2015 IL App (3d) 140750-U

Order filed March 4, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re L.P.S,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-14-0750
	)	Circuit No. 12-JA-161
v.	)	
	)	
Randy S.,	)	The Honorable
	)	David J. Dubicki,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a termination of parental rights case, the appellate court held that: (1) the trial court's finding of parental unfitness was not based upon improper evidence; (2) the trial court's best-interest determination was not against the manifest weight of the evidence; and (3) the biological father was not denied effective assistance of counsel in the termination proceedings. The appellate court, therefore, affirmed the trial court's judgment, terminating the biological father's parental rights to his minor child.

¶ 2 In the context of a juvenile-neglect proceeding, the State filed a petition to involuntarily terminate the parental rights of respondent father, Randy S., to his minor child, L.P.S. After hearings on the matter, the trial court found that respondent was an unfit parent/person and that it was in L.P.S.'s best interest to terminate respondent's parental rights. Respondent appeals, challenging the finding of parental unfitness and the best-interest determination, and also raises a claim of ineffective assistance of trial counsel. We affirm the trial court's judgment.

¶ 3 I. FACTS

¶ 4 Respondent and Mollie P. were the biological parents of the minor child, L.P.S., who was born in May 2012. In July 2012, the Department of Children and Family Services (DCFS) took protective custody of L.P.S. and placed him in a relative foster home after both parents were arrested for an incident of domestic violence that occurred in the family home while the minor was present. Shortly thereafter, the State filed a juvenile neglect petition. The petition alleged that L.P.S. was subjected to an injurious environment in that: (1) Mollie P. and L.P.S.'s sibling were previously involved in a juvenile court case from June 2005 until January 2007, with Mollie P. surrendering her parental rights; (2) both Mollie P. and respondent had a history of domestic violence, substance abuse, and mental health problems (specific incidents were listed in the petition); and (3) both Mollie P. and respondent had a history of prior criminality (the specific crimes and the dates were listed in the petition). Mollie P. and respondent were given court-appointed attorneys to represent them in the juvenile court proceedings.

¶ 5 On September 14, 2012, after an adjudicatory hearing in which respondent and Mollie P. stipulated that the State could prove the allegations contained in the neglect petition, L.P.S. was found to be neglected. A dispositional hearing was immediately held, at the conclusion of which, the trial court found that respondent and Mollie P. were unfit parents. The finding of

unfitness as to respondent was based upon: the contents of the neglect petition, his history of domestic violence, his drug and alcohol usage, and his history of prior criminality. The trial court made L.P.S. a ward of the court and named DCFS as L.P.S.'s guardian.

¶ 6 At the time of disposition, respondent was given certain tasks to complete in order to correct the conditions that led to the adjudication and removal of L.P.S. Those tasks included: (1) to cooperate fully and completely with DCFS; (2) to obtain a drug and alcohol assessment arranged by DCFS and to successfully complete any course of treatment recommended; (3) to perform random drug and/or breathalyzer tests two times per month; (4) to participate in and successfully complete individual counseling; (5) to participate in and successfully complete a parenting course or classes specified by DCFS; (6) to participate in and successfully complete a domestic violence course or classes specified by DCFS; (7) to obtain and maintain stable housing conducive to the safe and healthy rearing of L.P.S.; and (8) to visit with L.P.S. at the times and places specified by DCFS and to demonstrate appropriate parenting conduct during those visits.

¶ 7 The first permanency review hearing was held in February 2013. Respondent was present in court for the hearing and was represented by his court-appointed attorney. A report, which had been prepared for the hearing by the caseworker, Jessica Cargill, indicated that respondent had completed many of the tasks that were assigned to him. Respondent had: (1) completed his drug and alcohol assessment with no treatment recommended; (2) tested negative on all of his required drug tests, except for one that he missed, which was considered to be a positive drug test by the caseworker; (3) attended all of his visits with L.P.S. and had cared appropriately for, and interacted well with, L.P.S. at those visits; (4) completed a domestic violence assessment and had participated in domestic violence classes, which he was scheduled to complete later in the month; (5) successfully completed parenting classes; and (6) participated

in individual counseling and had only missed one session for which he had called in advance. In addition, respondent was living at a residence in Peoria, which he was working on improving. Although L.P.S.'s bedroom in the residence appeared safe, the residence itself still needed a few improvements before it would be considered to be safe for a young child. Based upon respondent's positive progress, Cargill recommended in her report that respondent be found to be fit. After considering Cargill's report, the trial court found that respondent had made reasonable efforts toward achieving the service plan/permanency goal and that respondent was now fit. The trial court set the permanency goal at returning the minor home to respondent within five months. In addition, the court left it to DCFS's discretion (the local agency) as to when L.P.S. would be returned home to respondent.

¶ 8 Another permanency review hearing was held in August 2013. Respondent was present in court for the hearing and represented by his attorney. A report, which had been prepared for the hearing by Cargill, indicated that as for the positive aspects of respondent's performance, respondent: (1) had successfully completed domestic violence classes in March 2013; (2) had interacted appropriately with L.P.S. at the visits he had attended; (3) had obtained a new drug and alcohol evaluation in July 2013 (required after some positive drug tests); (4) was scheduled to start outpatient treatment in August 2013; and (5) was still working on improving the home in which he was residing, which was not yet safe for a young child. In addition, Cargill noted in her report that L.P.S. appeared to be bonded to respondent and did not want to leave when the visits had ended. As for the negative aspects of respondent's performance, the report indicated that respondent: (1) did not visit with L.P.S. from about April 10 until about May 22, 2013, although respondent had attended visits regularly prior to that time; (2) had missed a visit on May 29, 2013, because he had failed to confirm the visit in advance as instructed; (3) had tested

