2015 IL App (2d) 150235-U
No. 2-15-0235
Order filed August 18, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re E.H., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 13-JA-161
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Willie T.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determination that respondent was unfit was not against the manifest weight of the evidence. The trial court's determination that termination of respondent's parental rights was in the minor's best interests was also not against the manifest weight of the evidence.

¶ 2 Respondent, Willie T., appeals the judgment of the circuit court of Winnebago County determining that he was an unfit parent and terminating his parental rights to the minor, E.H. Respondent argues that the trial court's determination of unfitness was against the manifest weight of the evidence because the State did not prove, by clear and convincing evidence, that he failed to maintain a reasonable degree of interest, concern, or responsibility toward the minor or that he failed to make reasonable progress toward the goal of returning the minor to his custody

in any of the nine-month periods under review. Respondent also argues that the State failed to prove, by a preponderance of the evidence, that it was in the minor's best interests to terminate his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 20, 2013, Allison H. gave birth to the minor. On that date, the Department of Children and Family Services (Department) received a hotline call alleging the birth of the minor and that her mother, who had two other children in foster care, had not been attending her recommended counseling. At the time of the call, respondent was in prison. There had been allegations of domestic violence against respondent, both in other relationships and within his relationship with the mother. In November 2012, the mother had obtained an order of protection against respondent, and this order was in effect during the relevant times pertaining to this appeal. In addition, a guardian *ad litem* for the minor's half-siblings, who were residing with the mother and respondent, obtained an order of protection on their behalf against respondent, and this was also in effect at the relevant times.

¶ 5 On April 21, 2013, the minor was taken into protective custody. On April 23, 2013, the State filed a neglect petition on the minor's behalf. On April 23, guardianship and custody of the minor was awarded to the Department. Also on that date, the minor was placed with her foster family. She has remained with the foster family since. On June 17, 2013, the minor was adjudicated neglected.

¶ 6 At the December 13, 2013, hearing, respondent remained in custody, but had been taken to a facility in Wisconsin for failing to pay child support for another of his eight other children. Respondent engaged in all of the services he was able to while he was incarcerated. This included substance abuse treatment and parenting classes. The trial court determined that

respondent had made reasonable efforts toward the return of the minor (obviously, it could not actually be "return" of the minor, because respondent had been incarcerated when the minor was born, but "return of the minor" conveys the concept).

¶ 7 At an April 28, 2014, hearing, respondent had been released from incarceration. He was living with one of his brothers. The caseworker testified that she believed that respondent was making reasonable efforts, but believed he had not been making reasonable progress toward the goal of the return of the minor. Respondent had been assigned the tasks of attending parenting classes, maintaining contact with the caseworker, signing the various releases and consents required by the Department, completing drug and alcohol treatment, remaining free of drugs and alcohol, and completing domestic violence treatment for the review period. Respondent completed his parenting classes while he had been incarcerated. Respondent was maintaining contact and had signed the necessary releases and consents. Respondent completed drug and alcohol treatment while in custody. Respondent also attended visitation with the minor, but, as he had just been released from incarceration, had only had a single visitation. Respondent behaved appropriately during this visit. Respondent did not complete domestic violence treatment, which had not been offered during his just-ended incarceration. Additionally, he had not completed an integrated assessment, but the caseworker, on cross-examination, conceded that the assessment could not be completed telephonically while respondent had been incarcerated, and respondent had not been visited while incarcerated. The caseworker opined that respondent had made reasonable efforts, but had not made reasonable progress toward the return of the minor because he was no closer to achieving custody of the minor. Respondent argued that he had made both reasonable efforts and progress because he had completed five of the six assigned services. The trial court agreed and determined that respondent had made both reasonable

progress and reasonable efforts; the trial court further set the goal to be a return home in 12 months.

¶ 8 On October 8, 2014, the minor's mother, about two weeks in advance of the next scheduled permanency hearing, signed consents for adoption of the minor. There was a little confusion over respondent's absence, but it was realized that he was to attend the upcoming October 20, 2014, permanency hearing.

¶ 9 On October 20, 2014, the trial court held the next scheduled permanency hearing. Respondent was not present, and he had not given either notice of his absence or, later, a reason for his absence from the hearing. The caseworker testified that, upon his release from incarceration in April 2014, respondent had been requested to complete assessments and services in furtherance of the goal of obtaining the minor's return: an integrated assessment; an assessment for domestic violence counseling conducted by Clarity Counseling; individual counseling services, consisting of initial adult group counseling sessions transitioning into individual counseling; and domestic violence counseling services. The caseworker testified that, at the end of May, after several missed appointments, respondent completed his integrated assessment. Similarly, with respect to the domestic violence counseling, early in July 2014, respondent was referred to Clarity, but not until the middle of September 2014 did respondent complete his assessment with Clarity for domestic violence counseling. Respondent then attended three group counseling sessions, but then sporadically attended the group counseling. In order to be qualified for individual counseling, respondent was required to attend five to six consecutive group sessions, but, as of the date of the hearing, had not done so. For the domestic violence counseling, on September 24, 2014, respondent attended a single class, but did not attend any further classes. Respondent was likely to be discharged from this service due to

nonattendance.

