

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> CHRISTIAN B., Minor,)	
)	
Respondent-Appellee,)	Appeal from the Circuit Court
)	of Cook County.
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	No. 11 JA 00894
)	
v.)	
)	The Honorable
ROBERT B.,)	Maxwell Griffin Jr.,
)	Judge, presiding.
Respondent-Appellant).)	

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's finding that father of minor child was unfit and that it was in the best interest of the child that parental rights be terminated was not against the manifest weight of the evidence.
- ¶ 2 Robert B. is the biological father of seven year old Christian B. Christian came to the attention of the Illinois Department of Children and Family Services in October 2010, when Robert left the two-year-old boy with his biological mother, Leah D., who has an extensive history of mental illness and was not permitted to have unsupervised contact with the child. The

DCFS removed Christian from Robert's care and placed him with a foster family. Over the next three years, Robert completed several required services, including parenting classes, and attended therapy sessions so as to be reunited with Christian, but his efforts were repeatedly stymied by his housing moves and more significantly, by three periods of incarceration for driving offenses. In March 2013, shortly after Robert was again incarcerated, Christian's permanency goal was changed from return home within 12 months to termination of parental rights. After a hearing, the trial court found Robert unfit to parent Christian under section 1(D)(m) of the Illinois Adoption Act (750 ILCS 50/1(D)(m) (West 2012)). The court then conducted a best interest hearing and found it was in Christian's best interest to terminate Robert's parental rights.

¶ 3 Robert argues the trial court's finding of unfitness and its decision to terminate his parental rights are against the manifest weight of the evidence. Although this is a close case, we affirm. Robert contends and the record suggests he has developed a bond with Christian and wants to be reunited with his son. But we agree with the trial court that the State proved by a preponderance of the evidence that Robert was unfit primarily due to his frequent incarcerations, which prevented him from making reasonable progress toward Christian's return home. The case had been in the court system for more than three years and the record supports the trial court's finding that despite his good faith efforts, Robert has been unable to complete services and achieve the goals that would make him fit to parent Christian. The State also proved that because of Robert's frequent absences from his son's life and the stability and security his foster family has provided since October 2010, a lengthy time in the life of a child, it was in Christian's best interest that Robert's parental rights be terminated.

BACKGROUND

¶ 4 Christian's biological parents are Robert B. and Leah D., who dated for a short period of time but never married. Christian is Robert's only child. Leah has given birth to several other children all of whom were removed from her custody due to her mental health issues, including a diagnosis of schizoaffective disorder and her failure to remain compliant with her medication. (The trial court also terminated Leah's parental rights, but she is not a party to this appeal.) Because of Leah's prior involvement with DCFS, the agency was notified when she gave birth to Christian on December 24, 2007. DCFS placed Christian in Robert's custody with a safety plan specifying that Christian was not to be left unsupervised with Leah.

¶ 5 On September 9, 2010, a DCFS caseworker visited Robert's home in Crescent City, IL, and determined it did not meet minimum standards because of inadequate food, dirty dishes, and holes in the floor, among other problems. Leah was not in the home at the time, and, again, Robert was advised that Christian was not to have unsupervised contact with her.

¶ 6 The case came into the court system a month later, on October 8, 2010, when Robert left Christian in Leah's care after he was arrested for driving on a revoked license. (Robert's license was revoked in 2006 after he was convicted of driving under the influence.) The State later learned that Leah had been living with Robert and Christian and that she was having extensive unsupervised contact with Christian. On October 12, 2010, the State filed a petition in Iroquois County for adjudication of wardship of Christian, alleging the child was neglected due to his mother's mental health problems. The court entered a temporary custody order on October 13, 2010. Christian was placed with a foster family and has continued to reside with them.

¶ 7 On December 22, 2010, Christian was adjudicated neglected based on an injurious environment under section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b))

(West 2012)). The court found Robert was unfit to care for Christian and placement with him would be contrary to Christian's health, safety, and best interest, because of Robert's arrest for "driving while suspended warrant" and because he allowed Christian to live with Leah despite knowing that she has significant psychiatric problems and could not properly care for Christian.