positive for cannabis in February and March 2013; (4) had tested positive for cocaine in June 2013; (5) had missed two drug tests in April, one in May, one in June, and one in July 2013; (6) had missed several individual therapy sessions in April and May 2013; and (7) was arrested in April 2013 for not paying previous fines and spent about a week in jail. Cargill noted in her report that since respondent's arrest, he appeared angry due to his decreased visitation time and negative service plan. Respondent believed that the local DCFS agency, the Center for Youth and Family Services (CYFS), was not working with him. Although respondent's visitation was initially increased and made unsupervised when he regained his fitness, it was returned to supervised visitation after respondent failed the first two drug tests as noted above. Cargill recommended in the report that respondent again be found to be an unfit parent. Cargill commented in her report that respondent had made only minimal progress since the last permanency review hearing, that respondent was not taking responsibility for his actions, and that respondent had not corrected the conditions that had brought L.P.S into care. After considering Cargill's report, the trial court found that the goal of returning the minor home to respondent within five months was no longer appropriate and changed the permanency goal to return home of the minor pending status. The trial court also found that respondent had not made reasonable efforts to achieve the service plan/permanency goal and that respondent was again an unfit parent.[1]

¶ 9 A third permanency review hearing was held in February 2014. Respondent was present in court for the hearing and was represented by his attorney. The permanency review report,

[1] The written order from the August 2013 permanency review hearing did not specifically note that the trial court had found that respondent was unfit. The State later made a motion to clarify, and the trial court ruled that it did in fact find that respondent was an unfit parent at the August 2013 hearing.

which Cargill had prepared for the hearing, indicated that as to the positive aspects of respondent's performance, respondent: (1) had entered in early January 2014, the Victory Acres Recover Program, a long-term, Christian-based service; and (2) respondent was attending weekly therapy sessions and working daily recycling pallets into mulch as part of the Victory Acres program. As for the negative aspects of respondent's performance, the report indicated that respondent: (1) had not been compliant with CYFS; (2) believed that CYFS took Mollie P.'s side in the case, instead of his; (3) had not completed any drug tests during the reporting period; (4) had told the caseworker in November 2013 that he was self-medicating; (5) had never showed up for, or called about, the outpatient treatment program he was supposed to start in August 2013; (6) had not visited with L.P.S. since August 21, 2013; (7) had contacted the agency in October 2013 and scheduled a meeting with the agency so that he could start visiting L.P.S. again but never showed up for the meeting; and (8) was discharged from individual counseling in August 2013 for failing to attend. At the conclusion of the report, Cargill recommended that the service plan/permanency goal be changed to substitute care pending a court decision on the termination of respondent's parental rights and that respondent be found to still be an unfit parent. Cargill noted further in her report that respondent had not made any progress since losing his fitness in August 2013. After considering Cargill's report and some letters that had been filed from relatives of respondents, which all recommended, either directly or indirectly, that respondent not be given back custody of L.P.S, the trial court found that the current service plan/permanency goal was inappropriate and changed the service plan/permanency goal to substitute care pending a decision on termination of respondent's parental rights. The written order for the permanency review hearing, however, did not contain specific written findings as to the reasons for the

permanency goal change. The trial court also found that respondent had not made reasonable efforts to achieve the service plan/permanency goal and that respondent remained an unfit parent.

¶ 10 On March 20, 2014, the State filed a petition to terminate respondent's parental rights to L.P.S. The termination petition alleged that respondent was an unfit person as defined in section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West Supp. 2014)) in that he had failed to make reasonable progress toward the return home of L.P.S. for any nine-month period following the adjudication of neglect. The nine-month period specified in the petition was from March 31, 2013, to December 31, 2013. Respondent filed his initial answer to the termination petition in May 2014 and denied the allegation raised in the petition.

¶ 11 A fourth permanency review hearing was held in July 2014. At the time of the hearing, respondent was still residing at Victory Acres. Respondent was present in court for the hearing and was represented by his attorney. The permanency review report, which had been prepared for the hearing by Cargill, indicated that as for the positive aspects of respondent's performance during the period, respondent: (1) was participating in the services offered at Victory Acres, which included daily bible study classes, submitting to random drug tests, attending therapy sessions, and working making mulch;[2] (2) had been compliant with CYFS; (3) was responsible for engaging in court-ordered services, which were offered at Victory Acres; (4) was completing drug tests at Victory Acres, which were all negative; (5) reported to the caseworker that he had also stopped smoking cigarettes; (6) had visited regularly with L.P.S. for an hour a month, starting in about the middle of February 2014, at Victory Acres (although respondent had not visited with L.P.S. from August 21, 2013, until that time); (7) had interacted appropriately at his

[2] To some extent, Cargill had to assume that respondent was participating in the services at Victory Acres because she had not been able to reach respondent's counselor at that location.

visits; (8) was scheduled to be released form Victory Acres in October 2014; and (9) would receive help from Victory Acres in finding housing and employment upon his release from the facility. As for the negative aspects of respondent's performance, the report indicated that respondent had failed to participate in the substance abuse treatment program or individual counseling that DCFS had recommended and had, instead, elected to enter into a program that he had chosen on his own at Victory Acres.[3] Cargill noted in her report that although respondent had been attending therapy sessions at Victory Acres, she was concerned that the therapy was more Christian-based, rather than being based on addressing the reasons why L.P.S. came into DCFS's care. At the conclusion of her report, Cargill recommended that the permanency goal remain the same and that respondent be found to still be unfit. After considering the report, an addendum to the report, some letters from the program manager at Victory Acres, and some testimony from respondent regarding the Victory Acres program, the trial court found that respondent had not made reasonable efforts to achieve the service plan/permanency goal because respondent was not doing the services as specified in the plan, but, rather, had chosen his own program to complete.[4] The trial court maintained the current permanency goal that was already in place.

