2015 IL App (2d) 140588-U
No. 2-14-0588
Order filed March 12, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re JACQUES S., a Minor.	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 10-JA-57
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Jacques S., Sr.,	)	Linda S. Abrahamson,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's unfitness and best-interest findings.

¶ 2 On April 30, 2014, the trial court found that the State had established by clear and convincing evidence that respondent, Jacques S., Sr., was unfit to parent his son, Jacques S. (J.S.). On May 12, 2014, the court found that it was in J.S.'s best interest that respondent's parental rights be terminated. Respondent appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 17, 2009, respondent suffered blunt head trauma in an assault and was in a coma for seven days. The injuries included a skull fracture, epidural hematoma, seizures, and

they required a craniotomy. He was hospitalized until mid-to-late January 2010. After that, he was discharged to a rehabilitation hospital, where he had to re-learn walking and speaking, and, from February to late September 2010, he was either in the rehabilitation hospital or in intensive outpatient rehabilitation. Respondent lives with his aunt, Juanita Wade, age 56. The record reflects that respondent has also suffered from attention deficit disorder and attention deficit hyperactivity disorder. He never finished high school.

¶ 5 A. Pre-Termination Proceedings

¶ 6 J.S. was born on January 21, 2010 (*i.e.*, when respondent remained hospitalized or was transitioning to a rehabilitation facility). On October 13, 2010, J.S. was adjudicated neglected. J.S.'s mother had mental health and substance abuse issues, was not providing adequate care, and was in need of services.[1] Respondent, at the time considered J.S.'s putative father, was found unfit, unable, and unwilling to care for J.S. because he had not yet come forward to care for or protect J.S. (apparently due to his injury and hospitalizations). A DNA test was subsequently conducted, and the results, establishing respondent as J.S.'s father, were received in March or April 2011.

¶ 7 Tasha Curry from Youth Service Bureau (an agency contracted with the Department of Children and Family Services (DCFS)) met with respondent and Wade at Wade's home on February 8, 2011. Based on that meeting, a client service plan for respondent was created on March 24, 2011. However, for purposes of a permanency review hearing that was held on April

[1] J.S.'s mother's parental rights were also terminated, and she is not a party to this appeal. Further, his mother's rights were also terminated with respect to a daughter, Aaliyah, J.S.'s half-sister. As discussed later in this decision, J.S. was placed with the same foster parent as Aaliyah.

4, 2011, respondent rated unsatisfactory on that plan because it rated respondent for the previous six-month period, and he had only begun his participation the last month of that period. Specifically, Curry rated respondent unsatisfactory for not completing items that the March 24, 2011, plan assigned as of March 15, 2011. The court ordered Curry to refer respondent for neuropsychological and parenting-capacity assessments, as set forth in the plan. Further, the court noted that DCFS had discretion to permit supervised visits between respondent and J.S., pending the results of the examinations. The court found that respondent had made some efforts, but no progress toward the goal of return home in 12 months.

¶ 8 Another client service plan was created on July 15, 2011. Respondent was again rated unsatisfactory, but this was due to the fact that the examinations had not yet been completed, in part because additional medical records were needed.

¶ 9 A permanency review hearing that was scheduled for September 28, 2011, was continued because the results from the neuropsychological exam had just been received. On October 5, 2011, respondent appeared at the permanency review hearing. The court received the plan and exam report into evidence. The report, completed by Dr. Michael Blackman, summarized that respondent, age 27 at the time of assessment, would have difficulty parenting, even with help. Blackman found that respondent: (1) had difficulty processing information and concentrating; (2) possessed the cognitive abilities, verbal skills, and memory communication of a child between third and fifth grade (impaired range); (3) possessed the ability to function in daily life as that of a person between ages 15 and 22 (below average range); (4) possessed the socialization skills as that of a person between ages 12 and 22 (below average range); (5) has an I.Q. of 64 (borderline and impaired range); and (6) suffers from depression. The specific diagnoses included

dysthymic disorder (a form of chronic depression), cognitive disorder not otherwise specified (NOS) (an indication of intellectual limitation), and learning disorder (difficulty processing or integrating information). Respondent has difficulty understanding written materials relative to a child's needs.

¶ 10 Curry explained that, although the court had given DCFS discretion to allow supervised visits pending the psychological report, it had not exercised that discretion because it wanted to ensure there were no safety or risk concerns that would first need to be addressed. Further, although the parenting assessment was ordered, the results of the psychological examination were first required. Curry testified that DCFS wanted to wait for the parenting assessment to be completed before beginning visitation. Curry agreed that respondent had been hospitalized for six months due to his brain injury, but that he had contacted her, expressing a desire to have a relationship with J.S., and that he was anxious to visit him. Respondent had been cooperative in getting the necessary consents and records and in participating in the neuropsychological evaluation. Respondent attended parenting classes on his own, and he had completed a course on nutrition and healthy lifestyles. Respondent's aunt, Wade, lived with him and repeatedly asked that J.S. be placed with her, but Curry explained that such placement was not allowed under DCFS policy. Further, Wade could not supervise visits between respondent and J.S.