¶ 10 The caseworker testified that respondent had an hour of visitation with the minor each week. He attended the visitations regularly, but was often 10 to 15 minutes late. Within about the month preceding the hearing, respondent had begun consistently to arrive on time for the appointment. Respondent also maintained contact with the caseworker, but respondent lacked a phone and did not have relations or friends with access to a phone. At the time of this hearing, respondent had changed his residence and was living with a different brother.

¶ 11 On June 19, 2014, respondent complied with a request for urine sampling. The sample he provided, according to the testing lab, had indications of tampering. The test was held to be inconclusive, but suspicious. On September 25, 2014, respondent was requested to provide another urine sample and declined to do so. The September 25 test was deemed to be positive.

¶ 12 Based on this testimony, the caseworker recommended that the goal be changed from return to substitute care pending termination of respondent's parental rights. Following argument, the trial court agreed. The court noted that it was in a new review period and that, for this hearing, respondent had not appeared and had given neither notice nor explanation for his failure to appear. The court determined that, during the new review period, respondent had not made reasonable efforts or reasonable progress toward the goal of returning the minor. The court changed the goal from return to substitute care.

¶ 13 In December 2014, the State filed its motion to terminate respondent's parental rights. On January 22, 2015, respondent was arrested on a domestic battery charge and incarcerated in the Winnebago County jail. On January 28, 2015, the trial court held a fitness hearing.

¶ 14 Respondent testified that, for nearly all of the first year of the minor's life, he was incarcerated because he violated his probation for failure to pay child support. Respondent

acknowledged that he did not pay child support for the minor, but explained that he had never received a court order requiring him to pay child support for the minor. Respondent also acknowledged that he had eight other children, had his parental rights terminated for "two that [he knew] of," and had never had custody of any of the other children. Respondent also acknowledged that he had never provided food or shelter for the minor since her birth, but he had bought a few clothes. Respondent also acknowledged that he did not write letters or send cards to the minor at any time since her birth, and he did not inquire about the minor's health or development during his incarceration or even during the time he was not incarcerated and conducting visitation with the minor.

¶ 15 Respondent admitted that, between June 2013 and May 2014, he had not completed domestic violence counseling, and, between June 2013 and January 2015, he had not completed individual counseling. Respondent testified that, while incarcerated in Wisconsin for failure to pay child support, he had completed substance abuse treatment and a parenting education class. Respondent testified that, after his release, he participated in individual counseling (however, this testimony is rebutted by record, which showed that he participated in group counseling but never qualified for individual counseling). Respondent testified that he cooperated with the caseworker and regularly attended his scheduled visitation with the minor. Respondent testified that, in visiting the minor, he would ride the bus or walk, if he did not have bus tokens. Respondent also conceded that he missed a lot of appointments and assessments. Respondent explained that he missed them when his mother was in the hospital, he was in court, or he was ill.

¶ 16 The caseworker testified that she initially contacted respondent while he was incarcerated. At that time, respondent was asked to complete domestic violence counseling, individual counseling, substance abuse counseling, and parenting classes. (The record indicates

that respondent completed substance abuse counseling and completed a parenting class while he was incarcerated.) In April 2014, respondent was released from incarceration. The caseworker completed an initial meeting with respondent, at which time an integrated assessment was scheduled for May 2014. Respondent missed three appointments to complete the integrated assessment, but, early in June 2014, completed the integrated assessment.

¶ 17 After completing the integrated assessment, the caseworker asked respondent to complete domestic violence counseling and individual counseling. In June or July 2014, respondent was asked to complete a substance abuse assessment due to the results of a urine test that indicated the sample may have been tampered with. (We note that the caseworker testified that she verbally informed respondent of the referral for a substance abuse assessment; respondent testified that he was never told he needed to complete a substance abuse assessment.) The caseworker testified that respondent never completed the substance abuse assessment.

¶ 18 For the domestic violence counseling, respondent was referred to Clarity Counseling. The caseworker testified that respondent attended the assessment and one class. The case worker testified that there were 26 classes in the domestic violence counseling program at Clarity; in November 2014, respondent was discharged from the domestic violence counseling program due to his nonattendance. In respondent's testimony, he indicated that he believed that, because the goal was changed as a result of the September 2014 permanency hearing, he was no longer allowed to attend counseling services. The caseworker testified that she did not tell respondent at any time that he could not attend his services, such as the domestic violence counseling.

¶ 19 The caseworker testified that, in the summer of 2014, respondent was referred to receive individual counseling. Before a client may attend individual counseling sessions, however, the client is usually required to attend group counseling sessions. In respondent's case, he was

required to attend five to six group counseling sessions consecutively before he would be eligible to participate in individual counseling. Respondent attended three consecutive group counseling sessions, then he missed two weeks, attended the next week, and missed a third time. The caseworker testified that respondent failed to give valid excuses for missing the sessions and that he did not complete either the group counseling prerequisite or the individual counseling services.

¶ 20 The caseworker testified that, shortly after his release from incarceration, respondent attended a Child and Family Team meeting. The caseworker explained that such a meeting reviews the client's case and proposed services with the client, and allows the client to ask questions and raise any issues he or she may have. A second Child and Family Team meeting was scheduled for September 29, 2014. Respondent did not attend the meeting, offering the explanation that his mother was ill. The meeting was rescheduled to October 6, 2014, but once again, respondent did not attend. This time, respondent offered no explanation for his failure to attend. A third Child and Family Team meeting was scheduled and held in December 2014. Respondent attended the December meeting.