¶ 12 After the July 2014 permanency review hearing had ended, respondent's attorney told the trial court that he wanted to address another matter related to the child. A short recess was taken.

[3] Cargill elaborated further on that matter at the hearing in responses to questions from the trial court.

[4] The trial court had also received a letter from one of respondent's sisters, asking that respondent's parental rights be terminated and that L.P.S. remain with the foster parents. Although the written order lists that the trial court considered the letter, the trial court stated orally that it was not considering the letter in making its ruling because much of what was described in the letter happened many years ago and because respondent's sister was not present in court to be cross-examined about the contents of the letter.

When the court was back in session, respondent's attorney orally moved to amend respondent's answer to the termination petition. The motion was allowed. Respondent's attorney filed an amended answer to the termination petition in which respondent stipulated that the State could prove that he was an unfit parent/person as specified in the petition. The trial court thoroughly questioned and admonished respondent regarding the stipulation. As part of that question-and-response process, the trial court confirmed with respondent that he was stipulating in his amended answer "that the State could prove, by clear and convincing evidence, that [respondent] was unfit in that [he] failed to make reasonable progress towards the return of the minor to [him] during the relevant 9-month period, being March 31 of '13, to December 31 of '13[,]" and told respondent that they would "be focusing at trial on that 9-month period." Respondent indicated that he understood those admonishments and all of the other admonishments and confirmed that his amended answer to the termination petition was given freely and voluntarily. After the trial court's question-and-response process was completed, the trial court found that respondent's stipulation to the parental unfitness portion of the petition was knowingly and voluntarily given. The case was set over to another court date for a prove-up.

¶ 13 Respondent was present in court for the prove-up and was represented by his attorney. At the prove-up, the State provided a factual basis for the allegations in the termination petition. In providing the factual basis, the State first asked the trial court to take judicial notice of the neglect petition, the adjudication of neglect, and the dispositional order, wherein respondent was assigned certain services to complete. Respondent's attorney had no objection to that request. The State then moved to admit State's Exhibit No. 1 (Exhibit No. 1), which was a certified copy of respondent's drug tests at Proctor First Care. The trial court asked the State if the exhibit included the relevant period, and the State responded that the exhibit included more than the

relevant period. Respondent's attorney had no objection to the admission of the exhibit, and the exhibit was admitted. The State then moved to admit State's Exhibit No. 2 (Exhibit No. 2), which was a copy of respondent's drug treatment records from White Oaks. In seeking admission of the exhibit, the prosecutor stated, "[a]gain, I'm only asking the Court to take notice of the records during the relevant nine-month time frame." Respondent's attorney had no objection to the admission of the exhibit, and the exhibit was admitted. Third, the State sought to admit State's Exhibit No. 3 (Exhibit No. 3), which was a certified copy of respondent's counseling records for CYFS. Again, the State asked the court to take notice of just the documents during the relevant time frame. Respondent's attorney had no objection, and the exhibit was admitted.

¶ 14 In addition to the exhibits, at the request of the trial court, the State proffered that if the matter had proceeded to a hearing on the parental-unfitness portion of the termination petition, the State would have called the caseworker, Cargill, to testify that: (1) she was assigned L.P.S.'s case from the time when L.P.S. first came into DCFS's care and was the caseworker for the entire nine-month period in question; (2) during that time period, respondent's services were to cooperate, complete a drug and alcohol assessment, do two random drug tests a month, attend counseling, provide stable housing, and visit with the minor child; (3) with regard to respondent's level of cooperation, once respondent tested positive for cannabis in March 2013, his cooperation began to lessen and his contact with Cargill became less and less; (4) Cargill hardly had any contact with respondent from August 21 through December 31, 2013; (5) on August 21, 2013, respondent attended a family team meeting and stated that he would re-engage in services but indicated that he felt that CYFS was working against him; (6) contrary to his statement at the meeting, respondent did not re- engage in any services; (7) at the beginning of October 2013,

respondent called CYFS and set up a meeting for October 3, 2013; (8) respondent did not attend the October 3 meeting but, instead, called and said that he had been arrested for driving with his license suspended or revoked; (9) respondent remained in jail from October 3 through October 7, 2013; (10) in about the middle of November 2013, respondent called Cargill and told her that he was severely depressed and that he was self-medicating; (11) Cargill scheduled a meeting for respondent shortly thereafter, and respondent did not show up for the meeting; (13) respondent called Cargill again in late December 2013 and indicated that he was staying at the rescue mission and was on a waiting list for Victory Acres; (14) other than those contacts with Cargill, respondent did not participate in any services; (15) in regard to his drug and alcohol assessment, respondent had tested positive in March 2013 for marijuana, so Cargill referred him to get a new drug and alcohol evaluation; (16) later during the relevant nine-month time frame, respondent tested positive again for marijuana and also tested positive for cocaine; (17) respondent completed the new drug and alcohol evaluation in early July 2013 and was supposed to enter treatment at White Oaks but never did so; (18) respondent was also supposed to take two drug tests a month, but he missed most of those tests; (19) in early June 2013, respondent tested positive for cocaine and then stopped doing drug tests altogether; (20) as for individual counseling, Cargill had referred respondent to CYFS; (21) respondent started missing counseling sessions in April 2013; (22) respondent attended one session in May and one session in June 2013; (23) respondent last attended individual counseling in about the middle of June 2013 and was eventually unsuccessfully discharged from counseling; (24) with regard to stable housing, respondent had indicated to Cargill that he had a house on which he was doing repairs; (25) Cargill had viewed the house on one occasion and a stove in the house was not vented outside and was leaving smoke in the house so Cargill told respondent that the house, in that condition,