¶ 11 The court maintained the goal as return home. It found that respondent had made reasonable efforts, but that he had not made reasonable and substantial progress. The court ordered that supervised visitation commence.

¶ 12 Respondent rated unsatisfactory on a client service plan dated January 11, 2012. As explained in more detail below, respondent apparently received parent mentoring from

November 2011, through February 2012, during his visitation. The unsatisfactory rating was based on respondent's failure to follow and implement parenting demonstrations and recommendations from therapists. Respondent was also rated unsatisfactory on a July 20, 2012, service plan, in part due to his continuing failure to implement parenting instruction, but also because, despite recommendations for treatment, he had not yet engaged a psychiatrist to pursue therapy or medication for his diagnosed dysthymic depression and cognitive disorder.

¶ 13 At a permanency review hearing held on March 21, 2012, the court found that respondent made reasonable efforts, but not substantial progress, and that respondent needed to follow up with the services recommended by the neuropsychological and parenting capacity assessments. Further, on June 27, 2012, respondent's aunt, Wade, had submitted to a psychological evaluation concerning her ability to co-parent with respondent and, based on those results, DCFS found that co-parenting was not an option. Specifically, the evaluation reflected deterioration in Wade's cognitive ability. No other family members had come forward to co-parent with respondent.

¶ 14 A permanency review hearing was held on September 19, 2012. The goal was changed to substitute care, pending termination of parental rights, because, although respondent made reasonable efforts, he had not, due to his head injury, made reasonable and substantial progress. It was noted that the neuropsychological and parenting capacity evaluations found that respondent could not parent alone, and, further, that respondent had not made progress in his parenting skills.

¶ 15 On February 27, 2013, a permanency review hearing was held and the court found that respondent had made reasonable efforts, but no progress. The court remained concerned about respondent's ability to meet J.S.'s developmental needs. Similarly, on August 26, 2013, the

court found reasonable efforts, but no reasonable progress. The court determined that, although respondent engaged in all required services and timely attended visits, it appeared that he remained, despite medical and psychiatric treatment, cognitively unable to provide for, discipline, or nurture his son.

¶ 16 On October 23, 2013, the State filed a second amended petition for termination of parental rights, alleging respondent was an unfit parent on multiple bases, including due to a mental impairment that rendered him unable to discharge his parental responsibilities in a reasonable time (750 ILCS 50/1(D)(p) (West 2010)) and his failure to make reasonable progress toward the return of the child to the parent within the time periods of October 14, 2010, to July 14, 2011; July 15, 2011, to April 15, 2012; April 16, 2012, to January 16, 2013; and January 17, 2013, to October 17, 2013 (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 17 The termination proceedings commenced on November 15, 2013, and are described below. However, in the midst of those proceedings, a permanency review hearing was held on February 27, 2014, wherein the court found respondent had made reasonable efforts, but not reasonable progress.

¶ 18 B. Unfitness Hearing

¶ 19 i. State's Case

¶ 20 Trial on the petition to terminate commenced on November 15, 2013. Felicia Nicosia testified that she is a counselor for Youth Service Bureau. In October 2011, Nicosia was assigned to be a clinical observer of respondent's visits with J.S. In that role, Nicosia was to observe the visits with the intent to monitor safety and the interactions. Nicosia was only to intervene if a safety issue arose. Nicosia observed nine visits between November 2, 2011, and

February 22, 2012. The visits were never unsupervised, and they never took place in respondent's home. Instead, respondent's visits with J.S. took place at a public library and in the observation room at the Youth Service Bureau, which has a room with a mirrored window so that Nicosia could observe without being seen. Nicosia felt compelled to intervene almost every visit, and sometimes more than once.

¶ 21 Specifically, Nicosia observed that, despite instruction and explanation, respondent had difficulty maintaining the specific mealtime and bathroom schedule J.S.'s daycare facility required. To assist respondent with the schedule, Nicosia wrote it on a whiteboard, but respondent either did not understand it or did not use it. Further, because it appeared that respondent could not easily use an analog clock, Nicosia suggested that he check the digital clock on his cell phone or set alarms thereon to maintain J.S.'s schedule. Respondent did not do so. Nicosia observed sanitation issues, such as respondent changing J.S.'s diaper and then serving him food without washing his hands, and respondent not requiring J.S. to wash his hands before eating. Once, J.S. dropped a piece of meat on the floor, and respondent picked it up and gave it back to him. Another time, respondent fed J.S. a hot dog but, because he did not have any utensils, he cut the hot dog into pieces using his thumbnail and hand. Respondent did not first wash his hands. This was of particular concern because Nicosia explained to respondent that J.S. had previously been hospitalized with a respiratory virus, which left his immune system suppressed and put him at a higher risk to contract illness from contacting germs. Nevertheless, respondent's failure to wash hands, either his own or J.S.'s, before eating, was a continuing concern.