¶ 21 The caseworker also testified that an administrative case review was scheduled to be held in August 2014. Respondent did not attend the case review.

¶ 22 The caseworker testified that, at no point was respondent allowed unsupervised visitation with the minor, and no progress had been made toward unsupervised visitation. Similarly, no progress was made toward placing the minor with respondent. The caseworker explained that respondent's lack of progress was because he was not completing the required services.

¶ 23 On cross-examination, the caseworker agreed that, even though respondent was unemployed and did not have a phone, he was able to maintain contact and regularly attended his

visitation with the minor, doing well with the minor during the visits. Additionally, the caseworker noted that respondent had completed parenting classes and substance abuse treatment, at least before the summer of 2014.

¶ 24 Also on cross-examination, the caseworker testified that respondent was late to his visitation, at least initially. Respondent was informed that, if he were able to let them know he was going to be late, then he could be accommodated, and the visitation would begin when he arrived and last for an hour from that time. Respondent did not, however, give them notice, so his visits were shortened by the amount of time that he was late.

¶ 25 On March 11, 2015, the trial court pronounced its ruling on respondent's fitness. The court stated:

> "I have reviewed all of the evidence, testimony, witness credibility, considered that as well as arguments of counsel, and find that the State has met its burden and proven the following by clear and convincing evidence as to [respondent], Paragraph 9, Count 1 and Count 3 [in the State's petition to terminate respondent's parental rights].
>
> Some salient facts, just a timeline: The first nine-month period that was considered was June 17, 2013[,] to March 17, 2014. The second period was March 17th to December 17, 2014. Reasonable process was not made by the father during either of those time period; also, under Count 1, he failed to maintain a reasonable degree of interest[,] concern[,] or responsibility.
>
> The father was placed in the Winnebago County Jail on September 28, 2012. In November 2012, the mother obtained an order of protection against the father for herself and this minor's two older siblings who had been taken into care. This child was then born on April 19, 2013.

In August 2013, the father was transferred from the Winnebago County Jail to the Chippewa Falls Jail in Wisconsin for failure to pay child support for a child other than this one. The father was finally released from Chippewa Falls Jail on April 7, 2014. Basically the father was incarcerated practically the first full year of this minor's life.

However, the father did do some services while he was in jail, he did some substance abuse and he did some parenting classes. And the—but during those nine-month periods of time as cited, the father did not make any reasonable progress, meaning there were no steps taken as far as being able to return this child home to the father. Also, some other facts on the permanency review of October 20, 2014, the father was found to have made no reasonable efforts or reasonable progress.

Once the father was—once the father was released, he, as far as maintaining a reasonable degree of interest, concern or responsibility, he was not asking about doctors['] appointments, developmental screens, where the placements were, any questions as to how the child was doing.

As far as support, there was no financial support. He did testify that he provided a pair of shoes and an outfit once or twice.

An additional piece of information was that the order of protection that was taken out by the mother in November 2012, I believe it was, for two years which extended to November 2014, and again that was for the mother and the two older siblings of this minor.

Once he got out he did not follow through with all the meetings he was asked to do. He did not complete his domestic violence or individual counseling services that he had been asked to do and missed a number of meetings with the Department about

services and his child. So I believe there's ample evidence to find that the State has met its burden in Count 1 and Count 3 of their motion."

¶ 26 The trial court then proceeded to a hearing on the best interests of the minor. The caseworker testified that, based on personal observations and periodic visits to the minor's foster home, she concluded that the minor was strongly bonded with the foster parents. The caseworker also testified that the minor would be excited to see respondent during his weekly visitation, but she noted that respondent was "not there on a daily basis to provide her with the things she needs." Moreover, respondent had once again been incarcerated, and, since October 2014, had only a single video visitation while he was at the jail. The minor participated, and was pleased to see respondent on the video screen, but, after about 10 minutes of the scheduled 30-minute visit, was "done."

¶ 27 The caseworker testified that the minor had gone to daycare from about six weeks of age to the present. She had occasional play dates with her friends, and it was expected, as she aged, to have increasing involvement in her community.

¶ 28 The minor's placement with her foster parents also included two older siblings on her mother's side. The foster parents were in the process of adopting the two older siblings. There was an additional younger sibling, who was in a different foster placement, but who was also located in town. The minor had visits with this sibling. The caseworker explained that the minor's foster parents did not seek to adopt the younger sibling due to the younger sibling's medical needs, but noted that the foster parents were committed to maintaining a relationship between the minor and her younger sibling. The caseworker also noted that the minor had been accepted and included in the foster parents' extended family, and she attended holidays, birthdays, and family gatherings.

¶ 29 The caseworker opined, based on her interactions and observations of the minor, her foster parents and foster family, and respondent, that it was in the minor's best interests to terminate respondent's parental rights and to free the minor for adoption. The caseworker also noted that the minor "need[ed] a legal permanent home for her to grow up in." The caseworker further supported her opinion by noting that the foster parents provided for the minor's physical, emotional, mental, and developmental needs. The minor was also thriving within the foster family.

¶ 30 On cross-examination, the caseworker testified that the foster parents were undecided as to whether they would continue the minor's relationship with respondent. The minor also had siblings on respondent's side, but the caseworker had not been given any contact information with them; the caseworker admitted that she had not asked respondent for contact information.