¶ 8 On April 26, 2011, the court entered a disposition order making Christian a ward of the court and placing him in the guardianship of DCFS. The court found Robert was unfit to care for Christian and that it would not be in Christian's best interest to be placed in Robert's custody. The court entered a permanency order on October 7, 2011, with a goal of return home within 12 months, noting that Robert had recently begun accessing service providers. On October 28, 2011, the case was transferred to DuPage County and then to Cook County in November 2011.

¶ 9 The permanency goal remained return home until March 13, 2013, when it was changed to substitute care pending termination of parental rights. On May 2, 2013, the State filed a supplemental petition for the appointment of a guardian with the right to consent to adoption. The supplemental petition alleged, in relevant part, that Robert failed to make reasonable efforts to correct the conditions that were the basis for the removal of Christian from Robert's care and/or failed to make reasonable progress toward the return of Christian within nine months after the adjudication of neglect or abuse under the Juvenile Court Act and/or within any nine month period after that finding in violation of ground (m) of the Adoption Act. 750 ILCS 50/1(D)(m) (West 2012). On November 14, 2013, the State filed its pleading identifying the following time periods that Robert failed to make reasonable progress: December 22, 2010 through September 22, 2011; September 23, 2011 through June 23, 2012; June 24, 2012 through March 24, 2013; March 25, 2013 through December 25, 2013; and April 21, 2013 through January 21, 2014.

¶ 10 The unfitness portion of the termination hearing commenced on April 17, 2014. Jill Gort, a caseworker at Evangelical Child and Family Agency (ECFA), testified that she was assigned to Christian's case from October 2010 until January 2011. After explaining why the case came into the court system, Gort said she assessed Robert for services and recommended he participate in a substance abuse assessment, parenting classes, individual therapy, and housing advocacy. Gort said when she visited Robert's home in October 2010, it appeared extremely dirty and cluttered. Gort saw bugs in the home and broken appliances. Gort said Robert expressed a willingness to engage in services and that he would like to move to a home more suitable for Christian. He was referred for housing services as well as for therapy to help him gain insight into why the case came into the system. Gort said Robert's visits with Christian were appropriate.

¶ 11 Heather Hawthorne, a supervisor at ECFA, testified that she was assigned to Christian's case from January 2011 until April 2012. When Hawthorne took over the case, Robert still needed a substance abuse assessment, a mental health assessment, parenting classes, housing advocacy, and therapy. She said Robert completed the substance abuse assessment and was found not be in need of further treatment. He also completed the mental health assessment and was referred to therapy to address how his choices led to his involvement with DCFS and the impact on Christian.

¶ 12 Hawthorne testified that Robert successfully completed parenting classes but was not initially compliant. Robert also was not initially compliant with therapy and his progress was slow and was hindered, in part, by his frequent moves. Hawthorne said Robert moved five times while she was assigned to the case. (Robert disputes this; he asserts he moved twice while the case was pending and has been living with his aunt since October 2011.) Hawthorne said each time Robert moved she had to find a new therapist and transportation, because Robert's driver's

license was revoked. Robert was employed while Hawthorne was assigned to the case, but he did not earn enough money to afford his own housing. Hawthorne said that because Robert moved often it was difficult to determine if he took advantage of the housing advocacy services.

¶ 13 Hawthorne further testified that Robert was incarcerated three times from January 2011 until April 2012 for driving-related offenses. He was incarcerated for 30 days at the time she was assigned the case in January 2011. Hawthorne could not recall the dates of his second incarceration but said that it was also for about 30 days. The third incarceration began in February 2012, and Robert was still incarcerated when she left the case in April 2012. Hawthorne thought the third incarceration was for six months.

¶ 14 In March 2012, Hawthorne prepared a permanency hearing report for the court recommending that the goal be changed to substitute care pending termination of parental rights. She said the recommendation changed due to Robert's lack of progress given the length of time the case had been in the court system. Further, Robert had not yet taken responsibility for the reasons the case came into the system and had not progressed to unsupervised visits with Christian. Hawthorne also said there was concern about Robert's judgment given that he continued to drive on a revoked license, and about Christian's negative reactions to Robert's frequent incarcerations.