¶ 22 Nicosia reported that she observed safety issues, such as respondent feeding J.S. food that was too large. For example, during their first visit, respondent gave J.S. apple slices. J.S.'s foster mother, who was present in the observation room during that visit, informed Nicosia that the slices were too large and that J.S. (age two at the time) had a tendency to put too much food into his mouth at once. Nicosia entered the room and brought to respondent's attention the choking hazard. Respondent was not happy with the intervention and noted that he did not have a knife to further cut the apples. Nicosia provided respondent with a knife from the kitchen, reminded respondent that, when he was finished, he would need to put the knife in a safe place, and returned to the observation room. Respondent used the knife, but did not cut the apples small enough, and he did not monitor how many pieces J.S. put into his mouth. J.S. began choking on the apples. Respondent said "oh shit" and sat down next to J.S., but he did not touch J.S. while he was coughing and choking. Nicosia returned to the room to intervene, but by then, J.S. had thrown up. After confirming that J.S. could breathe, Nicosia obtained paper towels for respondent to clean up the vomit, which was on J.S., respondent, and the couch. Respondent cleaned up himself and J.S.'s shirt and pants, but he did not clean up the vomit on the couch or floor, and he did not change J.S.'s clothes. Later, when J.S. was playing, he knocked the knife (that was used to cut the apple) onto the floor, picked it up, and handed it to respondent. Respondent then put the knife in a secure place.

¶ 23 Other safety issues included allowing J.S. to stand on a small slide with a toy fishing pole rope wrapped around his neck. Respondent told J.S. to remove the rope from his neck, but did not walk over and remove it himself. J.S. kept playing with it, and it came untangled from his neck on its own. Once, J.S. retrieved a bottle of ibuprofen from the diaper bag. On certain

visits, respondent let J.S. walk around while eating. During a visit in the library, J.S. wandered toward the entrance, but respondent did not follow him. Instead, a caseworker re-directed him. At times, respondent did not pick up on cues that J.S. needed to use the bathroom, including on one occasion, where J.S. told respondent he needed to use the bathroom, but respondent said it was time to eat. J.S. soiled himself, and respondent changed him, but then respondent returned to preparing food without washing his hands, and he was visibly agitated when Nicosia reminded him to wash his hands. On certain occasions when J.S. was upset, particularly upon separation from his foster mother, respondent would get frustrated, and although he tried to comfort J.S., he would say things like, "why are you doing this to me," and other statements reflecting a lack of understanding about why J.S. was upset. Other times, however, respondent made attempts to comfort J.S., saying things like "she will be back" and "this is your time with daddy." Further, respondent played with J.S. and read to him, and he was able to distract the child with games, toys, books, or snacks. There were times when J.S. was smiling and happy during visits, and he was comfortable with respondent.

¶ 24 In sum, Nicosia related that respondent appeared to want to be a good parent. Respondent was genuinely interested in his son and had affection for him. However, Nicosia testified that respondent not only was not able to receive direction or assistance, he would, at times, reject it. Nicosia testified that, over the course of the nine visits, she did not see improvement in respondent's functioning as it pertained to safety issues, nutritional concerns, his ability to take direction, his ability to appropriately discipline J.S., or his ability to understand J.S.'s physical or emotional needs. Although she saw improvement in the father-son

relationship, Nicosia remained concerned about respondent's ability to care for J.S. and she testified that she did not see that changing quickly.

¶ 25 Tasha Curry testified that she is a caseworker for Youth Service Bureau. Curry has been the caseworker on J.S.'s case since its inception. Curry explained that visitation commenced on October 24, 2011, and she attended the initial and several subsequent visits. The initial visits contained some awkwardness and reluctance on J.S.'s part, which was to be expected. However, respondent did not demonstrate confidence or the ability to redirect J.S. when needed. Curry testified that she had observed hundreds of visits prior to those between respondent and J.S., and, based on her experience, she would still expect the parent, even in early visits, to exhibit more instruction, narration, and communication than what respondent displayed. Her observations in the visits confirmed the information in the neuropsychological report in terms of respondent's limitations and ability to parent independently. One of those limitations reflected that parenting instructions could not be given only verbally, in a typical class-lecture format, so Nicosia was brought in to observe visits and to help demonstrate appropriate parenting behavior. One of respondent's requirements pursuant to the parenting capacity assessment was that he be able to take direction and instruction from his therapist and to use those instructions to demonstrate appropriate child care skills.

