2015 IL App (3d) 140948-U

Order filed May 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re A.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. 3-14-0948
	)	Circuit No. 10-JA-244
v.	)	
	)	
JENNIFER S.,	)	
	)	Honorable
Respondent-Appellant).	)	Albert L. Purham, Jr.,
	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent's affirmative defense of *laches* had no merit where the State did not lack diligence in filing the termination of parental rights petition against her and the respondent was not prejudiced. Section (1)(D)(t) of the Adoption Act does not create an impermissible rebuttable presumption and does not violate the respondent's constitutional right to substantive or procedural due process. Section (1)(D)(t) of the Adoption Act required proof of unfitness by clear and convincing evidence.

¶ 2 The respondent, Jennifer S., appeals from the circuit court's order terminating her parental rights to her son, A.S. On appeal, Jennifer argues: (1) the trial court erred in finding her unfit where she had raised *laches* as an affirmative defense; (2) section 1(D)(t) of the Adoption Act is unconstitutional in that it creates an irrebuttable presumption of unfitness and violates equal protection guarantees; (3) section 1(d)(t) of the Adoption Act violated her right to procedural due process; and (4) the admission of evidence from adjudication of wardship hearing failed to meet the higher burden of clear and convincing evidence at the termination hearing. We affirm.

¶ 3 FACTS

¶ 4 On August 13, 2010, A.S. was born. A.S.'s meconium tested positive for cocaine. On August 31, 2010, the State filed a petition for adjudication of wardship. In Count I, the State alleged that A.S. was neglected in that his meconium tested positive for cocaine. In Count II, the State alleged that A.S. was neglected in that his environment was injurious to his welfare.

¶ 5 On September 1, 2010, A.S. was placed into the temporary custody of DCFS. On September 13, 2010, a shelter care rehearing took place because Jennifer did not appear at the initial hearing. She also did not appear at the rehearing. On October 21 and 29, November 18, and 24, and December 10, 2010, the State filed certificates of publication of notice of the adjudication of neglect hearing by way of publication.

¶ 6 On December 10, 2010, Lutheran Social Services of Illinois (LSSI) filed a dispositional hearing report indicating that Jennifer's whereabouts remained unknown. In 2009, Jennifer had surrendered her parental rights to F.R. (case number 07-JA-03) and S.S. (case number 07-JA-04). On March 19, 2010, in S.S.'s case in Stark County, the father of S.S. and A.S. was ordered to have no contact with Jennifer.

¶ 7 On December 10, 2010, Jennifer did not appear at the adjudication hearing in this case. The circuit court found that Jennifer was defaulted and the neglect petition had been proven. The circuit court adjudicated A.S. neglected. The court immediately held a dispositional hearing and found that Jennifer was dispositionally unfit to care for, protect, train or discipline A.S., or was unwilling to do so. A.S.'s father was found to be dispositionally fit but remained dispositionally unfit in Stark County as to S.S. A.S. was made a ward of the court.

¶ 8 Both Jennifer and A.S.'s father were admonished in the written order that "they must cooperate with [DCFS], comply with the terms of the services plans, and correct the conditions which require[d] the child to be in care, or risk termination of parental rights." Jennifer was ordered to correct the condition that led to the adjudication of neglect and removal of A.S. by doing the following tasks: (1) execute releases of information requested by DCFS; (2) cooperate "fully and completely" with DCFS or its designee; (3) obtain drug and alcohol assessments and complete recommended treatment; (4) perform four random drug drops per month; (5) submit to a psychological examination; (6) complete counseling as recommended; (7) complete a parenting course; (8) obtain and maintain stable housing; (9) provide notice of any change of address within three days; and (10) disclose information of any person that DCFS would have reason to believe that a relationship has developed which will affect A.S.

¶ 9 On October 3, 2011, the State filed a motion for unfitness to have A.S.'s father found dispositionally unfit because, among other things, he had allowed Jennifer to have contact with A.S. during visits. On November 3, 2011, the trial court found that A.S.'s father was dispositionally unfit in this case.