¶ 15 Another caseworker, Crystal Toro, took over in May 2012. Toro testified that in March 2013, the goal became substitute care pending termination of parental rights because of the length of time the case was in the court system, Robert's failure to timely complete services, and his lack of good judgment. Toro said Robert was incarcerated when she was assigned to the case, serving a six month sentence and had been incarcerated several times for traffic offenses, which hindered his ability to complete services. Toro said that in May 2012, Robert's only outstanding

service was individual therapy, which was intended to help Robert take responsibility for the case coming into the court and correct his behavior. When Robert got out of jail, he began individual therapy in August 2012 and attended consistently, until he was again incarcerated in November 2012. Robert resumed therapy after his release in January 2013.

¶ 16 Toro acknowledged that in November 2012, before Robert was again incarcerated, she prepared a permanency report recommending Robert have unsupervised visitation with Christian. After Robert was arrested, the report was changed to recommend Robert not have unsupervised visitation and that the goal be changed to substitute care pending termination of parental rights.

¶ 17 On cross-examination, Toro acknowledged that when she got the case in May 2012, Robert had completed parenting classes, drug and alcohol services, and had obtained stable housing with his aunt, Linda Plesh, and only had one outstanding service to complete, individual therapy. She also acknowledged Robert began therapy as soon as he was able and that before his November 2012 incarceration, the consensus at her agency was that Robert had made sufficient progress in his therapy and other services to allow unsupervised visits with Christian. She also agreed that Robert's supervised visits with Christian went well, that she perceived no problems with Robert's parenting style, that Robert and Christian had a good bond, and that Christian referred to Robert as DaDa.

¶ 18 Robert's aunt, Linda Plesh, testified that Robert began living with her and her family in Bloomingdale, IL, in October 2011, and that he could live there indefinitely. She also said if Christian were returned home, he could also live in her house indefinitely. Plesh supervised and helped plan Robert's visits with Christian from February or March 2012 until July 2012. The visits were usually at her house, though sometimes they would go to the beach or the zoo. Plesh

said that Robert and Christian appeared to be bonded, that Christian recognized Robert as his father, and referred to him as "DaDa."

¶ 19 Dr. Freddy Tung testified that he was Robert's therapist from August 2012 until May 2013, although there was a break from November 2012 until February 2013, while Robert was incarcerated. Dr. Tung said that the goals for Robert's therapy were to address the reasons the case came into care so as to develop Robert's insight into his behaviors and actions that led to DCFS stepping in and the impact the DCFS placement had on Christian. Dr. Tung testified that in November 2012, Robert had made significant progress on his goals and that he supported unsupervised visits between Robert and Christian. Dr. Tung testified that Robert appeared to have a good relationship with Christian and that Christian had a positive attitude and looked forward to seeing Robert. Dr. Tung said that Christian referred to Robert as "Dad" but acknowledged that Christian also referred to his foster father as his father. On cross-examination, Dr. Tung said he recommended attachment therapy for Robert and Christian to ensure the relationship remained strong after learning that that Christian did not always refer to Robert as his father and would become upset when people referred to Robert as his father.

¶ 20 Robert testified that Christian lived with him since he was born until the case came into the court system in October 2010. He said Christian's mother, Leah, would visit for a week or two but would then leave. Robert said his mother and some of his friends helped watch Christian when he was at work. Robert acknowledged that he left Christian alone with Leah when he was arrested on October 8, 2010, despite a safety plan that expressly prohibited Leah from having unsupervised contact with Christian. Robert said he could not leave Christian with his mother because she was in the hospital with kidney failure and his sister and aunt lived 100 miles away, and it was 1:00 a.m. when he was arrested.

¶ 21 Robert acknowledged that the reason the case came into the court system was "pretty much" due to his own actions. He said he came to that realization about two weeks after he began therapy. Robert said the agency told him that his home was not an appropriate environment for Christian but never helped him find other housing. Robert acknowledged he had been incarcerated three times since the case came into the court system. He was arrested on October 8, 2010, for driving on a revoked license and in September 2011, again for driving on a revoked license. He was incarcerated beginning February 1, 2012, on the September 2011 charge. Robert admitted that after his October 2010 incarceration he continued to drive on a revoked license even though he was aware of the consequences. He also acknowledged that his incarcerations had a negative impact on Christian.