¶ 26 Curry recounted that, at a visit to the Elgin library on November 23, 2011, J.S. was very active and would run away. Respondent did not hold J.S.'s hand or properly supervise him, resulting in Nicosia and Curry following and watching him. Curry recalled telling respondent to hold J.S.'s hand, take him to an area where he could not easily run off, and engage J.S. in a book or something similar. Respondent seemed to understand the instructions, but his attempts to

implement the instructions did not work. Respondent tried to hold J.S.'s hand, but when J.S. ran off, respondent laughed and looked at Curry. Curry and Nicosia went to get J.S.

¶ 27 Further, respondent was given recommendations on how to assist J.S. with potty training and diaper changes, including how to supervise him on a changing table and how to recognize cues that J.S. might need to use the bathroom (being restless, not being able to sit down, holding himself, etc.). Respondent did not follow those recommendations. At a visit Curry observed on April 2, 2012, respondent yelled at J.S. for spilling water on himself. Respondent did not attempt to clean up the mess or J.S. There existed an ongoing lack of engagement between the two, where J.S. would play in one place and respondent would sit on the couch or elsewhere not engaged in the same activity. Respondent would give one-word directions, such as "no" or "don't," but he could not expand on that for J.S. According to Curry, while one-word directions were appropriate to get a child's attention, they were not appropriate for discipline because, without further explanation, the child does not know what to do instead or why what he did was wrong. She explained the method used by the foster mother and daycare, which involved a few warnings before a timeout or redirection, used the method with him, and then observed his ability to recall and implement it without prompting. Respondent did not implement the procedure.

¶ 28 On a visit on April 2, 2012, Kathy Hull, a case aid, was supervising from a two-way room and Curry was observing. J.S. tried to leave the room to use the bathroom, and he ultimately called out for Hull. Respondent did not pick up on the fact that J.S. needed to use the bathroom. Hull then suggested to respondent that he take J.S. to the bathroom. J.S. used the bathroom, but he then exited without a diaper or any pants on. After J.S. returned to the

visitation room and sat on the couch, Hull instructed respondent to put a diaper and pants on J.S. At other visits, Curry observed J.S. jumping off of a bench in the library in a dangerous manner. Respondent would watch and laugh, so Curry told J.S. to stop because he could get hurt and then she redirected him. According to Curry, Hull had witnessed the same thing on prior occasions and she had told respondent how to handle that situation. Curry testified that respondent also had difficulty maintaining J.S.'s eating schedule and would sometimes bring sugary sweets, despite the daycare facility asking that J.S. not receive those during his visits. On one occasion, respondent asked Curry whether the candy "Skittles" was a sugary snack.

¶ 29 In sum, whether it involved discipline, picking up on J.S.'s cues, nutrition, or safety issues, Curry testified that respondent was not able to implement the corrections he received. Curry testified that there is no doubt that respondent loves J.S.; however, over the course of supervised visitation, respondent did not improve "at all" in his abilities to read J.S.'s cues, protect J.S. from risks, engage with J.S. on a developmentally appropriate age level, or discipline or nurture him. Curry testified that much of respondent's inabilities apparently stemmed from the cognitive disorder with which he was diagnosed, and she saw no evidence or indication that he was ever likely to improve or regain a normal level of cognition.

¶ 30 Valerie Bouchard, a licensed clinical psychologist, testified that, on February 9, 2012, she performed a parenting capacity assessment of respondent. Her assessment took place at the Youth Service Bureau over the course of three to four hours. Specifically, she observed respondent and J.S. interacting for around one hour, she conducted a clinical interview of respondent for around one hour, she spoke with Wade, and she administered tests to respondent that took around one and one-half hours to complete. Prior to her assessment, she reviewed

several documents, including the neuropsychological report. According to Bouchard, the purpose of the assessment was to: "provide direct, observable evidence of the relationship, the nature, the quality of the relationship between a parent and a child, as well as parenting skills and capacity to safely and adequately care for a child." Bouchard testified to the disorders diagnosed by Dr. Blackman, and she confirmed that respondent's memory was impaired and that he did not benefit from repetition. Further, she testified that, due to his injury, respondent suffered seizures. At the time of the assessment, Bouchard learned that respondent had stopped taking medication without medical authorization and had suffered a seizure, requiring response from paramedics.

¶ 31 Bouchard testified at length to her observations and her report, which was admitted into evidence. In sum, Bouchard relayed that there was a period during the observation when respondent and J.S. played compatibly, with genuine laughter and connection. Further, "[respondent] was trying to reach out. He was doing his very best and he was reaching out to the child and there were moments there of some genuine connection." Nevertheless, Bouchard testified that, overall during the visit, there was frustration expressed by both respondent and J.S., a lack of attunement between them, particularly in respondent's ability to read J.S.'s cues, and that respondent repeatedly tried to impose his desires and agenda on the child. There was an overall lack of rapport, connection, and attunement. Her interview with respondent reflected that, although he was oriented, he demonstrated difficulty with memory, had limited insight and judgment, and viewed himself as much more capable than others viewed him. Finally, the test she administered led Bouchard to conclude that respondent would not be able to adequately and safely care for J.S. independently. She was of the opinion that the situation, because of the brain damage, would not be resolved in any reasonable period, and she remained concerned that he

had stopped taking his seizure medication. Bouchard testified that, since respondent's injury happened more than two years prior, she would expect that the amount of brain recovery that would happen had already been reached. Bouchard acknowledged that Wade told her she felt respondent could live independently without her assistance, that respondent would be a wonderful father, and that he interacts well with her grandchildren. Further, she agreed that respondent's intellectual deficits did not meet all criteria to classify as mental retardation.