¶ 10 On December 13, 2011, the State filed a petition to terminate the parental rights of both Jennifer and A.S.'s father in regard to A.S. because they failed to make reasonable progress

within nine months after A.S. was adjudicated neglected. See 750 ILCS 50/1(D)(m)(ii) (West 2010). On December 29, 2011, Jennifer was served with notice of the termination petition at the Dwight Correctional Center, where she had been imprisoned since November 15, 2011. On January 17, 2012, the State filed a supplemental petition, adding allegations that Jennifer was unfit under section 1(D)(t) of the Adoption Act in that she was the biological mother of a newborn baby, whose meconium tested positive for cocaine and was also the biological mother of newborn infant who had been adjudicated a neglected minor because his blood, urine or meconium contained a controlled substance, and Jennifer had the opportunity to enroll in and participate in a clinically appropriate substance abuse counseling, treatment, and rehabilitation program. See 750 ILCS 50/1(D)(t) (West 2010).

¶ 11 On January 25, 2012, Jennifer appeared in court and was appointed counsel. On March 5, 2012, Jennifer filed an answer to the termination petition, denying the allegations.

¶ 12 On April 25, 2012, the LSSI caseworker filed a permanency review report, indicating that Jennifer had not made contact with the agency in regard to A.S. until January of 2012, when she gave birth to A.G. Upon inquiring about services for A.G., Jennifer requested visitation with A.S. Since becoming involved in the case, Jennifer was cooperative and successfully completed a parenting course.

¶ 13 On June 1, 2012, Jennifer was released from the Dwight Correctional Center. On June 11, 2012, Jennifer married A.S.'s father in violation of the no-contact order in his service plan.

¶ 14 On June 20, 2012, the State dismissed its petition for termination of parental rights in A.S.'s case with the intent to refile upon the transfer of S.S.'s case from Stark County. On January 11, 2013, the State refiled the termination petition, re-alleging that Jennifer was unfit pursuant to section 1(D)(t) of the Adoption Act. See 750 ILCS 50/1(D)(t) (West 2010). The

State also alleged that Jennifer was depraved pursuant to section 1(D)(i) of the Adoption Act. See 750 ILCS 50/1(D)(i) (West 2010). Jennifer filed a motion to dismiss Count I of the petition, arguing that section 1(D)(t) of the Adoption Act (750 ILCS 50/1(D)(t) (West 2010)) was unconstitutional. The trial court denied the motion to dismiss.

¶ 15 On May 6, 2013, Jennifer filed an answer to the termination petition, asserting *laches* as an affirmative defense. Jennifer argued that there had been an "unreasonable delay" by the State in bringing the termination petition, which prejudiced her in that the State was aware of her past substance abuse problem and that she had given birth to a second cocaine exposed baby in August of 2010, but the State failed to file any action until January 11, 2013, after Jennifer had, in good faith, undertaken to complete various services ordered. Jennifer also alleged that the State failed to take "any steps to find [her] unfit for almost two and one-half years."

¶ 16 On June 21, 2013, the LSSI caseworker submitted a permanency review report, indicating that on May 21, 2013, Jennifer had gave birth to D.S., with no indication of substance exposure. On November 13, 2013, Jennifer was found dispositionally fit in regard to D.S.

¶ 17 On September 10, 2013, the State filed a motion *in limine* to bar the testimony of Dr. Deborah Frank as to the effects of prenatal cocaine exposure in infants and the testimony of Tom Hausenstein as to Jennifer's ability to parent. The trial court barred any testimony from Frank regarding the affects of prenatal cocaine exposure on infants because section 1(D)(t) of the Adoption Act did not require a showing of actual harm to the child to support a finding of unfitness. The trial court barred any testimony from Hausenstein regarding parenting abilities because the testimony was not relevant to proving unfitness under sections 1(D)(t) and 1(D)(i) of the Adoption Act.