¶ 22 Robert testified that ECFA, the first agency to handle Christian's case, referred him for a drug and alcohol evaluation, which he completed in March 2011. Robert was also referred for counseling, which he started in May 2011 and parenting classes. Robert said he went to parenting classes in Paxton, IL, until ECFA closed in September 2011. Shortly after ECFA closed, Robert moved to his aunt's house Bloomingdale. DCFS took over the case and referred him to counseling in Addison, IL, which he began in November 2011. Robert said therapy sessions ended in mid-December because the bills had not been paid. From December, 2011 until his incarceration in Iroquois County jail on February 1, 2012, Robert was not referred for counseling. While he was incarcerated, Robert did not receive services but attended weekly counseling sessions with a pastor. Robert said he spoke to the pastor about how he got into jail, his decision making, and consequences of his action.

¶ 23 Robert said that when he was first incarcerated in February 2012, he did not want Christian to visit because he was only allowed 15 minutes visits through a television monitor.

But Robert when became a "county trustee" in the jail and was given the privilege of two hour visits on Saturdays with physical contact, Christian began to visit him in jail.

¶ 24 Robert said he was released from jail a couple of days before the next court date in this case, and he immediately contacted his case worker and told her he wanted to restart counseling. About three months later, in August 2012, Robert began counseling sessions with Dr. Tung.

¶ 25 On November 27, 2012, Robert went to court for this case and was picked up on a warrant from Iroquois County for "escaping." He was placed in Cook County jail for three weeks and then transferred to Iroquois County jail until January 2013. Robert said the warrant was faulty, because when he previously pled guilty to driving on a revoked license the charges were reduced from a felony to a misdemeanor but that Iroquois County failed to reflect this change in its paperwork. He said that an offender can be released early on a misdemeanor but not for felony, so when he was released early, Iroquois County officials thought he had escaped. The record shows that Iroquois County issued a warrant on September 12, 2012, for misdemeanor failure to return from furlough. On February 19, 2013, the State's Attorney *nolle prossed* the charges without explanation. Robert resumed counseling with Dr. Tung after his release and continued counseling until May 2013.

¶ 26 During arguments, the State asked that Robert be found unfit on the ground of lack of progress under 750 ILCS 50/1(D)(m) (West 2012), due to his continuing poor judgment, repeated incarcerations, and lack of demonstrable movement toward the goal of return home. The State conceded that Dr. Tung testified that Robert was making progress from August 2012 through March 2013, except during the period he was incarcerated, but argued that his progress was "too little, too late." The attorney/GAL concurred with the State, noting that Robert never

achieved unsupervised visits with Christian and that any progress made in therapy with Dr. Tung was too late.

¶ 27 Robert argued the State had not met its burden of showing unfitness by clear and convincing evidence on any of the grounds alleged. He asserted he made progress in his services within a reasonable amount of time since his referrals, that visitation with Christian went well, and that he had been rated as satisfactory on his housing after he moved in with his aunt.

¶ 28 On June 16, 2014, the trial court found Robert unfit. The court noted that the case came into the system when Robert left Christian alone with Leah in violation of the safety plan in place and even though he knew of her mental health and substance abuse issues and her refusal to take her medication. The court noted that Robert was referred for individual therapy but failed to make progress in therapy due to his frequent moves, which also made it difficult for the agency's housing advocate to find him appropriate housing. The court further noted the case was complicated by Robert's three incarcerations between January 2011 and April 2012. The court said that Robert did not take responsibility for the case coming into the system, continued to blame Leah, and lacked insight into his shortcomings as a parent.