¶ 32 Upon questioning by the court, Bouchard made clear that she was not concerned that any lack of relationship that had developed between respondent and J.S. was the result of any lack of contact. She testified that, even after only a few months, and particularly with a child J.S.'s age, she would expect to see far more affection, attention, and interest in one another, than what she observed:

> "Children will [ ] reach out and seek attention and seek affection and seek closeness with people they feel comfortable with. They won't do that with people they don't feel comfortable with. And what I saw was a child who did not feel comfortable with his father. And even though it had been four or five months since they had been visiting each other, I would have expected a much greater degree of comfort than I saw."

¶ 33 Michael Blackman, a licensed clinical psychologist, testified that, on September 8, 2011, he conducted a neuropsychological evaluation of respondent to assess respondent's overall cognitive and emotional functioning. Blackman learned from Wade that, prior to respondent's injury, respondent had been in special education classes due to learning disabilities. When Blackman met with him, respondent appeared sad, and "he acknowledged that he was so sad that he could not stand it, that he felt like crying, but couldn't." During testing, respondent required

the instructions to be repeated multiple times. Blackman testified at length about the testing procedures and respondent's performance, but he ultimately diagnosed respondent with dysthymic disorder (a chronic, long-term form of depression), cognitive disorder NOS, and learning disorder, as well as the functioning age comparisons previously described in this decision. Blackman testified that, with a head injury, improvement in impairment decreases over time. In other words, functioning after the injury can improve to a degree, but, as time passes, it gets harder to return to the previous level of functioning. The biggest stretch of improvement usually occurs within the first year, and then subsequent improvement is relative to the amount of time that has passed and the person's involvement in therapy. Blackman agreed that, at the time of the hearing, respondent was four years post-injury, and that, when he assessed respondent, he was only two years post-injury. Blackman had not seen respondent in two years. Blackman testified that the cognitive disorder is classified as a mental impairment, while the dysthymic disorder is a mental health disorder. The State rested.

¶ 34 ii. Respondent's Case

¶ 35 In his case, respondent called his cousin, Duana Holmes, who testified that she is a 36-year-old Chicago firefighter and the mother of three children. Wade is her mother. Since 2009, she has relied on respondent to care for her children when she works 24-hour shifts at the fire department. Respondent has a great relationship with her children, and they rely on him for many things, including cooking meals, getting dressed and out the door with homework for school, and ironing their clothes. Respondent does not get annoyed or angry with Holmes's instructions for caring for the children, and he has never given any indication that he is overwhelmed by the children. The children were around ages 13 and 8 (twins) when they

received respondent's care. In addition, respondent cared for Holmes's 80-year-old grandmother when she was injured and lived with the family for one month. She was essentially bedridden, but respondent helped to bathe her, changed her linens, cooked for her and fed her, and got her medication for her. Holmes agreed that her mother and father do not work and, unless they occasionally go out for errands, they are generally home. Holmes has not observed respondent with J.S. Holmes would like J.S. returned to respondent, and she has provided respondent with monetary and other support.

¶ 36 Next, Margie Hamlin testified that she is respondent's aunt. Hamlin works for the State as an "educated surrogate parent," representing children who are expelled from school, and she also works for the Department of Health Services as a personal assistant and power of attorney for her mother (respondent's grandmother) and for others who suffer from dementia or Alzheimer's disease. Hamlin testified that her mother has many health issues, is essentially confined to bed, and requires constant care. On weekends, respondent helps another personal assistant, his cousin, to care for his grandmother. Respondent commutes there by train, and he is responsible for changing his grandmother's soiled clothes, checking her blood sugar and administering medication, preparing meals, dressing and bathing her, and doing laundry, house cleaning, and grocery shopping. From August 2011, until four months prior to the hearing, respondent cared for his grandmother alone, and he started doing it with assistance from his cousin when his grandmother broke her ankle and required two people to assist her. Hamlin always found her mother well cared for by respondent. Hamlin testified that she observed part of one visit between respondent and J.S., and she would like J.S. returned to respondent.

¶ 37 Shenique Hamlin Allen testified that respondent is her cousin. Allen has three children, ages 18, 13, and 11. When they visit with Allen's and respondent's grandmother, Allen leaves them with respondent, who cooks for them. Her children are typically well-behaved, and respondent is not responsible for disciplining them.