was not an appropriate place for the minor child to reside; (26) as for visitation, respondent had no visits with L.P.S. from about the middle of April 2013 until shortly after the middle of May 2013, even though he was entitled to one visit a week; (29) respondent resumed visitation and visited with L.P.S. from shortly after the middle of May 2013 until shortly after the middle of August 2013; and (30) from that point forward until the end of the nine-month period on December 31, 2013, respondent had no further visits with L.P.S. As an additional part of the prove-up, the State asked the trial court to refer to a certain tab in Exhibit No. 1, which showed that respondent tested positive for cocaine in early June 2013; that respondent's last drug test was in about the middle of June 2013; and that there were no other drug tests after that point. In regard to Exhibit No. 2, the State asked the trial court to review certain tabs in the exhibit, which showed, among other things, that respondent was offered several appointments to start outpatient treatment at White Oaks, that respondent did not show up for any of those appointments, and that respondent basically never received any drug or alcohol treatment from March through the end of December 2013. As for Exhibit No. 3, the State asked the trial court to refer to certain tabs in the exhibit, which showed that respondent did not show up or call for two of his individual counseling sessions in April 2013; that respondent attended an individual counseling session near the end of May 2013 and indicated that he was angry at the system; that respondent did not show up for an individual counseling session near the middle of June 2013; and that from that point forward through the end of the nine-month period in December 2013, respondent never participated in any other individual counseling services. After the State had completed its presentation, respondent's attorney and the guardian *ad litem* (GAL) for L.P.S. were given an opportunity to respond. Both responded that the State's representations were consistent with the discovery in the case. The trial court found that there was a factual basis for respondent's

stipulation, that the stipulation was voluntarily made, and that respondent understood the possible consequences of the stipulation. The trial court determined that the parental-unfitness portion of the termination petition had been proven by clear and convincing evidence. The case was set for a hearing on the best-interest portion of the termination petition.

¶ 15 The best-interest hearing took place in September 2014. Respondent was present in court for the hearing and was represented by his attorney. A best-interest report had been prepared by Cargill in preparation for the hearing and had been filed with the court. In the report, Cargill noted that L.P.S. was two years old and had resided with the relative foster parents since he was two months old. The foster parents had adequately provided for L.P.S.'s basic needs of food, shelter, health, and clothing, and also provided for his medical needs. L.P.S. was doing well in the home and had successfully progressed through the developmental milestones. L.P.S. had an affectionate relationship with the foster parents, referred to them as "mommy" and "daddy," and believed that he was a part of the foster parents' family. L.P.S. seemed to have no memory of living with his biological parents and had developed a very strong, happy, and affectionate relationship with the foster family. The whole foster family adored L.P.S. The foster parents wanted to adopt L.P.S., and the foster mother stated that she could not imagine her life without L.P.S. The foster family had lived in the same home for the past several years and had strong ties with the community and with the church. Because the foster mother was a relative of respondent, she had maintained a relationship with L.P.S.'s grandparents and aunts. Cargill had spoken to those relatives, and they believed that it was in L.P.S.'s best interest to remain in the home with the foster parents. As for L.P.S.'s relationship with respondent, Cargill indicated in her report that L.P.S. had lost his bond with respondent when respondent did not have any visits with L.P.S. from September 2013 to February 2014. L.P.S. did not call respondent "daddy," and

Cargill believed that L.P.S. was merely repeating what respondent had said when L.P.S. told respondent that he loved him. According to Cargill, L.P.S. viewed respondent as a playmate, rather than as his father, and no longer became emotional when the visits were over and it was time to leave. Based on all of the above, Cargill recommended and believed that it was in L.P.S.'s best interest to terminate respondent's parental rights.

¶ 16 At the beginning of the hearing, the trial court acknowledged that it had received the best-interest report and confirmed that there were no updates to the report. The parties were then given an opportunity to ask any questions of Cargill. The questioning was done informally, in the nature of unsworn testimony. Cargill responded to the questions in a manner that was consistent with her report and provided some clarifications when the parties requested it. After Cargill's testimony was finished, the foster father made a brief statement and answered some questions of the parties. During that question and answer session, the foster father indicated that he and the foster mother wanted respondent to do well and to be able to take care of L.P.S., but if the court decided that respondent could not do so, the foster parents could provide a loving home for L.P.S.

¶ 17 In his case-in-chief, respondent called Ken Hohulin, the program manager at Victory Acres, to the witness stand. Hohulin was not a certified counselor but had been to Bible College, had been counseling for many years, and had dealt with a lot of addiction issues when he had worked as a missionary in the Philippines. Hohulin testified in extensive detail about the Victory Acres program. According to Hohulin the program was an inpatient faith-based program that was nine months long. Most of the men that went through the program had some type of addiction problem. Some of the services that were provided or required in the program were daily classes with homework, bible-verse memorization, parenting classes with homework,

individual counseling, random drug testing, and work in the program's pallet-manufacturing shop. According to Hohulin, respondent had about four or five weeks left in the program and was expected to complete the program successfully. Hohulin stated that respondent had put a lot of time into his class work, especially the parenting classes, and had made positive changes in his ability to manage anger, frustration, and stress. Hohulin stated further that there had been other men in the program in the past who were involved in juvenile abuse and neglect situations similar to respondent. According to Hohulin, in past situations when they had to call DCFS in, DCFS looked at the program and encouraged the particular person involved to continue with the program. When participants completed the program, they were provided with about $1,100 in savings and with assistance in finding housing and employment. The graduating participants were encouraged to live in a special area of the Peoria Rescue Mission for a period of time, rent-free, so that they could have accountability while they built up their savings and found other housing and employment.