¶ 29 The court stated that while Robert made efforts to stay in contact with Christian and to engage in services, those efforts were spotty and hindered by his frequent incarcerations. The court noted that at no time did Robert progress to a point where a caseworker or therapist recommended he have unsupervised visits with Christian. Nor was anyone ever able to say that Robert would be able to have Christian in his custody in the reasonable future, where the child would be in a safe and stable environment. The court thus found the State met its burden of proof by clear and convincing evidence under 750 ILCS 50/1(D)(m) (West 2012), that Robert had not

made reasonable progress toward return home in all of the five periods alleged in the State's petition for adjudication of wardship.

¶ 30 The trial court then proceeded to a best interest hearing. Carrie Wallace-Onifade of Children's Home and Aid testified that she was the foster care supervisor on Christian's case. She said Christian was placed in a foster home with three of his half siblings and has lived there for four years. On September 23, 2014, caseworker Sara Cruz visited the foster parents' home and found it be safe and appropriate, with no signs of neglect, risk of harm or unusual incidents. Christian, who is seven years old, is doing well in school and is up to date on his medical, dental, vision, and hearing screenings. Christian was in individual therapy but it was discontinued after a determination that it was no longer needed. Onifade testified that her agency recommends termination of parental rights and adoption. She said that Christian lives in a great home, is attached to his foster parents, and is thriving. Onifade acknowledged that Chrystal Toro's records indicated that Christian and Robert have a strong attachment but said they also showed that Christian was negatively impacted by Robert's absence in his life.

¶ 31 Sara Cruz, a foster care manager at Children's Home and Aid, was assigned to Christian's case in August 2014. When Cruz visited Christian's foster home on September 23, 2014, Christian, his foster parents, and three of his half-siblings were present. Cruz said Christian was very attached to his foster parents and referred to them as Mom and Dad and bonded with his half-siblings. Christian told Cruz he wanted to continue living in his foster home. The foster parents separately told Cruz they want to adopt Christian. Cruz testified that the foster mother's first language is Spanish and that Christian is now bilingual. Cruz said she never spoke to Christian about Robert and never used the word adoption when talking to him.

¶ 32 Christian's foster father Gilberto M. testified that he has been a pastor for 25 years. He works full-time while his wife stays home with the children. In addition to Christian, three of Christian's half siblings also live with Gilberto and his wife. Gilberto said that Christian shares a room with his five-year-old half-brother Neal, who is now called Gilberto, and that they have a strong bond. He said they protect and look out for each other and take care of their half-sister, who is three years old. The foster parents' backup care plan is a family member who lives in Chicago and other family members who are willing to fly in to help out, if necessary. The family also has a large and supportive social circle in their church, and Christian and the other children are integrated into their family life and involved in church activities.

¶ 33 Gilberto testified about Christian's daily routine, stating that when he gets home from school he takes a bath, eats, and then does his homework, followed by play time with his half siblings. Gilberto said the family goes on outings to the park, the zoo, or the aquarium, and they take vacations, most recently to Walt Disney World.

¶ 34 Gilberto is bilingual and his wife understands English but is not fully bilingual. Gilberto said he never had any concerns about Christian's ability to communicate effectively with his foster mother. While Christian only spoke English when he first came to live with them, he has developed his language skills over the years and is now fully bilingual.

¶ 35 Gilberto further testified that Christian enjoyed his visits with Robert but they were fairly inconsistent. When Robert was incarcerated and unable to visit, Christian became upset. The last time Robert visited with Christian was a couple of months earlier and that Christian had not asked about Robert recently, although he used to a few years earlier.

¶ 36 If Gilberto and his wife were allowed to adopt Christian, Gilberto would prefer that contact between Robert and Christian be through calls, letters, and pictures but would allow in-

person contact if that is what Christian wanted and if it was necessary for Christian's well-being. He said he was willing to provide Robert with his address and phone number so that he could write or call Christian.

¶ 37 Robert testified that he and Christian love each other and that he does not think it is in Christian's best interest for his parental rights to be terminated. He said that he had "gone along with the program" and he did not know what else he could have done.