¶ 31 The foster mother testified that, if "it was appropriate and in the best interest of [the minor,] we would be willing [to continue the minor's relationship with respondent]." Likewise, if it were feasible and appropriate, the foster parents would be willing to initiate a relationship between the minor and her siblings from respondent's side.

¶ 32 Respondent testified that he was expecting to be released from incarceration within a month. At that time, he planned to resume living with his brother. Respondent testified that his brother's place would be a suitable home for the minor.

¶ 33 The foster father read a letter to the court that he and the foster mother composed. The letter emphasized the bond between the minor and her siblings residing at the foster parents' home. The letter further emphasized that the minor was part of the foster parents' family and they were committed to providing the minor with the emotional, social, financial, and developmental support she needed and deserved.

¶ 34 Following the parties' arguments, the trial court pronounced its judgment:

"As you know, the law gives us—gives the Court and the attorneys something call[ed] statutory best interest factors, those are factors that the Court has to consider when one considers whether or not to terminate a parent's rights.

I have considered those statutory best interest factors, I think they've been covered well both by the report and by the testimony from the foster parents, and believe the State has met its burden and proven by preponderance of the evidence that it would be in [the minor's] best interest that the parental rights of her biological father be terminated, and therefore the Court will terminate [respondent's] parental rights.

Now, as I tell every parent who walks in this courtroom what this is about and the only reason we're here is to do what's in the child's best interest. And unfortunately, [the minor's] father has taken himself out of her life, that's not her fault. She has found a home where she has been able to grow, develop, she's able to be with her siblings, her biological siblings and be raised with them.

I know because I've read that [respondent] has at least 8 other children, and I believe from the reports they're older, in their 20's and maybe late teens from what I thought the report was. There maybe was not any kind of an effort on the father's part to make those siblings a part of her life, bringing them up in how to contact them, that's not this child's fault. So I believe that she has found a safe, stable placement, loving. And it's very much in her best interest to stay where she is, in the home, the only home she's ever known."

¶ 35 After terminating respondent's parental rights, the trial court then changed the goal to adoption of the minor. Respondent timely appeals.

¶ 36 II. ANALYSIS

¶ 37 On appeal, respondent challenges the trial court's determinations that he failed to make reasonable efforts and reasonable progress in any nine-month review period toward the goal of placing the minor in his care. Respondent also contends that the trial court erred in determining that it was in the minor's best interests to terminate his parental rights. We consider the points in turn.

¶ 38 We initially note that this appeal was accelerated under Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Pursuant to that rule, the appellate court must, except for good cause shown, issue its decision in an accelerated case within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Here, on March 11, 2015, respondent filed his notice of appeal (with an amended notice of appeal filed on March 13, 2015). Thereafter, respondent's counsel requested a 16-day extension to file his opening brief, which this court granted. Respondent timely filed his opening brief. However, the brief did not comply with Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013), and we struck the brief on our own motion. Respondent was granted a month to remedy his opening brief, requiring that the briefing schedule to be adjusted. The adjusted deadline for the reply brief to be filed in this case (although respondent chose not to file one) was July 21, 2015, only 20 days before the 150-day period expired. We find these circumstances to constitute good cause for this decision to be issued after the time frame mandated in Supreme Court Rule 311(a).

¶ 39 Turning to respondent's arguments on appeal, he first argues that the trial court erroneously determined that he was unfit because he failed to maintain a reasonable degree of interest, concern, or responsibility toward the welfare of the minor. In order to terminate a parent's rights involuntarily, a trial court must comply with the requirements set forth in the

Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)). *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). A court can involuntarily terminate a parent's rights only if it first determines, by clear and convincing evidence, that the parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2) (West 2012); *Gwynne P.*, 215 Ill. 2d at 354. The Adoption Act states in the disjunctive that a parent's failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare is a basis for finding the parent unfit. 750 ILCS 50/1(D)(b) (West 2012); *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004). Because it is stated disjunctively, any one of the elements may support a determination of unfitness: the failure to maintain a reasonable degree of interest, or concern, or responsibility as to the child's welfare. *Id.* The State has the burden to prove the parent to be unfit by clear and convincing evidence. *Gwynne P.*, 215 Ill. 2d at 354. The court's determination that the State has proved the parent unfit by clear and convincing evidence is reviewed to determine if it is contrary to the manifest weight of the evidence. *Id.* A court's decision regarding a parent's fitness is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.* In reviewing the trial court's determination, the reviewing court must remain mindful that each case is to be considered and decided on its own unique facts and circumstances. *Id.*

¶ 40 Respondent argues that he was involved with the minor throughout the case, while he was incarcerated and while he was not. Respondent admonishes that the court is to remain mindful of the difficulties of his circumstances and to judge his efforts to demonstrate a reasonable degree of interest or concern or responsibility in light of those difficulties. See *In re Adoption of Syck*, 138 Ill. 2d 255, 278-79 (1990) (factors to be considered include the parent's transportation or lack, the parent's poverty, the statements of others hindering or discouraging

the parent's visitation, and the parent's need to cope with aspects in his own life versus true indifference to the child). With this in mind, respondent notes that he completed all services offered while he was incarcerated, including substance abuse treatment and parenting classes. Respondent also highlights that he was cooperative with the case worker, signed the necessary consents and releases, took GED classes, and secured housing with his brothers. Upon his release, respondent continued to maintain contact with the caseworker, undertook the requested services, and faithfully took advantage of his opportunities for visitation with the minor.