¶ 18 On cross-examination, Hohulin confirmed that he was not a certified counselor and that he did not have a degree in social work or psychology. The counseling that was offered to residents at the facility was provided by biblical counselors. In addition, the parenting classes were not taught by anyone that was certified in teaching parenting; nor was there anyone on the staff who was certified in drug and alcohol addiction counseling. Hohulin acknowledged further that there was no guarantee as to whether residents would be successful at implementing what they had learned in the program once they got out into the real world, although graduating participants who got involved with the local church and went to church on a weekly basis tended to do well.

¶ 19 In addition to Hohulin, respondent was also called to the witness stand at the best-interest hearing to testify in his case-in-chief. Respondent testified that he was currently sober, healthy, and able; that he no longer smoked cigarettes; and that he never tested positive for any drugs at Victory Acres. Respondent was scheduled to graduate from Victory Acres in the second week of October 2014. Respondent had a couple of job interviews lined up and had a guaranteed full-time job with his old employer, who respondent had worked with for about five years, remodeling, landscaping, flipping houses, and doing construction. In that job, respondent would be paid about $13 to $15 an hour. Respondent was also a certified welder, so he was seeking other avenues of employment as well. Respondent's other job interview was for a full-time position with a welding-manufacturing shop. In that job, respondent could make $15 an hour or more. Respondent was planning on living at the Peoria Rescue Mission or buying another home contract for deed through his previous landlord when he was released from Victory Acres. Respondent knew that L.P.S. was in pre-preschool or daycare and stated that he would try to keep L.P.S. at that location until L.P.S.'s next level of school, even if respondent had to take L.P.S. there and had to pay some type of tuition. Respondent claimed to be a changed person and stated that he felt that he had gained insight into the things that were stressors and triggers in his life and that he was ready to go into the real world. Respondent had already looked into becoming a member of a local church and had an appointment with the pastor of the church to discuss membership. Respondent currently had visits with L.P.S. for one hour every month. Respondent stated that he was excited to see L.P.S. when their visits occurred, that they would play together, and that there was not much reason to discipline L.P.S. at the visits.

¶ 20 Respondent acknowledged that his guaranteed job with his old employer was the same place that he worked when he was using drugs and alcohol. Respondent denied, however, that

he would be around the same people as he was then. According to respondent, the owner allegedly told him that all of those people had been let go and that there was no one currently working at the business that used drugs or alcohol. Respondent's old boss was a recovering alcoholic and/or drug addict, had been clean for seven years, and was the chairman of a local Alcoholics Anonymous group that respondent was planning on attending. Respondent's plan initially, however, was to live at the Peoria Rescue Mission for about a month, so that he could save more money and would not be jumping into a house and bills as soon as he left Victory Acres. Respondent recognized that he did not have to pay things like rent, electricity, gas, or phone while he was living at Victory Acres. Respondent acknowledged that he did not have a driver's license or a car and that he would have to pay off some fines and have an appointment with a hearing officer before he could get his license back (to get a hardship license for work and transportation of L.P.S. while he paid off the remainder of his fines). Respondent claimed that he would maintain L.P.S.'s current relationships, even though respondent himself did not have a relationship with many of those people at the time. Respondent admitted that he had successfully completed alcohol and drug treatment three times in the past and that each time, he eventually began using alcohol or drugs again after the program was over. Respondent acknowledged further that his father had sent him about $3,600 at about the time that the instant case began so that respondent could pay off his fines and get his driver's license back. Respondent was unable to do so, however, because the fines exceeded the amount that respondent had received. Respondent stated that after the trial court had determined that respondent was no longer fit, respondent started using drugs again and used some of the money that his father had given him to purchase drugs. Respondent acknowledged that his family was disappointed in him but believed that they would accept him if he got his act cleaned up.

Respondent commented that the difference between the Victory Acres program and the programs he had done in the past was that the Victory Acres program was a lot longer, had a stronger structure, and was based on religion.

¶ 21 Following the presentation of the evidence, the trial court heard the arguments of the attorneys. The State argued for termination of respondent's parental rights, and respondent's attorney argued against termination. The GAL for L.P.S. represented to the trial court that she agreed with Cargill's recommendation and felt that it was in the best interest of L.P.S. to terminate respondent's parental rights.

¶ 22 After reviewing the reports, the testimony, and the arguments, the trial court made its ruling. In doing so, the trial court discussed several of the statutory best-interest factors in detail. As part of that discussion, some of the comments made by the trial court included the following:

> (1) "[Respondent] is making a good faith attempt to get back on his feet, but even as we sit here today, he's not self-sufficient. He still has a good road ahead of him to complete the program in October, find a place to live, find work, and find a home. Even as we sit here today, he's unfit, dispositionally unfit.
>
> And, of course, there are uncertainties everywhere. There are uncertainties about how [L.P.S. is] going to prosper in the [foster parents'] household, and I think we have a least two plus years of history of knowing that he's thrived within that household. I think there's greater speculation and uncertainty as to [respondent's] future. And we all wish him well, there's no question about that, but he has – and if the past is any indication of what might happen in the future, I'm more – I believe that the child can – will have greater

stability in the foster placement, which is a prospective adoptive placement, than he would have – greater certainty that he would have in [respondent's] home."

(2) "Child's sense of familiarity. Much more familiar with the [foster parents'] household than with [respondent], and to a great degree [respondent], all he had to do was – I realize recently when the goal went to 24, he's visiting but once a month, but he at one time was found fit in this case and had the opportunity to truly take advantage of time spent with the child. He just didn't do that; kind of sabotaged his own efforts to have reunification."