¶ 38 Cynthia Sullivan testified that she is respondent's cousin's girlfriend. She has three children, ages 12, 6, and 2. Sullivan and her children lived with respondent for a period, including after his accident. She observed respondent interacting with her children in many ways, including playing with them, making breakfast for them about three times per week, helping with their homework, ironing their clothes, helping with their hair, and bathing them. (At that time, her eldest was age 10, the next child was age 3, and the youngest was not yet born). Sullivan testified that respondent was a "big help" to her and that her children love him and give him the utmost respect. Sullivan has never seen respondent get annoyed with the children or yell at them. If a child was acting inappropriately, respondent would let the parent know or give him or her a timeout. After his injury, around 2010 or 2011 and after a period of recovery, Sullivan felt comfortable leaving her children in respondent's care approximately twice per week for around eight hours. Respondent did a "great job," and, when Sullivan returned home, the children were "fine," the house was clean, they were bathed and fed. At the time of the hearing, Sullivan continued to leave her two-year-old child in respondent's care, while the other children were in school, and, when she returns, the child is clean, fed, and happy. Sullivan does not need to give respondent specific instructions on how to care for the children. In addition to her children, Sullivan has witnessed respondent interacting with her six nieces and nephews (ranging in age from 10 to 17), and his interactions with them are the same as with her

kids. Sullivan agreed that there were times that she left her children in respondent's care when Wade was also home and, because she was not present, she did not know if Wade helped respondent care for the children. Sullivan would like J.S. returned to respondent's care. Respondent rested his case.

¶ 39 iii. Rebuttal

¶ 40 In rebuttal, the State called Nicholas O'Riordan to testify that, in May 2012, he was engaged to perform a psychological evaluation of Wade to assess whether she could co-parent J.S. with respondent. He performed the evaluation at Wade's home and was there for around three hours. Respondent was present, along with two of Wade's grandchildren, one of which was in fourth or fifth grade and the other was around two years old. Wade instructed respondent and the children to move to another room, while she met with O'Riordan. The rooms were close, however, and within earshot of one another. Respondent occasionally called out answers to questions Wade posed to him from the other room. O'Riordan asked Wade to stop that practice. The children were quiet in the other room with respondent, and O'Riordan could hear the television. Respondent cared for the children while O'Riordan was present, he did not seem to have any difficulty doing so, and he did not come and ask Wade for any instructions. O'Riordan noted that he was not there to assess respondent or to evaluate him in any capacity. O'Riordan determined that Wade minimized respondent's issues and was experiencing some cognitive limitations, particularly with memory.

¶ 41 iv. Court's Findings

¶ 42 The trial court found that the State met its burden of establishing respondent's unfitness for failing to make reasonable progress toward the goal of return home in all time periods alleged

by the State, and because he has a mental impairment that renders him unable to discharge his parental duties in a reasonable time. The court found Blackman credible in his diagnosis of the mental impairment cognitive disorder NOS and in his testimony that the amount of recovery or change in respondent that he would expect to see would only decrease over time. She found credible Blackman's testimony that, because of his functioning level and communication and language problems, respondent would have problems parenting. The court found credible Nicosia and Curry's testimonies, noting that it found that some of the concerns they raised were "nitpicky," but that it was nevertheless concerned about the lack of improvement in respondent's ability to discipline, understand J.S.'s needs, and safely parent over the course of respondent's visitations. The court found that the directions given to respondent to assist him were "extremely concrete" and yet, "over that entire timeframe, there was no progress." The court also found Dr. Bouchard's testimony credible and unbiased. The court noted that, with respect to both doctors, it gave their testimonies more weight than other witnesses because of their education and experience and the fact that their testimonies were not contradicted by an expert.

¶ 43 The court stated that respondent made significant and reasonable efforts, did everything asked of him, clearly loves J.S., and that he lives "in the heart of a family who clearly loves him." However, it found that respondent's objective progress was not reasonable, despite his efforts. The court noted that it found respondent's witnesses credible, but biased. The court noted that, while those witnesses testified that respondent plays a significant role as caregiver for his grandmother and nieces and nephews, "I think there is a qualitative difference for caring for some of those family members and parenting full time." Further, it noted the difference between

"what [respondent] is safely doing for his family and what parenting requires of this very active young child."

¶ 44 B. Best Interests

¶ 45 On May 12, 2014, the court held a best-interests hearing. Sherry Butler testified that she is J.S.'s foster mother and that he was placed with her on January 5, 2011. Butler has four biological children (ages 19, 15, 14, 12), one adopted daughter (age 5), and J.S. (age 4) in her care. Butler's adopted daughter is Aaliyah, J.S.'s half-sister. Butler works full time at Kids Therapy as a pediatric physical therapist. When Butler works, J.S. goes to daycare; his needs are met and he does very well there. Butler views J.S. as part of her family, she loves him, and he is very close with his siblings. J.S. calls her "mom." J.S. is included in all family gatherings, they attend church, and he plays soccer. Her home is safe, J.S. appears to feel safe there, and Butler wishes to adopt him. J.S. does not talk about or ask about his visits with respondent, but, when she asks him about them, he "lately" speaks about them in positive terms.