¶ 38 In considering the best interest factors listed in section 1-3 (4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2012)), the court stated that the foster parents have provided Christian with physical safety and welfare, including food, shelter, health, and clothing for most of his life, as well as a sense of identity. The court noted that children feel attached to people who protect them and to whom they can go to with a problem. The court found there was no doubt that Christian's feels safe and protected by his foster parents and that they have met his needs and provided him with a sense of security, familiarity, and affection. Thus, the court found that by a preponderance of the evidence, the State has shown that terminating Robert's parental rights was in Christian's best interests and appointed the DCFS Guardianship Administrator as Christian's guardian, with the right to consent to adoption. The court advised the foster parents to discuss and acknowledge Christian's questions about his biological parents. He added that although they should not make guarantees about the level of future contact with the biological parents, the foster parent should make those judgments based on Christian's best interests. A permanency order was entered that same day, with a goal of adoption for Christian. Robert filed a notice of appeal on October 13, 2014.

¶ 39

ANALYSIS

¶ 40

Robert argues the trial court's finding that he was unfit under 750 ILCS 50/1(D)(m)(iii) (West 2012) for failing to make reasonable progress for Christian's return home was against the manifest weight of the evidence, as was the court's finding that termination of parental rights was in Christian's best interests. Robert also argues that in finding him unfit, the trial court improperly considered the effect on Christian of his incarcerations.

¶ 41

The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)) provides a two-step process for the involuntary termination of parental rights. *In re Joshua K.*, 405 Ill. App. 3d 569, 580 (2010). First, the State must prove by clear and convincing evidence that the parents are unfit as defined in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2012); *In re C.W.*, 199 Ill.2d 198, 210 (2002); *In re C.N.*, 196 Ill.2d 181, 208 (2001). Only if the court makes a finding of unfitness will the court go on to consider whether it is in the best interest of the child to terminate parental rights and to appoint a guardian with the right to consent to the child's adoption. 705 ILCS 405/2-29(2) (West 2012); *In re C.W.*, 199 Ill. 2d at 210. Because the circuit court is in the best position to assess the credibility of witnesses, a reviewing court may reverse a circuit court's finding of unfitness only where it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill.2d at 208. A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id.* In determining whether the trial court's decision is contrary to the manifest weight of the evidence, we are mindful that every matter concerning parental fitness is *sui generis*—meaning it must be decided on the particular facts and circumstances presented. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 42 Failure to Make Reasonable Progress Toward Returning Home

¶ 43 Robert first argues the trial court's finding that he was unfit under subsection 1(D)(m) of the Adoption Act for failing to make reasonable progress toward Christian's return home was against the manifest weight of the evidence. Under section 1(D)(m) of the Adoption Act, a parent will be found unfit if he or she fails:

"(ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act, or (iii) to make reasonable progress toward the return of the child to the parent within any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under section 2-4 of that Act." 750 ILCS 50/1(D)(m)(ii), (iii) (West 2012).

¶ 44 Reasonable progress is judged by an objective standard and relates to making progress—measurable or demonstrable movement—toward the goal of returning the child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). The standard for measuring a parent's progress under section 1(D)(m) of the Adoption Act includes 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 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 is established if the trial court can conclude that it will be able to order the child returned to parental custody in the near future. *In re Daphne E.* 368 Ill. App. 3d 1052, 1067 (2006). Unfitness may be based on any one nine month period under ground (m)(iii). *In re Jaron Z.*, 348 Ill. App. 3d 239, 255-56 (2004).

¶ 45 The State alleged Robert was unfit in that he failed to make progress toward the return of Christian within nine months after adjudication and within the four nine month periods after that. Robert contends he made reasonable progress toward Christian's return home in each of the five periods and thus the unfitness finding was against the manifest weight of the evidence. Robert notes that he completed substance abuse and mental health assessments in the first nine month period, completed parenting classes and found a stable living situation with his aunt in the second nine-month period and attended therapy throughout each of the five periods and also sought out therapy with a pastor while he was incarcerated. Robert acknowledges that his participation in therapy was sporadic, partly due to his incarcerations but also due to factors beyond his control, such as the failure of his caseworkers to secure services for him. Robert also contends that his visits with Christian were deemed to be consistent and appropriate and that several witnesses testified to a strong bond between them. He further notes that before his November 2012 incarceration, caseworkers supported a recommendation of unsupervised visits with Christian. Robert contends that this incarceration was wrongful and led to the termination proceedings, despite his having made reasonable progress toward Christian's return home.