(3) "Child's need for permanence. Now that's extremely important. Stability, continuity of relationship with parent figures, with siblings and other relatives. We all want [respondent] to do well. He has fought addictions for a long period of time. He's been sober now for eight months. He was – I do believe as of the fall of 2013, he was discharged from outpatient and has really done a lot to help himself through the program at Victory Acres. But he does have a long road to stability and providing – and sobriety, which long road means until the – you know, every day of his life, because I'm sure he knows better than anyone that it's a day-by-day matter. But this child's in a place – the child does need permanency, and this is a prospective adoptive placement, and that clearly favors the termination of parental rights of both parents."

(4) "I would also note that one of [respondent's] tasks was to get a drug and alcohol assessment arranged by DCFS or its designee. He self-reported to this Victory Acres, and I don't criticize the program in any sense. From what I can tell, it seems to be a good program, and it's been good for [respondent], and I

> wish him well in doing what's necessary to maintain his sobriety and to go forward in life, but I think that's what this child has to do, too. This child needs certainty and stability and needs to go forward in life."

The trial court ultimately found that it was in the best interest of L.P.S. to terminate respondent's parental rights.[5] The trial court terminated respondent's parental rights, set L.P.S.'s permanency goal to adoption, and named DCFS as the guardian of L.P.S. with the right to consent to adoption. Respondent filed this appeal to challenge the trial court's ruling.

¶ 23 II. ANALYSIS

¶ 24 A. Parental Unfitness

¶ 25 As his first point of contention on appeal, respondent argues that the trial court erred in finding that he was an unfit parent/person. Respondent does not challenge the factual support for that finding. Rather, respondent asserts that the trial court's ruling was erroneous because in making its decision, the trial court considered evidence of matters that occurred outside of the relevant nine-month period. Specifically, respondent contends that Exhibit No. 1, the drug test results, contained information for drug tests and missed drug tests that occurred both within the relevant nine month period and outside of the relevant nine-month period. Respondent contends further that unlike with the other exhibits presented by the State at trial, the trial court did not specifically note that it was limiting its consideration of Exhibit No. 1 to only the information that occurred within the relevant nine-month period. Based upon the alleged consideration of

[5] During the course of the proceedings in this case, Mollie P. decided to surrender her parental rights and executed the appropriate documentation to that effect. Her parental rights were terminated based upon the surrender.

improper evidence, respondent implicitly asks that we reverse the trial court's finding of parental unfitness.

¶ 26 The State argues that the trial court's ruling was proper and should be upheld. The State asserts first that this issue has been forfeited because respondent did not object to the admission of Exhibit No. 1 at trial and has not argued on appeal that the admission of the exhibit constituted plain error. The State asserts second, and in the alternative, that the trial court's finding of parental unfitness was not against the manifest weight of the evidence. Third, and again in the alternative, the State asserts that respondent's contention should be rejected because: (1) a presumption exists that the trial court knew the law and that it only considered proper evidence; and (2) the record in this case shows that the trial court did, in fact, only consider proper evidence in making its ruling. Fourth and again in the alternative, the State asserts that even if the trial court erroneously considered improper evidence, any error that occurred was harmless because the proper evidence of respondent's parental unfitness was overwhelming so that the alleged error did not have any effect on the outcome of the proceedings. The State asks, therefore, that we affirm the trial court's ruling that respondent was an unfit parent/person.

¶ 27 A trial court's finding of parental unfitness in a proceeding to terminate parental rights will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion. *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005); *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90 (2004). A trial court's ruling on the admissibility of evidence in a termination proceeding, on the other hand, will not be reversed on appeal unless the trial court committed an abuse of discretion in making its ruling. See *In re A.W., Jr.*, 231 Ill. 2d 241, 256 (2008). The threshold for finding an abuse of discretion is a high

one and will not be overcome unless it can be said that the trial court's ruling was arbitrary, fanciful, or unreasonable, or that no reasonable person would have taken the view adopted by the trial court. See *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009); *In re Leona W.*, 228 Ill. 2d 439, 460 (2008).

¶ 28 The involuntary termination of parental rights is governed by the provisions of both the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2012)) (Juvenile Court Act) and the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2012)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the first stage of proceedings, the State must prove by clear and convincing evidence that the parent is an "unfit person" 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); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). Section 1(D) lists several grounds upon which a finding of parental unfitness may be made. See 750 ILCS 50/1(D) (West 2012); *C.W.*, 199 Ill. 2d at 210; *Tiffany M.*, 353 Ill. App. 3d at 889. Although numerous grounds may be alleged in a termination petition, the proof of any single ground is sufficient for a finding of parental unfitness. *Id*.

¶ 29 Of relevance to this appeal, a parent may be found unfit under section 1(D) of the Adoption Act if he or she fails to make reasonable progress toward the return of the child to the parent during any nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West Supp. 2014). To determine if reasonable progress has been made, a court will apply an objective standard and will generally consider the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent. *C.N.*, 196 Ill. 2d at 216-17; *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). "At a minimum, reasonable progress requires measurable

or demonstrable movement toward the goal of reunification." *J.A.*, 316 Ill. App. 3d at 565. In determining whether reasonable progress has been made, the trial court may only consider the parent's conduct that occurred during the statutorily prescribed nine-month period. *In re J.L.*, 236 Ill. 2d 329, 341 (2010); *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35. Evidence of the parent's conduct outside of the nine-month period may not be considered. *A.S.*, 2014 IL App (3d) 140060, ¶ 35.

¶ 30 In the present case, before we address the merits of respondent's assertion on appeal as to this issue, we will first dispense with two of the State's arguments, the forfeiture argument and the manifest weight of the evidence argument. First, we decline to apply forfeiture as a basis for denying respondent's claim of error as to this issue on appeal, contrary to the suggestion by the State. Respondent has argued that his attorney's failure to object to the admission of Exhibit No. 1 constituted ineffective assistance of counsel, and our supreme court has recognized that ineffective assistance may, at times, justify an exception to the application of the forfeiture rule on appeal. See *People v. Williams*, 181 Ill. 2d 297, 320 (1998). Second, we need not address the State's claim that the trial court's finding of parental unfitness was not against the manifest weight of the evidence. As we noted previously, respondent has not attacked the finding of parental unfitness on that basis on appeal. Instead, we will turn to the merits of respondent's argument regarding the consideration of improper evidence.