¶ 18 On February 25, 2014, the LSSI caseworker submitted a permanency review report indicating that Jennifer gained fitness as to A.G. and D.S. On April 14, 2014, the trial court found that Jennifer was dispositionally fit as to A.S. On May 1, 2014, LSSI discontinued Jennifer's random drug screenings because her drug testing had been "clean." On June 12, 2014, the LSSI caseworker filed a permanency review report indicating that Jennifer completed all services.

¶ 19 On July 2 and September 3, 2014, the trial court held a hearing to determine whether Jennifer was unfit as alleged in the termination petition. The trial court took judicial notice of all prior proceedings. The State entered into evidence: (1) Jennifer's surrender of parental rights as to S.S.; (2) Jennifer's convictions; (3) birth records for S.S. and A.S.; (4) Jennifer's admission to the petition in S.S.'s case (case number 07-JA-4) that S.S. was born with cocaine in her system; (5) the dispositional order in S.S.'s case that ordered Jennifer to complete a drug and alcohol assessment; (6) Jennifer's drug treatment and counseling records, which indicated that she had the opportunity to receive drug treatment after the birth of S.S. on October 2, 2007, and before the birth of A.S. on August 13, 2010.

¶ 20 At the request of Jennifer's counsel, the trial court took judicial notice that Jennifer was found dispositionally fit in regard to D.S. in case number 13-JA-149 and dispositionally fit in this case as to A.S. on April 14, 2014. Jennifer testified that she had completed a parenting class, anger management class, substance abuse treatment, and had been sober for four years. She attended visits with A.S., successfully completed individual counseling, and signed all releases as requested. Jennifer testified that she had not been involved in any criminal activity since her last conviction in 2011. Since the birth of A.S., Jennifer gave birth to A.G. and D.S., who were born without any illegal substances in their systems. Jennifer submitted into evidence

certificates of completion for drug treatment, anger management, and prenatal parenting classes that she had completed while in prison.

¶ 21 Jennifer's counsel gave an offer of proof of the testimony of Dr. Debra Frank by entering Frank's deposition testimony into evidence. He also gave an offer of proof of the testimony of Tom Hassenstein, a substance abuse counselor, as follows:

> "[Hassenstein] has experience with addicts and users of various illegal substances, that they are able to function as parents for significant periods of time. He would testify that information that a mother gave birth to two Cocaine exposed babies a couple of years apart in and of itself is insufficient information to ascertain that a mother's ability to parent in the interim period or following a birth of the second child gives any information in [that] regard. He would testify that where a mother subsequently gave birth to a child not exposed to any illegal substance, it would be an indication that the mother has achieved sobriety."

¶ 22 Jennifer testified that she had suitable housing in Wyoming, Illinois, where she lived by herself in a home owned by A.S.'s father. Jennifer remained married to A.S.'s father, who remained dispositionally unfit, but she intended to file for divorce. Jennifer had been seeing a man named John Dowd for the past month. Jennifer testified that the Dowd was background checked prior to having contact with the children. The caseworker, Richard Upchurch, testified that he had not run a background check on Dowd before Dowd had contact with the children. Upchurch also testified that Jennifer informed him that she was residing with Dowd in Rock Falls, Illinois.

¶ 23 On September 17, 2014, the circuit court found that Count I pertaining to A.S. being born with cocaine in his meconium after Jennifer had previously given birth to another child and had

an opportunity to enroll and participate in treatment was proven by clear and convincing evidence. In support of its finding, the trial court noted that the records in evidence showed: (1) on October 2, 2007, S.S. was born with cocaine and amphetamines in her meconium and was subsequently adjudicated neglected; (2) on September 28, 2007, and May 27 to December 29, 2008, Jennifer used crack; (3) on April 25, 2008, Jennifer was unsuccessfully discharged from treatment; (4) on November 3, 2008, Jennifer indicated that she did not want to pursue inpatient treatment; (5) on March 18, 2010, personnel at the Peoria County Probation Department indicated that Jennifer tested positive for cocaine; (6) on March 23, 2010, Jennifer admitted to using cocaine and that she was pregnant; (7) on May 3, 2010, S.S.'s case was closed due to no contact with Jennifer; and (8) on August 13, 2010, A.S. was born and his meconium tested positive for cocaine. The circuit court found that the State failed to prove Count II regarding allegations of depravity.