¶ 46 We agree that Robert successfully completed several services soon after the case came into the system and appeared to be committed to attending therapy throughout the duration of the case. But his progress was repeatedly retarded by his own conduct and poor choices, which prevented him from taking responsibility for his conduct that resulted in DCFS involvement and from working toward providing Christian with a safe and stable environment. The case first came into the system in October 2010 when Robert was arrested for driving on a revoked license. Robert left Christian in Leah's care despite a safety plan that prohibited Leah from having unsupervised contact with the child. Over the next few years, Robert was incarcerated

three times between January 2011 and November 2012. Each time, his therapy stopped until his release. And although Robert made efforts to stay in contact with Christian during his incarcerations, he was unable to be a consistent presence in Christian's life. Moreover, even when Robert was in therapy his progress was slow and minimal. Caseworkers testified that Robert never took responsibility for the case coming into the system and continued to exercise poor judgment, as evidenced by his repeated arrests on traffic violations.

¶ 47 When Robert reached a point in November 2012 where caseworkers were prepared to recommend he have unsupervised visits with Christian, he was again incarcerated for three months. Robert contends this incarceration was wrongful and should not be used to support a finding of unfitness. The trial court heard testimony about the November 2012 incarceration and appeared to believe the warrant was not faulty, as it made note of it in its finding that Robert failed to make reasonable progress. Robert failed to provide the trial court with any evidence establishing that the incarceration was improper and in the absence of a complete record, we must resolve the issue against respondent. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Further, even if we did not take the November 2012 incarceration into consideration, the evidence presented at the unfitness hearing showed that Robert repeatedly drove on a revoked license despite the consequences, which is evidence of poor judgment and a failure to understand how his actions were responsible for the case being in the court system.

¶ 48 As the trial court noted, Robert made efforts to engage in services and tried to stay in contact with Christian during his incarcerations. But at no point during the more than three years the case was in the court system were caseworkers or therapists able to say that in the reasonably near future Christian could be returned to Robert's care with the knowledge that he would be in a safe and stable environment. Indeed, although he came close, he never progressed to the point

where he was allowed to have unsupervised visits with Christian. While there were no doubt a number of contributing factors, including the closing of ECFA and a delay in finding a therapist for Robert, the primary factor was Robert's three incarcerations while the case was pending, which repeatedly curtailed his ability to make progress toward Christian's return home. Thus, the State met its burden of proving that Robert was unfit for failing to make reasonable progress in any of the five periods specified in the State's petition.

¶ 49 Next, Robert asserts that in making its finding of unfitness, the trial court erred in considering the effect his incarcerations had on Christian. Robert contends that this goes to the child's best interest, which is not relevant in judging a parent's fitness. *In re Syck*, 138 Ill. 2d 255, 276 (1990) ("When ruling on parental unfitness, a court is not to consider the child's 'best interests.' "). Robert notes that in questioning caseworker Crystal Toro, the State asked "What, if any, reaction did Christian have when [Robert] was arrested again in November 2012?" The trial court permitted the witness to answer the question over objection by Robert's attorney stating, "Certainly the child's reaction with respect to the impact of the Father's either absence—you know it goes to his fitness as a parent." Toro responded that Christian was "upset" and "really, really hurt because once again [Robert] was not there to visit him."

¶ 50 Robert contends Christian's reaction to his incarcerations was not relevant to whether he made reasonable progress toward his son's return home and the trial court improperly relied on this testimony in making its fitness determination. We disagree. Nothing in the record indicates that the trial court considered the effect of Robert's incarceration on Christian in making its finding of unfitness. In its ruling, the court referred to Robert's incarcerations as one reason for Robert's inability to complete services in a timely manner or to provide a stable and healthy environment for Christian so that it would be reasonably foreseeable for him to return home. The

court also suggested his repeat instances of driving on a revoked license despite the negative impact on his relationship with Christian were evidence that he lacked insight as to his shortcomings as a parent. Certainly it was not improper for the court to consider that Robert's three incarcerations while the case was pending made it difficult to conclude that it would be able to order the child returned to Robert's custody in the near future.

