of Chamness and the parties' closing arguments, and the respondent does not claim any resulting prejudice.

¶ 57 As for the third and final *Mathews* factor, we must consider the State's interests, including the burden of delaying the termination proceeding until the necessary connections allowing for a videoconference were in place. On appeal, the respondent maintains that "the technology required for video communication was set to be available on February 7, 2014," and thus an additional "one-day delay" would not have been burdensome. This contention presumes that the technology would have undoubtedly been available February 7, however, and the record does not support such a presumption.

¶ 58 As previously noted, at the January 23, 2014, status hearing, the trial court indicated that the "new courtroom" with "Skype ability" would not be ready by February

6, 2014. The court explained that there was a dedication ceremony for the new courtroom scheduled for February 7, 2014, that the courtroom would not be available for use until after the ceremony, and that technology training might also be a factor. The court nevertheless stated that its "intention" was to conduct the termination hearing via Skype, if possible. The court was then advised, however, that the federal facility in Fort Worth did not " 'use Skype under any circumstances.' " The court was further advised that a secure connection would be required for a videoconference and that the court's information technology technician would have to contact Fort Worth to " 'set up a test [to] *** determine if the connection [was] possible.' " In light of this information, the trial court denied the respondent's motion to continue and determined that proceeding with "audio only" would adequately protect the respondent's rights. The court further indicated that it was in the best interests of the child to proceed with the technology that was currently and unquestionably available.

¶ 59 Speculation cannot support a claim of prejudice (*In re Karen E.*, 407 Ill. App. 3d 800, 811 (2011)), and we cannot speculate when, or even if, a secure video connection to Fort Worth could have successfully been made. Although the record suggests that Skype might have been available by February 7, 2014, the trial court was advised that using Skype was not an option "under any circumstances." We accordingly reject the respondent's suggestion that the burden in delaying the termination proceeding until the necessary connections allowing for a videoconference were in place would have been minimal. "Moreover, the denial of a request for continuance will not be grounds for reversal unless the complaining party has been prejudiced by such denial." *In re M.R.*,

305 Ill. App. 3d at 1086. As previously stated, the procedures employed in the present case "offered little or no risk of an erroneous deprivation" of the respondent's liberty interest (*In re M.R.*, 316 Ill. App. 3d at 402), and a videoconference would not have added to the probative value of the termination proceeding.

¶ 60 "The government's function in seeking to terminate parental rights is an aspect of its role as *parens patriae*." *In re C.J.*, 272 Ill. App. 3d at 466.

"The legislature recognizes that serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor and the family and that it frustrates the health, safety and best interests of the minor and the effort to establish permanent homes for children in need." 705 ILCS 405/2-14(a) (West 2012).

When the child at issue is "very young," delays in the proceedings impose "a particularly serious cost on governmental functioning." *In re C.J.*, 272 Ill. App. 3d at 466. Additionally, "[c]ourts must not allow children to live indefinitely with the lack of permanence inherent in foster homes." *In re C.C.*, 299 Ill. App. 3d 827, 830 (1998).

¶ 61 Here, C.J.B. was adjudicated a neglected minor on September 16, 2010, and the State filed its motion to terminate the respondent's parental rights on February 1, 2012. The initial date set for the termination hearing was June 28, 2012. In the months that followed, the termination hearing was continued numerous times on the respondent's representations regarding her release from prison. In August 2013, the trial court was informed that the respondent anticipated being released in January 2014. In November 2013, the court was informed that she anticipated being released sometime between April

and July 2014. As an aside, we note that the federal Bureau of Prisons' website (www.bop.gov) indicates that the respondent's release date is July 20, 2015 (www.bop.gov/inmateloc, BOP Register Number 08306-025 (last visited June 30, 2014)). See *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 430 (2007) (noting that the court could take judicial notice of information on official prison website); *Bova v. U.S. Bank, N.A.*, 446 F. Supp. 2d 926, 931 n.2 (S.D. Ill. 2006) (noting that "the court was entitled to take judicial notice of information on 'prisoner locator' websites, such as those maintained by the federal Bureau of Prisons"). In any event, by the time the termination hearing was held on February 6, 2014, it had been continued for over 19 months, and nearly 41 months had passed since C.J.B.'s adjudication. Under the circumstances, it was in C.J.B.'s best interests to go ahead with the technology that was available, and the trial court proceeded accordingly.

¶ 62 As previously noted, due process is "flexible" and "calls for such procedural protections as the particular situation demands." *Brewer*, 408 U.S. at 481. Here, having considered and balanced the three *Mathews* factors, we conclude that the respondent was afforded due process. To its credit, the trial court made every reasonable effort to accommodate the respondent's request that the hearing be conducted via videoconference, but the required technology never came to fruition.

¶ 63 CONCLUSION

¶ 64 For the foregoing reasons, we affirm the trial court's judgment terminating the respondent's parental rights to C.J.B. and appointing DCFS guardian with the power to consent to adoption.

¶ 65 Affirmed.