¶ 46 Brooke Plating testified that she works with Youth Service Bureau and that she was J.S.'s caseworker while Curry was on maternity leave. Plating observed J.S.'s visits with respondent over the course of three months, and she agreed that J.S. was happy to see respondent and showed him affection by running and hugging respondent at the beginning and end of each visit. The visits between respondent and J.S. appeared positive, and, although respondent once had difficulty disciplining, she witnessed no safety concerns. Specifically, on one visit, J.S. was "all over the place and running and screaming" and, while respondent asked him to calm down, J.S. continued to be defiant with no consequence. However, respondent allowed J.S. to guide the

visit, choose the activity in which he was interested, and they then participated in those together. She witnessed no inappropriate behavior.

¶ 47 Plating also twice observed J.S. in Butler's home. J.S. appears "very" bonded with Butler, and she loves and cares for him. Butler's home is safe. Butler's other children love him, and J.S. will go to the older children to sit on their laps for comfort and to cuddle. "He pretty much follows Aaliyah around and does whatever she does. So, they are very close." Butler is prepared to adopt J.S.

¶ 48 The trial court applied statutory factors and determined it is in J.S.'s best interests for respondent's parental rights to be terminated. The court noted that J.S. has spent all but six months of his life with Butler and her family and that his half-sister is in the home. J.S. refers to Butler as "mom" and, although he has developed a better relationship with respondent, his sense of attachment is in the foster home, where he is valued, secure, and familiar. The court found that J.S. has a sense of continuing affection in the foster home, and maintaining that placement is the least disruptive placement alternative for him. The court noted that all of J.S.'s community ties, including school/daycare, church, friends, soccer, etc., are present in the foster home, and that his need for permanence favors the foster home. Finally, the court noted that Butler testified that she loves him, wants him, and is ready and able to be his parent. Respondent appeals.

¶ 49 II. ANALYSIS

¶ 50 A. Unfitness

¶ 51 Respondent argues first that the trial court's unfitness finding was contrary to the manifest weight of the evidence. Specifically, respondent contends that the unique circumstances of this case demonstrate that he was severely injured and was making a

miraculous recovery, he made extreme efforts to comply with all expectations placed upon him by DCFS, and he was concerned about J.S.'s welfare. Accordingly, he argues in his initial brief that the court erred in relying on the opinions of Bouchard and Blackman to find that he could not recover fast enough or quantitatively enough to properly parent, given their limited periods of observation (allegedly, one hour by Bouchard and no observations by Blackman of respondent with J.S.). According to respondent, various publications and articles suggest that parenting capabilities of persons with disabilities should be determined by observing the child with the parent over extended periods. Respondent notes that the court received testimony from his relatives and O'Riordan that reflect far more extensive observations of respondent's capabilities for parenting. Respondent notes that the court found that testimony credible, and it should have weighed it more favorably than that of Bouchard and Blackman. We disagree.

¶ 52 We address first the State's motion in its response brief to strike respondent's brief to the extent it relies on "evidence," specifically, articles that were not presented to the trial court. We reject this motion. Respondent relies on the articles as persuasive authority to support his arguments, not as evidence. Further, and in any event, respondent's arguments fail.

¶ 53 A trial court's unfitness finding will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). We need not consider all of the grounds under which the trial court found respondent unfit, as any one of them, if not contrary to the manifest weight of the evidence, is sufficient to affirm the court's finding. *Id.* at 350.

¶ 54 Here, the trial court's finding that respondent is unfit because he is unable to discharge his parental responsibilities (supported by competent evidence from a psychiatrist, licensed

clinical social worker, or clinical psychologist of a mental impairment, mental illness, or mental retardation or developmental disability) and there is sufficient justification to believe that the inability to discharge parental duties shall extend beyond a reasonable time (750 ILCS 50/1(D)(p) (West 2012)), is not contrary to the manifest weight of the evidence. Respondent does not challenge the diagnosis of mental impairment. Rather, the gravamen of respondent's argument is that the court erred in relying on the testimonies of Bouchard and Blackman because they did not spend more than one hour observing respondent with J.S. This oversimplifies the evidence. The court did find the testimony of those doctors credible, particularly Blackman's diagnosis of a mental impairment, and Bouchard's testimony that she witnessed a lack of connection between respondent and J.S. However, the court also explicitly found credible Curry and Nicosia, who *did* spend significant periods observing respondent with J.S. Together, Blackman's testimony concerning respondent's impairment and that further improvement from his injury is unlikely, coupled with the observations of Bouchard, Curry, and Nicosia regarding respondent's lack of improvement over time in his ability to implement concrete parenting instruction, makes clear that the court's unfitness finding was not contrary to the manifest weight of the evidence.