¶ 41 In spite of these successes, however, the trial court held that respondent had not made reasonable efforts at demonstrating his interest, concern, or responsibility as to the minor's welfare. The trial court noted that the evidence also showed that respondent dragged his feet significantly in completing the necessary assessments to get him into group and individual counseling and to enroll him into domestic violence counseling. The evidence also showed that, while respondent was consistent in utilizing his visitation opportunities with the minor, respondent was frequently 10 to 15 minutes late for visitation and did not give the caseworker notice so that he could receive his full visitation time. Respondent also had 8 other children, none of whom were ever in his custody, and about whom he did not speak to the caseworker in order to try to establish a relationship between them and the minor. Respondent had been unemployed after his release, had not contributed to the minor's expenses and, indeed, had purchased an outfit and a pair of shoes for the minor only once or twice. Respondent did not send the minor cards or letters to be read to her; respondent did not ask about the minor's placement, health, or development. Respondent was initially incarcerated for failing to pay child support obligations for a different child; in January 2015, he was taken into jail on charges of domestic battery. This after he was accepted into a domestic violence treatment program, but

was dropped from it for failing to attend after the first session. Likewise, respondent was accepted into a group counseling program and was required to attend five or six sessions before he could attend individual counseling sessions. Respondent attended three sessions and was dropped from the group counseling for failure to attend. Respondent also submitted a urine sample that showed signs of tampering. At that point, he was referred to seek substance abuse counseling services. Respondent did not comply and, in September 2014, refused to take a urine screening, resulting in the refusal being deemed a positive test result. Respondent attended one Child and Team meeting with the caseworker, missed the next scheduled meeting and, when that meeting was rescheduled, missed it as well. Respondent did attend a third meeting after the goal had been changed from return to termination of parental rights. Finally, respondent missed at least one of the permanency hearings in the trial court without notice or excuse presented to explain his absence.

¶ 42 In light of this evidence, we hold that the trial court's determination was not against the manifest weight of the evidence. While respondent should be commended for the efforts he made, ultimately, they were insufficient. Key to the trial court's finding was that, upon release, respondent did not attempt to complete the necessary assessments in a timely manner and to undertake the recommended services thereafter. Because he was not completing the services, respondent was making no progress on the goal of returning the minor to his custody. Respondent did attend visitation, but his participation in the services designed to reunite him with the minor was minimal and plainly insufficient. Because there is ample evidence to support the trial court's determination as to respondent's efforts at demonstrating a reasonable interest or concern or responsibility as to the child's welfare, we cannot say that the trial court's determination was against the manifest weight of the evidence.

¶ 43 Respondent next argues that the trial court erred in determining that he had not made reasonable progress toward the goal of returning the minor to his custody in any of the nine-month review periods after the minor was adjudicated a neglected or abused minor. Although our conclusion that the trial court's determination regarding respondent's reasonable efforts was not against the manifest weight of the evidence is dispositive, meaning that if the court's determination about his progress were erroneous, the result would not change due to the trial court's determination on his efforts, we nevertheless choose to address respondent's arguments on this point.

¶ 44 A parent is unfit, pursuant to the Adoption Act, if he or she failed "to make reasonable progress toward the return of the child to the parent during any 9-month period *** following the adjudication of neglect[] or abuse[] [of the] minor." 750 ILCS 50/1(D)(m)(iii) (West 2012). If a service plan to render the parent fit to have custody of the child has been established, the parent fails to make reasonable progress toward the return of the child to the parent where the parent does not substantially fulfill his or her obligations under the service plan and correct the conditions that led to the adjudication of abuse or neglect in any 9-month period following the adjudication of abuse or neglect. *Id.* We review the trial court's determination as to whether the parent has made reasonable progress in any 9-month period under the manifest-weight-of-the-evidence standard. *Gwynne P.*, 215 Ill. 2d at 354.

¶ 45 While the parent's reasonable efforts are judged by a subjective standard based upon what is reasonable for the particular individual and his or her circumstances, "reasonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). Moreover, the parent's personal circumstances are irrelevant to

the objective standard, even if those circumstances may have impeded or prevented the parent from making reasonable progress. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89. Minimally, reasonable progress is determined by measurable or demonstrable movement toward the goal of returning the child to the parent's custody. *Daphnie E.*, 368 Ill. App. 3d at 1067. The benchmark for measuring reasonable progress is compliance with the parent's service plans and other related court orders so that the court can conclude that it will be to reunite the parent and the child in the near future. *Id.*

¶ 46 Respondent argues that the trial court's determination that he did not make reasonable progress was against the manifest weight of the evidence. Respondent argues that, for the two nine-month review periods, June 2013 to March 2014 (first period), and March 2014 to December 2014 (second period), he made reasonable progress toward the goal of reunification. Regarding the first period, respondent essentially argues that the trial court's determination in the April 28, 2014, permanency hearing, that he had made both reasonable efforts and reasonable progress toward the return of the minor logically forecloses a finding that respondent did not make reasonable progress in the first period at the termination hearing. Respondent argues that, moreover, the finding of reasonable efforts in the first period also logically compels a determination of reasonable progress in the first period.