¶ 24 On October 29, 2014, the circuit court found that it was in the best interest of A.S. to terminate the parental rights of Jennifer and A.S.'s father and, subsequently, entered the order terminating their parental rights. Jennifer appealed.

¶ 25 ANALYSIS

¶ 26 On appeal, Jennifer argues: (1) the circuit court erred in finding her unfit where she raised *laches* as an affirmative defense and the State failed to respond; (2) section 1(D)(t) of the Adoption Act is unconstitutional in that it creates an irrebuttable presumption of unfitness and violates equal protection guarantees; (3) section 1(D)(t) of the Adoption Act violates Jennifer's substantive due process rights; and (4) the admission of evidence from adjudication of warship hearing failed to meet the higher burden of proof of clear and convincing evidence at the termination hearing.

¶ 27 Section 1(D) of the Adoption Act defines an "unfit person" as "any person whom the court shall find to be unfit to have a child, without regard to the likelihood will be placed for adoption." 750 ILCS 50/1(D)(t) (West 2010). The ground for an unfitness finding under section 1(D)(t) of the Adoption Act is as follows:

> "A finding that at birth the child's blood, urine, or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, [except where] the presence of which in the newborn infant was the result of medical treatment ***, and that the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987, after which the biological mother had the opportunity to enroll in and participate in a clinically appropriate substance abuse counseling, treatment, and rehabilitation program." 750 ILCS 50/1(D)(t) (West 2010).

¶ 28 Subsection (c) of Section 2-3 of the Juvenile Court Act defines a neglected minor as "any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance" with the exception of controlled substances that were the result of medical treatment. 705 ILCS 405/2-3 (West 2010).

¶ 29 I. *Laches*

¶ 30 Jennifer first argues that the trial court erred in failing to deny the State's petition for termination of her parental rights based on her affirmative defense of *laches*. A determination of whether *laches* applies to a particular set of facts is within the sound discretion of the trial judge.

Lozman v. Putnam, 379 Ill. App. 3d 807, 822 (2008). The burden of pleading and proving the defense is on the party asserting the defense. *Id.*

¶ 31 *Laches* precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party. *Tully v. Illinois*, 143 Ill. 2d 425, 432 (1991). *Laches* is an equitable doctrine based on the principle that courts are reluctant to aid a party who has knowingly slept on his rights to the detriment of the opposing party. *Id.* The application of the *laches* doctrine requires the showing of: (1) a lack of diligence by the party asserting the claim; and (2) prejudice to the opposing party resulting from the delay. *Id.*

¶ 32 Here, in support of her *laches* affirmative defense, Jennifer specifically alleged that: (1) A.S. was born on August 13, 2010, and at the time of the State's filing of the juvenile petition on August 31, 2010, the State had copies of the Stark County file regarding S.S.; (2) A.S. was adjudicated neglected on December 10, 2010, and various services were ordered; (3) Jennifer had "undertaken and completed many of the court-ordered services prior to January 11, 2013"; (4) Jennifer was not admonished that despite her cooperation with DCFS and substantial completion of services, her parental rights were subject to termination; and (5) the State had knowledge of Jennifer's past substance abuse problem and that she gave birth to a second cocaine exposed baby, but the State "did not file any action until January 11, 2013, nearly 30 months later after [Jennifer] had, in good faith, undertaken to complete various services ordered in the underlying juvenile proceeding." Jennifer claimed that the delay was unreasonable and materially prejudiced her. The State failed to reply to the *laches* affirmative defense.

¶ 33 Generally, a party's failure to respond to an affirmative defense constitutes an admission of the facts therein but does not admit that the facts constitute a valid defense. *Mitchell Buick & Oldsmobile Sales, Inc. v. National Dealer Services, Inc.*, 138 Ill. App. 3d 574, 585-86 (1985). In

this case, even if the facts contained in Jennifer's affirmative defense were admitted as true, there is no merit to Jennifer's *laches* defense because there was no lack of diligence by the State or prejudice to Jennifer.