¶ 55 We agree with respondent that termination cases are unique unto themselves and that we should be careful before making factual comparisons between cases. See, *e.g.*, *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999). However, looking only to the evidence in this case, it is clear that there was sufficient evidence for the court's findings. Further, much of respondent's arguments attack witness credibility or the weight the court gave to the evidence. Of course, "[b]ecause the trial court has the best opportunity to observe the demeanor and conduct of the parties and

witnesses, it is in the best position to determine the credibility and weight to be given to the witnesses' testimony." *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). Although the court here found respondent's witnesses credible, it determined that they were family members who loved him and, therefore, were biased. It was within the trial court's province to weigh the evidence and to determine that more weight should be given to the expertise and education of Bouchard and Blackman and, further, that there is a difference between parenting a small child full time and providing the care to relatives as described by respondent's family members. See *In re M.S.*, 302 Ill. App. 3d at 1002 ("our function is not to substitute our judgment for that of the trial court on questions regarding the evaluation of the witnesses' credibility and the inferences to be drawn from their testimony; the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses as they testify."). In sum, the court's finding that respondent is unfit because a mental impairment precludes him from discharging his parental duties in a reasonable time must be affirmed.

¶ 56 As mentioned, we can affirm the unfitness finding on any one ground, and our analysis could end here. Further, respondent did not challenge in his opening brief the court's finding that he failed to make reasonable progress toward the goal of return home and, therefore, we could find that argument forfeited. Nevertheless, because the State argues in its response brief that the court's unfitness finding on that ground should be affirmed, and because respondent does, in his reply brief, challenge the finding, we exercise our discretion to add that the court's finding of lack of reasonable progress, too, is within the manifest weight of the evidence.

¶ 57 A parent may be found unfit for failing "to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period

following the adjudication of neglected or abused minor. 750 ILCS 50/1(D)(m)(iii)(West 2010). Here, the overwhelming testimony was that respondent had not made progress with respect to implementing parenting instruction on matters such as discipline, safety, and his overall ability to understand J.S.'s needs. It was undisputed below, and it is patently clear to this court, that respondent made reasonable efforts. It is clear that he loves his son, and his efforts to maintain his parental rights are laudable. Nevertheless, reasonable progress requires demonstrable or measurable movement toward the goal of reunification. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). Here, there was clearly adequate evidence from which the trial court could find that no reasonable progress had been made to placing J.S. in respondent's care. J.S. went into care at the age of six months, and he was four years old at the time of the best-interests hearing. In that period, respondent never achieved unsupervised visitation. Nicosia and Curry testified that they intervened repeatedly at visits and that, despite practical demonstrations, respondent was unable to implement those instructions into his parenting. Overall, the witnesses saw no change over any period in respondent's functioning. As such, it was not unreasonable for the court to find that no reasonable progress had been made and J.S. was no closer to being placed in respondent's care. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068 (2004).

¶ 58 B. Best Interests

¶ 59 Respondent next argues that the court erred in concluding that it was in J.S.'s best interests that his parental rights be terminated. Respondent argues that the court erred because, before it rendered its decision, it received no updates concerning the reports of Blackman and Bouchard, which were now "stale." The court should not have relied on those reports,

respondent argues, particularly given the fact that the evidence reflected that, more recently, respondent's rapport with J.S. had improved. We disagree.

¶ 60 It was not against the manifest weight of the evidence for the trial court to conclude that termination of parental rights was in J.S.'s best interests. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-103(4.05) (West 2010)), including the child's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Id.*

¶ 61 Here, as respondent acknowledges, the court relied only in part on Bouchard's and Blackman's reports for its best-interests finding. Although the court considered the case history and the DCFS reports, when considering the section 1-3(4.05) factors, it relied heavily upon the testimony it heard in court at the best-interests hearing. It is true that the testimony included evidence from Plating that reflected positive visits between respondent and J.S. However, the court also heard evidence from Plating that J.S. is "very" bonded with Butler, that she loves and cares for him, her home is safe, her other children love him, he is close to the other children, including his half-sister, whom Butler adopted, and that Butler is prepared to adopt J.S. Butler testified consistently with Plating, also providing evidence that J.S. goes to church, daycare, and plays soccer and that he is included in all family activities and is considered part of the family. Butler testified that J.S. came into her care at six months old, he is now age four, and he calls her "mom." In light of this evidence, we cannot find contrary to the manifest weight of the evidence the court's findings that factors such as J.S.'s physical safety and welfare; need for permanence,

stability and continuity; sense of attachments, love, security, and familiarity; and community ties, including school/daycare, weigh in favor of terminating respondent's parental rights. We affirm the court's best interests finding.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 64 Affirmed.