¶ 51 Termination of Parental Rights

¶ 52 Robert next contends the State failed to prove terminating his parental rights was in Christian's best interests. He specifically contends the State's witnesses at the best interests hearing—the two caseworkers and Christian's foster father—did not have sufficient information to form an opinion about Christian's best interests. He further asserts the evidence of his close bond with Christian was undisputed and weighs in favor of not terminating parental rights.

¶ 53 When the trial court finds a parent unfit under one of the grounds of section 1(D) of the Adoption Act, it must then determine whether termination of parental rights to be in the best interests of the child under 1-3 (4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2012)).The State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest. See *In re D.T.*, 212 Ill. 2d 347, 366 (2004). We will not disturb a trial court's best interests determination on appeal unless it is against the manifest weight of the evidence, meaning the opposite conclusion is clearly evident. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010).

¶ 54 Under section 1-3 (4.05) of the Juvenile Court Act, the court must consider the following factors when making a decision about the best interests of a child: the child's physical safety and welfare; the development of the child's identity; the child's familial, cultural, and religious background; the child's sense of attachment, including love, security, familiarity, continuity of

affection, and the least disruptive placement alternative; the child's wishes; the child's ties to his community; the child's need for permanence including his need for stability and continuity of relationships with parent figures and other relatives; the uniqueness of every family and child; the risks related to substitute care; and the preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). Additionally, a court may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have on his emotional and psychological well-being. *In re Jaron Z.*, 348 Ill. App. 3d at 262.

¶ 55 Christian has been living with his foster family for over four years, more than half his life. In addition to his two foster parents, Christian lives with two half brothers and a half sister, with whom he has formed a strong bond. Caseworkers testified that Christian's foster home is a safe and supportive environment and that Christian is very attached to his foster parents, whom he refers to as Mom and Dad. Christian has also formed bonds in the community, participating in religious activities with his foster parents and half siblings. Christian told the caseworkers he wanted to continue living in his foster home and the foster parents want to adopt Christian.

¶ 56 An important factor in the trial court's best interest determination was Christian's attachment to his foster family and the stability, continuity, and affection they have provided. The trial court noted that for most of Christian's life his foster family has provided for his physical safety and welfare, including food, shelter, health, and clothing, which have helped him in the development of his identity. The court stated, "I have little doubt based on the testimony that the place the he feels safe and protected would turn to when he needed something would be his foster parents." The court also emphasized the continuity of affection, stating it "has been there and can't be overlooked because it's that continuity, that stability that sets a permanency

that allow[s] children to grow and stretch and meet the demands of an ever-changing society." Thus, the court concluded that by a preponderance of the evidence the State showed that it was in Christian's best interest to terminate parental rights.

¶ 57 Robert asserts, however, that he and Christian have a very close bond and termination would be contrary to Christian's best interests. Several witnesses testified that Christian and Robert have a strong attachment and that Christian enjoyed his visits with Robert. But a parent-child bond does not mean that termination of parental rights is not in the child's best interests particularly where, as here, the child has formed an equally strong or stronger attachment to his foster parents, who have provided him security and stability for the majority of his life.

¶ 58 The record shows Robert tried to complete the required services so that he could be reunited with Christian. But for one reason or another, he was never able to reach a point where the caseworkers or trial court found that Christian could be returned to his care or even have unsupervised visitation. Robert essentially asks for another chance. But he has had multiple chances since the case first came into the system in October 2010, and all have resulted in failure. Thus, based on this record before us, which we have thoroughly reviewed, we can find no basis to reject the trial court's decision to terminate his parental rights at the cost of Christian's need to maintain the support, permanency, and stability he has found with his foster parents.

¶ 59 The trial court's finding that terminating Robert's parental rights was in Christian's best interests was not against the manifest weight of the evidence. The record supports the trial court's decision that it was in Christian's best interest to gain permanency by allowing adoption by his foster parents, who have provided a safe and loving home for him for more than four of his seven years.

¶ 60 Affirmed.