¶ 34 First, there was no lack of diligence by the State. A proceeding to involuntarily terminate parental rights may only be brought under the authority of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2010)) or the Adoption Act (750 ILCS 50/1 *et seq*. (West 2010)). *In re A.S.B.*, 381 Ill. App. 3d 220, 221 (2008). Under the Juvenile Court Act, filing a petition alleging that a minor is neglected initiates child protection proceedings. 705 ILCS 405/2-13(1) (West 2010); *In re D.S.*, 198 Ill. 2d 309, 320 (2001). Thereafter, the State may request the termination of parental rights any time after the entry of a dispositional order. 705 ILCS 405/2-13(4) (West 2010).

¶ 35 In the instant case, A.S. was born on August 13, 2010, and 17 days later the State initiated the juvenile proceedings by filing a petition to make him a ward of the court. There was a four-month delay in the proceedings because Jennifer could not be located. After providing Jennifer with notice of the adjudication hearing via publication, A.S. was adjudicated neglected and Jennifer was found dispositionally unfit on December 10, 2010. Therefore, Jennifer's allegations that the State "did not file any action until January 11, 2013" is contradicted by the record where the State had initiated these proceedings on August 31, 2010.

¶ 36 Additionally, there was no requirement for the State to file a termination petition prior to the entry of the dispositional order on December 10, 2010. Jennifer's whereabouts remained unknown until after she was imprisoned on November 15, 2011. The State filed the termination petition on December 13, 2011, and filed a supplemental petition on January 17, 2012. On June 20, 2012, the State dismissed the termination petition in anticipation of the transfer of S.S.'s case

from Stark County and refiled a termination petition on January 11, 2013. Based on this record, we do not find that the State lacked diligence in filing the termination petition.

¶ 37 Second, Jennifer was not prejudiced by the timing of the initial, supplemental, and subsequent termination petitions. We note Jennifer did not start any services or make any efforts toward services until after she was imprisoned on November 15, 2011, which was after A.S was over one year old. Shortly after Jennifer was imprisoned, the State filed the initial termination petition in December of 2012. Jennifer did not appear in this case until January of 2012. Additionally, although the State dismissed the original termination petition in June of 2012, the State had indicated its intent to refile upon the transfer of S.S.'s case from Stark County. Based on these facts, we find no prejudice to Jennifer by the timing of the State filing the initial, supplement, or subsequent termination petitions.

¶ 38 Furthermore, Jennifer's completion of offered services does not preclude a finding of unfitness under section 1(D)(t) because section 1(D)(t) does not require her efforts and progress to be considered before she can be found unfit on this ground. See 750 ILCS 50/1(D)(t) (West 2010); *In re C.W.*, 199 Ill. 2d 198, 216-17 (2002). Jennifer's completion of services was irrelevant to a determination of unfitness under section 1(D)(t) of the Adoption Act. See *C.W.*, 199 Ill. 2d at 216-17; *In re D.F.*, 201 Ill. 2d 476, 505 (2002) (reasonable efforts and reasonable progress are not affirmative defenses that can be raised to refute allegations of neglect under a subsection of the Adoption Act that does not pertain to unfitness for lack of reasonable efforts or reasonable progress). Rather, the evidence that Jennifer substantially completed services would be more appropriately considered at the second stage of the termination proceedings, at which time the court could considered whether it was in A.S.'s best interest to terminate Jennifer's

parental rights. See *C.W.*, 199 Ill. 2d at 217. Therefore, Jennifer's successful completion of services is not a defense to the allegations of unfitness under section 1(D)(t) of the Adoption Act.