¶ 47 We need not comment extensively on this argument, as we believe that there is ample evidence supporting the trial court's determination with regard to the second period. Suffice it to say that respondent's former contention, the trial court's determinations in the permanency hearing regarding respondent's efforts and progress foreclosing a contrary result have a bit more logical force than the latter contention that reasonable efforts compel a determination of reasonable progress. Because the parent's progress is measured by an objective standard while

effort is measured by a subjective standard (*id.* at 1066-67), it is easily conceivable that reasonable efforts under the individual's circumstances could still translate into a lack of reasonable progress. As to the former contention, the orders from a permanency hearing are generally interlocutory (*In re Curtis B.*, 203 Ill. 2d 53, 59-60 (2002)), and the holdings of an interlocutory order may be revisited by the trial court before the entry of a final order (*id.*; and generally, *In re Marriage of Herrick*, 267 Ill. App. 3d 131, 135 (1994) (in general, a trial court may review, modify or vacate its interlocutory orders at any time before final judgment")). Thus, even if the trial court gave a determination of reasonable effort and reasonable progress at a permanency hearing, it would not be foreclosed from revisiting the determination at a later time. Thus, respondent's reasoning does not actually stand up. Be that as it may, we turn to consideration of the second period.

¶ 48 Respondent contends that there is ample evidence to support a determination of reasonable progress. Respondent points to evidence showing that, after his release from incarceration, he kept in contact with his caseworker, he completed his integrated assessment, and he began group counseling. Additionally, he attended visitation, making strides in his parenting ability. Respondent argues that these facts show that he was "progressing and not moving backward" during the second period. Respondent also notes that, while incarcerated, "he had already done much of what [the Department] required him to do." Respondent thus implicitly concludes that there was ample evidence supporting his argument that he made reasonable progress.

¶ 49 Respondent's argument, however, turns our review on its head. We review whether the trial court's determination regarding respondent's progress was against the manifest weight of the evidence. *Gwynne P.*, 215 Ill. 2d at 354. This is an entirely different proposition than

determining, as respondent argues, whether there is evidence supporting respondent's argument on appeal. As has been noted, the trial court's determinations regarding a parent's efforts or reasonable progress involves credibility assessments and factual determinations that the trial court is in the best position to make. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90 (2004). Consequently, on review, we defer to the trial court's factual determinations; the trial court's determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or it was arbitrary, unreasonable, and not based on the evidence. *Id.* at 890. Respondent, by contrast and without support, suggests that we should embark on some sort of *de novo* review, reversing the trial court's decision because there is some evidence supporting his argument. This we cannot do.

¶ 50 Under the proper manifest-weight standard, it is clear that the trial court's determination regarding the second period is both amply supported by evidence in the record and is not against the manifest weight of the evidence. In April 2014, Respondent was released from incarceration. His first task was to complete an integrated assessment. Rather than comply, respondent missed three scheduled appointments for the assessment. Eventually, though, respondent did complete the assessment. As a result, service plans were created for respondent to complete domestic violence counseling and individual counseling. (It should be remembered that domestic violence in the form of physical abuse caused the minor's siblings to be taken into the Department's custody and that these were among the conditions that needed correction before the minor could be returned to respondent.)

¶ 51 In August 2014, an assessment for the domestic violence counseling was scheduled for respondent. Respondent missed the appointment. It was not until September 2014, that respondent completed the assessment. On September 24, 2014, respondent attended his only

domestic violence counseling session. The program was a 26-week program, and respondent could miss only three sessions. Respondent did not attend following his first and only session; further respondent did not complete the required domestic violence counseling. This is perhaps made more important by the fact that, in January 2015, respondent was arrested on domestic battery charges. Thus, it is clear that the domestic violence counseling was a reasonable requirement to fulfill before the minor could be entrusted to his care.

¶ 52 With regard to the individual counseling, the service provider required respondent first to complete five to six consecutive sessions of group counseling before moving into individual counseling. Respondent notes that he completed some individual counseling sessions in connection with his substance abuse treatment that he completed while incarcerated. Respondent is apparently insinuating that the individual counseling that was a component of his substance abuse treatment should also count as fulfilling his service plan for individual counseling. If, for the sake of argument, it did, that would still not change, excuse, or mitigate his failure to complete the domestic violence counseling, and the trial court's determination could be upheld on that basis alone. However, respondent's insinuated contention overlooks the fact that, as a result of his assessment, he was directed to complete both individual counseling and domestic violence counseling even though he had participated in some individual counseling while he was incarcerated. Thus, the individual counseling requirement was imposed only after respondent's release from incarceration followed by his eventual completion of the assessment necessary for his referral. Respondent therefore needed to complete both individual counseling and domestic violence counseling in order to progress toward the goal of returning the minor to his custody.

¶ 53 As noted, respondent first had to complete five to six group counseling sessions. The evidence showed that respondent started attending group counseling, going to two consecutive

sessions. Respondent then missed two sessions, and he did not give explanations. Respondent attended a third group session; the next week he missed his third session in four weeks. Respondent told his caseworker that his mother had been ill. The caseworker informed the group counselor of the excuse and informed the counselor that respondent would attend the next week's session. Respondent did not attend the next session. Respondent did not attend any more group sessions and had not completed individual counseling.