¶ 31 Having reviewed the record in the present case, we find that it does not support respondent's argument—that the trial court improperly considered evidence of respondent's conduct outside of the nine-month period. To the contrary, it is clear from the record that the trial court knew and understood the law and that it applied the law correctly. In admonishing respondent about his stipulation to the parental-unfitness portion of the termination petition, the

trial court specifically told respondent that the focus would be on the nine-month period specified in the petition. In addition, the fact that the trial court questioned the State about whether Exhibit No. 1 contained information from outside the relevant nine-month period is a clear indication that the trial court was well aware of the law in this area, that it was limiting its consideration to only that conduct that occurred during the nine-month period, and that no improper evidence was considered. There is simply no support in the record for respondent's assertion to the contrary. We, therefore, reject respondent's argument on this issue and uphold the trial court's finding of parental unfitness. Having done so, we need not address the State's additional arguments on this issue in support of the trial court's ruling.

¶ 32 B. Best Interest

¶ 33 As his second point of contention on appeal, respondent argues that the trial court's best-interest determination was against the manifest weight of the evidence. Respondent asserts that the trial court's finding was erroneous because it was based more on the fact that respondent had been found unfit and not ready to care for the minor, rather than on the statutory best-interest factors. Respondent asserts further that the trial court misstated or misinterpreted the evidence when it found that it would be a long time before respondent would be able to care for the minor, when the evidence actually showed that respondent had only a few weeks left in the Victory Acres program, in which he had done well; that he had completed counseling; that he had not tested positive for drugs or alcohol for the past several months; and that he had a job and housing lined up for when he was finished at Victory Acres. Respondent implicitly asks, therefore, that we reverse the trial court's best-interest determination.

¶ 34 The State argues that the trial court's decision was proper and should be upheld. The State asserts that the evidence overwhelmingly established that it was in L.P.S.'s best interest to

terminate respondent's parental rights so that L.P.S. could be adopted into the current foster home. In making that assertion, the State notes that respondent had relapsed three times in the past after completing drug and alcohol counseling programs. The State contends, therefore, that it was not likely in the present case that respondent would become a fit parent anytime in the near future. For those reasons, the State asks that we affirm the trial court's best-interest ruling.

¶ 35 In a termination proceeding, once the trial court finds that a parent is unfit as defined in section 1(D) of the Adoption Act, the trial court must then determine, pursuant to the Juvenile Court Act, whether it is in the minor's best interest to terminate parental rights. See 705 ILCS 405/2-29(2) (West 2012); *Tiffany M.*, 353 Ill. App. 3d at 891. The burden of proof in the trial court is upon the State to show by a preponderance of the evidence that termination is in the minor's best interest. *Tiffany M.*, 353 Ill. App. 3d at 891. The trial court's ruling in that regard will not be reversed on appeal unless it is against the manifest weight of the evidence. *Id.*

¶ 36 In a best-interest hearing, the focus of the termination proceeding shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in having a stable and loving home life. *D.T.*, 212 Ill. 2d at 364. The issue is no longer whether parental rights can be terminated, but rather, whether in the child's best interest, parental rights should be terminated. *Id.* In making a best-interest determination, the trial court must consider, in the context of the child's age and developmental needs, the numerous statutory factors listed in section 1-3(4.05) of the Juvenile Court Act. See 705 ILCS 405/1-3(4.05) (West 2012). Some of those factors include the child's physical safety and welfare, the development of the child's identity, the child's sense of attachment, and the child's need for permanence and stability. 705 ILCS 405/1-3(4.05) (West 2012). The trial court may also consider the nature and length of the child's relationship with the current caretaker and the effect that a change in placement would

have on the child's emotional and psychological well-being. *Tiffany M.*, 353 Ill. App. 3d at 893. Although the trial court is required to consider the statutory factors in making its best-interest determination, it is not required to articulate specific reasons for its decision. See *id.*

¶ 37 In the instant case, after having reviewed the record, we find that there is ample evidence to support the trial court's determination that it was in the best interest of L.P.S. to terminate respondent's parental rights. The evidence presented at the best-interest hearing indicated that L.P.S. was in a stable, secure, and loving home with his foster family, where he had lived for nearly the past two years, since two months after he was born. L.P.S. had bonded with his foster parents, who were willing to adopt him. All of L.P.S.'s needs were being met in the foster home, and it was the opinion of the caseworker and of the GAL that it was in L.P.S.'s best interest to terminate respondent's parental rights. Based upon the record presented, we find that the trial court's best-interest determination was not against the manifest weight of the evidence. See *C.N.*, 196 Ill. 2d at 208; *Tiffany M.*, 353 Ill. App. 3d at 892-93. Therefore, we affirm the trial court's ruling on this issue.