¶ 54 Based on these failures to complete the required services, the trial court held that respondent had not made reasonable progress toward the goal of returning the minor to his custody. The failure to progress occurred in the second period, when respondent was discharged from the domestic violence counseling and individual counseling programs. Simply put, the failure to complete (or even to participate in) the services meant that respondent had made no measurable or demonstrable progress toward the goal of returning the minor. Based on this record, we cannot say that that the trial court's determination that respondent had not made reasonable progress was against the manifest weight of the evidence. Indeed, the record amply supports the trial court's determination. Accordingly, we reject respondent's argument.

¶ 55 Respondent also argues that the goal change entered at the October 20, 2014, from return to termination impaired his ability to make progress because he could no longer receive the services. Respondent argues that he was deprived of two month of the second period during which he could have attended the services, but due to the goal change, those services were no longer available. Respondent concludes that he was effectively deceived by the change of goal in the middle of the second period and, perhaps, deprived of the process he was due. We acknowledge the seriousness of the contention, but we conclude that it is supported neither by evidence nor authority. The evidence adduced reveals that respondent was not informed that his

services would be discontinued as a result of the change of goal from return to termination. Moreover, respondent cites to no authority, statute, or regulation that supports his contention that his services were no longer offered once the goal had been changed. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument on appeal is forfeited by failing to cite to the record or to pertinent authority). Accordingly, we reject respondent's argument.

¶ 56 Respondent last argues that the trial court erred in determining that it was in the minor's best interests that his parental rights be terminated. Once the parent has been found to be unfit, the State is required to prove, by a preponderance of the evidence, that the termination of parental rights is in the child's best interest. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 10. When reviewing the trial court's best-interest determination, a reviewing court will disturb the trial court's ruling only if it is contrary to the manifest weight of the evidence. *Tiffany M.*, 353 Ill. App. 3d at 891-92.

¶ 57 In assessing the minor's best interests, the trial court must look at all matters bearing on the minor's welfare. *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. Among the factors to be considered are the ones set forth in the Juvenile Court Act, which also takes into consideration the minor's age and developmental needs:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

The trial court may also consider the nature and the length of the child's relationship with his or her present caretaker along with the effect that a change in the child's placement might have on his or her emotional and psychological well-being. *Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. The trial court's best-interest determination need not contain an express reference to each of the Juvenile Court Act factors and the others mentioned above; a reviewing court is not bound by the trial court's reasoning in affirming the trial court's decision. *Id.*

¶ 58 Respondent argues that a consideration of each factor in light of the evidence adduced in the record generally favors respondent. For example, respondent argues that, considering factor (e) from section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05)(e) (West 2012)), demonstrates "that the child loves and bonds with her father so ripping her away from her father wouldn't [*sic*] appear to be in her best interests." Respondent's analysis continues in a similar vein for the other factors. Based upon his consideration of portions of the evidence in the record in light of the factors, respondent concludes that the State did not carry its burden of proving, by a preponderance of evidence, that termination of his parental rights was in the minor's best interests.

¶ 59 To the extent that respondent is effectively challenging the sufficiency of the evidence supporting the trial court's determination, we believe that, while we make the determination of whether the trial court's best-interests determination was against the manifest weight of the evidence, we can also affirmatively consider whether there was sufficient evidence in the record to plausibly sustain the State's burden. Accordingly, we will consider the trial court's determination in that dual light.

¶ 60 Under the first factor, respondent argues that it favors him because, during his visitations, "there were no indications that he was ever inappropriate" with the minor. However, the first factor expressly includes not only consideration of the child's physical safety, but also the child's welfare including the provision of "food, shelter, health [care], and clothing." 705 ILCS 405/1-3(4.05) (a) (West 2012). Respondent's visitations with the minor spanned only 11 months in the minor's second year of life. The visits would last one hour or less, occurred once a week, and were supervised. In January 2015, respondent was incarcerated on domestic battery charges, and thereafter, had only a single, telephonic visit with the minor which lasted about 10 minutes out of

the scheduled 30-minute appointment. By contrast, the minor was placed with her foster family very shortly after her birth. Testimony revealed that the foster family had provided the minor with food, shelter, clothing, and health care. The minor was developmentally on track for her age, and she was thriving with the foster family. We do not denigrate respondent's accomplishments in forging a bond with the minor in spite of his circumstances; however, we cannot ignore the real fact that for the entirety of the minor's life, her foster family has kept her safe, healthy, and thriving. Further, the success of respondent's one-hour supervised visits with the minor, while significant, does not really indicate that it would be entirely safe to place the minor with respondent, especially where respondent had not completed the necessary counseling services, and had not shown that he could provide a stable, healthy, and safe environment for the minor. Accordingly, while respondent has had some success in his visitations with the minor, we cannot say that his factor favors maintaining respondent's parental rights when all of the evidence is considered.

¶ 61 Respondent argues that the next factor, the development of the child's identity, favors him because the minor "clearly enjoyed and identified with her father and bonded with her father." In making this argument, respondent ignores the facts that, for the first year of the minor's life, respondent was incarcerated and had no contact with her. When he was released, he had hour-long visits each week with the minor, but, over the entirety of her life, the foster family raised the minor, raised the minor's two siblings, and maintained contact with a third sibling. In contrast, respondent had not provided any information to the caseworker about his children and apparently never made any efforts to have the minor included in his family. While the evidence showed that there was a bond between respondent and the minor, and that the minor enjoyed visiting with respondent, the evidence also strongly showed that the minor had a stable family

that included her siblings, and that any identity she was forming was based mostly on her foster family and her siblings. It may be a product of time spent with the foster family, but to remove her from the foster family would seem to strip the minor of the stability and identity that she formed within the foster family for the much more tenuous bond with respondent based on brief, supervised, weekly visits. Contrary to respondent's argument, we cannot conclude that this factor favors maintaining respondent's parental rights.

¶ 62 Respondent argues that the next factors, the child's background and ties and the child's sense of attachments, favor him as well as the foster parents. While we acknowledge that respondent has created a bond with the minor, the foster family, raising the minor since her birth as well as with her siblings, has also created substantial ties and attachments with and for the minor. Respondent was absent from the minor's life for her first year because he was incarcerated. Thereafter, respondent has been an occasional presence in the minor's life, visiting for an hour each week. We do not doubt that the visitation has forged an attachment between the minor and respondent; however, respondent has spent her entire life living in her foster family. The foster family has also included the minor's siblings on her mother's side; respondent did not appear to try to provide information of any of his children to the caseworker to encourage any relationship between the minor and her paternal siblings. The factors, where the child feels love and attachment, sense of security, sense of familiarity, continuity of affection, least disruption, all heavily favor maintaining her placement in her foster family. Accordingly, we cannot accept respondent's weighing of these factors, and we cannot say that they favor maintaining his parental rights.

¶ 63 Respondent argues that the next factor, the child's wishes and long-term goals, weighs in his favor, because "the child loves and bonds with her father so ripping her away from her father

wouldn't [*sic*] appear to be in her best interests." We disagree on whether this factor is applicable. At the time of the termination hearing, the minor was two years of age. We do not believe that she is of an age where her wishes must be taken much into account; further she is plainly too young to formulate long-term goals. Respondent's argument is not actually about weighing the factor; rather, respondent is arguing that, because he and the minor have bonded to whatever extent, he should not be forced from her life. This argument is not without weight, however, it actually says nothing about the factor under consideration and is more properly directed to other factors. With that said, respondent's contention gives too little consideration to the balancing contemplated by these factors: the foster parents have also bonded, and the evidence suggests that it is to a much stronger extent, to the minor. The converse of respondent's argument, ripping the minor from her foster parents (and, in a very real sense, the only mother and father she has known) would even more strongly appear to be contrary to the minor's best interests. Accordingly, while this factor is actually not applicable, we also reject respondent's associated argument.

¶ 64 The next factor about which respondent argues concerns the child's need for permanence and stability. Respondent contends that the minor "clearly identifies [respondent] as her father. *** To make the decision to break [the minor] away from her family *** is not in her best interests and taking [respondent] away from her clearly does not give her a sense of permanency." Respondent concludes that, "[i]f anything[,] it is stripping [the minor] of the only father she's [*sic*] ever known." Respondent's argument fails to consider the reality of the minor's life and placement with her foster and prospective adoptive family. The foster family received the minor very shortly after her birth and raised her for nearly two years. The foster family includes two older siblings on the biological mother's side as well as integration into the

foster family's biological and legal extended family and the biological mother's family, where possible. Respondent made no efforts to include the minor into his family or his extended family. The foster mother was unaware that respondent had children until it was brought out in testimony at the termination hearing. Comparing the permanency and stability the minor enjoys with her foster family, respondent's argument is more appropriate to the foster family: if anything, keeping the status quo defeats stability and permanency, while awarding custody to respondent would literally strip the minor of the only family she has actually known, as opposed to occasional and brief visits with respondent. Contrary to respondent's contention, we cannot say that this factor remotely favors maintaining respondent's parental rights.

¶ 65 Respondent argues that the next factor, the uniqueness of the child and family, favors him because "[the minor is] and would be better served with more parental figures in her life." The evidence shows, however, that the minor's family is her foster family. Respondent provided the minor with her genetic inheritance and the spark of life; the minor's family, however, is the foster family who has raised her since birth, provided love, affection, shelter, food, clothing, and encouragement. This is not to say that respondent also does not love the minor, only that he is not in her immediate family. Accordingly, we cannot say that this factor balances in favor of maintaining respondent's parental rights.

¶ 66 The remaining factors, risks associated with substitute care, and the preferences of the persons available to care for the child, also favor termination. The minor is with foster parents and family, who have indicated a desire to adopt the minor and her two older siblings. The evidence shows that the placement is stable, safe, and loving, so there is minimal risk associated with adoption by the foster family. Additionally, respondent is not in a position to have custody of the minor, because he has not completed the necessary services, has never spent more than an

hour with the minor at a time, and was incarcerated again at the time of the termination hearing. Respondent has not demonstrated that he would be able to provide a stable, safe, and healthy environment for the minor and has been living in apparently temporary accommodations with his brothers when he is not incarcerated. These factors cannot be said to remotely weigh in favor of maintaining respondent's parental rights.

¶ 67 Our weighing of the evidence against the factors enumerated in section 1-3(4.05) of the Juvenile Court Act is squarely against respondent and in favor of termination and the foster family. We cannot say that the trial court's determination, that termination of respondent's parental rights was in the best interests of the minor, was against the manifest weight of the evidence.

¶ 68 III. CONCLUSION

¶ 69 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 70 Affirmed.