¶ 38 C. Ineffective Assistance of Counsel

¶ 39 As his third and final contention on appeal, respondent argues that the trial court's ruling should be reversed because he was denied effective assistance of counsel in the termination proceedings. Respondent asserts first that his appointed attorney's performance was deficient in the termination proceedings in that his attorney: (1) failed to require the trial court to make specific written findings in the February 2014 permanency review order to support the trial court's change of the permanency goal as required under the Juvenile Court Act; (2) failed to ensure that a new or updated service plan was prepared and filed based upon the February 2014 permanency goal change as required under the Juvenile Court Act; (3) allowed the proceeding to

move forward without the above two requirements of the Juvenile Court Act having been satisfied; (4) allowed respondent to stipulate to the parental-unfitness portion of the termination petition, even though respondent had been found fit just five months prior to the start of the relevant nine-month period; (5) failed to object to the admission of Exhibit No. 1 at the parental-unfitness prove-up, despite the fact that Exhibit No. 1 contained evidence of drug tests from outside the relevant nine-month period; and (6) failed to effectively cross-examine the caseworker as to both the broad conclusions that she was making (primarily in her report) at the best-interest hearing and her qualifications to draw those conclusions. Second, respondent asserts that he clearly suffered prejudice as a result of his attorney's deficient performance, especially as it related to the caseworker's report and testimony at the best-interest hearing, and that the outcome of the case may have been different if not for the ineffective assistance of his attorney.

¶ 40 The State argues that respondent was not denied effective assistance of counsel in the termination proceedings. As to respondent's claim of deficient performance, the State asserts that: (1) respondent cannot attack any improprieties that occurred in the February 2014 permanency review order because permanency review orders are not final orders and may not be challenged on appeal; and (2) respondent cannot complain about his stipulation to the parental unfitness portion of the termination petition because respondent chose to proceed in that manner in the trial court and told the court at the time that he was doing so both knowingly and voluntarily. Regarding respondent's claim of prejudice, the State asserts that respondent cannot establish that he suffered prejudice as the result of any alleged deficient performance because the evidence was overwhelmingly against respondent at both stages of the termination proceedings and, thus, any alleged deficient performance by respondent's attorney had no effect on the

outcome of the proceedings. The State asks, therefore, that we reject respondent's claim of ineffective assistance of counsel and that we deny respondent's request for a reversal on that basis.

¶ 41 In a proceeding to terminate parental rights, parents are entitled to effective assistance of counsel. *In re M.F.*, 326 Ill. App. 3d 1110, 1119 (2002); see also 705 ILCS 405/1-5(1) (West 2012) (indigent parents have the right to be represented by an attorney in a juvenile proceeding); *In re Adoption of K.L.P.*, 198 Ill. 2d 448, 461 (2002) (recognizing that the Illinois legislature provided for the appointment of counsel for an indigent parent of a minor who is subject to proceedings under the Juvenile Court Act). In analyzing a claim of ineffective assistance of counsel in the context of a proceeding to terminate parental rights, the courts apply the *Strickland* test, the same test that is applied in criminal cases. *In re A.J.*, 323 Ill. App. 3d 607, 611 (2001). To prevail on a claim of ineffective assistance of counsel in a termination proceeding, the respondent parent must show: (1) that his attorney's performance was deficient in that it fell below an objective standard of reasonableness, and (2) that the deficient performance prejudiced the respondent to the extent that he was deprived of a fair proceeding such that the outcome of the proceeding would have been different but for the errors of respondent's attorney. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525-27 (1984); *People v. Patterson*, 217 Ill. 2d 407, 438 (2005); *A.J.*, 323 Ill. App. 3d at 611. A respondent's failure to satisfy either prong of the *Strickland* test prevents a finding of ineffective assistance of counsel. *Patterson*, 217 Ill. 2d at 438. A court, therefore, need not determine whether an attorney's performance was deficient if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice. *Albanese*, 104 Ill. 2d at 527; *A.J.*, 323 Ill. App. 3d at 611.

¶ 42 In the present case, even if we were to assume for argument's sake that the performance of respondent's attorney was deficient, we would still have to reject respondent's claim of ineffective assistance of counsel because respondent has failed to establish that he was prejudiced by his attorney's alleged deficient performance. See *id.* As the State correctly notes, the evidence in this case was overwhelming that respondent was an unfit parent/person and that it was in the best interest of L.P.S. to terminate respondent's parental rights. First, as to respondent's parental unfitness, the evidence presented in the prove-up showed that during the relevant nine-month period, respondent had failed and missed drug tests and had stopped submitting to drug tests altogether; respondent had missed individual counseling sessions and had been discharged from individual counseling unsuccessfully for failing to attend; respondent had missed periods of visitation with L.P.S. and had stopped attending visits altogether; and that respondent had stopped cooperating and communicating, for the most part, with the caseworker. Regardless of respondent's fitness status five months prior to the start of the nine-month period, the evidence showed that during the nine-month period, respondent essentially made no progress whatsoever toward the return of the child or toward correcting the conditions that led to the removal of the child. Thus, despite any irregularities in the February 2014 permanency review hearing and regardless of whether respondent stipulated to parental unfitness or demanded strict proof thereof, the end result still would have been the same—that respondent was an unfit parent/person. Second, as to the best interest of L.P.S., the evidence presented at the best-interest hearing showed that L.P.S. had been with his foster family for nearly his entire life, that L.P.S. recognized the foster family as his own family, that L.P.S. was having all of his needs satisfied by the foster parents, and that L.P.S. was thriving in the foster parent's home where he was truly adored. Thus, even if respondent's attorney would have cross-examined the

caseworker more thoroughly as to her qualifications or as to her ability to state that the child did not have a bond with, or appear to love, respondent as a father, the end result of the best-interest hearing would have been the same—that it was in L.P.S.'s best interest to terminate respondent's parental rights so that L.P.S. could be adopted by his current foster parents and have permanency in the only home he had ever known. Under the circumstances of the instant case, we find that the alleged errors of respondent's attorney in the termination proceedings had no bearing on the outcome of the case and that respondent, therefore, has failed to establish a claim of ineffective assistance of counsel. See *Patterson*, 217 Ill. 2d at 438.

¶ 43 III. CONCLUSION

¶ 44 The judgment of the circuit court of Peoria County is affirmed.

¶ 45 Affirmed.