¶ 39 II. Unconstitutionality of Section 1(D)(t) of the Adoption Act

¶ 40 Jennifer next argues that section 1(D)(t) of the Adoption Act violates her right to substantive due process in that the statute creates an unconstitutional irrebuttable presumption and violates equal protection guarantees. All statutes are presumed constitutional, and we must construe a statute so as to affirm its constitutionality and validity, if possible. *In re D.W.*, 214 Ill. 2d 289, 310 (2005). The party challenging the constitutionality of a statute bears the burden of rebutting the presumption of constitutionality and clearly establishing a constitutional violation. *In re O.R.*, 328 Ill. App. 3d 955, 959-60 (2002). Our review of the constitutionality of a statute is an issue of law that we review *de novo. Id.* at 960.

¶ 41 Where the constitutional right at issue is a fundamental right, the presumption of constitutionality is weaker, and courts must subject the statute to the more rigorous requirements of a strict scrutiny analysis. *D.W.*, 214 Ill. 2d at 310. Under a strict scrutiny analysis, the measures employed by the legislature must be necessary to serve a compelling state interest and be narrowly tailored, with the legislature using the least restrictive means consistent with the attainment of its goal. *Id*. A statute is considered to be "narrowly tailored" if it targets and eliminates no more than the source of evil it seeks to remedy. *In re Amanda D.,* 349 Ill. App. 3d 941, 944-46 (2004).

¶ 42 The right of parents to control the upbringing of their children is a fundamental constitutional right. *D.W.*, 214 Ill. 2d at 310. Therefore, we must apply a strict scrutiny analysis to reviewing the constitutionality of section 1(D)(t) of the Adoption Act, which pertains to the termination of parental rights. See *Id.* at 311.

¶ 43 A. Irrebuttable Presumption

¶ 44 Jennifer alleges that section 1(D)(t) of the Adoption Act creates an unconstitutional irrebuttable presumption of her unfitness. Specifically, she claims that the statute violated her right to due process because it does not allow for considerations of: (1) her actual parenting ability; (2) any progress in a substance abuse program; (3) subsequently born children whose blood, urine or meconium contained no amount of a controlled substance; and (4) the actual amount of a controlled substance in the newborn's blood, urine, or meconium. A challenge to an irrebuttable presumption is a substantive due process question because it is a substantive rule of law that was created based upon a determination by the Legislature of a matter of overriding social policy. *Amanda D.*, 349 Ill. App. 3d at 944-46.

¶ 45 Under section 1(D)(t) of the Adoption Act, a mother who has had the opportunity to become involved in drug rehabilitation services after one of her children has been adjudicated neglected due to being substance-exposed *in utero* and, despite the mother having had such an opportunity for drug treatment after the birth of that child, gives birth to a subsequent child who has been substance-exposed to *in utero* is unfit. The compelling state interest of section 1(D)(t) of the Adoption Act is the State's interest in "the protection of the child from harm, with the legislature protecting that interest by declaring unfit those mothers who pose a risk to the safety and well-being of their children." *O.R.*, 328 Ill. App. 3d at 962. We agree with the statement set forth by the Second District Appellate Court in *O.R.* that:

> "[S]ection 1(D)(t) provides a narrowly tailored means of identifying parents who pose a danger to their children's health and safety. It provides a time framework that is tied to the mother's conduct, inaction, or inability that relates to her competence to care for her child in the future, as well as to the care she has

already given her child *in utero.* The time period is not specifically expressed in terms of a specific number of months. However, it is implied, given the gestation period between births and the requirement that the mother has the opportunity to participate in drug rehabilitation services." *O.R.*, 328 Ill. App. 3d at 963.

¶ 46 The State has a compelling interest in identifying certain parents as unfit in order to protect children from harm. We find that the statute is narrowly tailored to that end and does not create an unconstitutional irrebuttable presumption.

¶ 47 B. Equal Protection

¶ 48 Next, Jennifer claims that section 1(D)(t) of the Adoption Act violates constitutional equal protection guarantees. (Ill. Const. 1970, art. I, § 2). The guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner. *In re R.C.*, 195 Ill. 2d 291, 309 (2001). Although the equal protection clause prohibits the government from according different treatment to persons who have been placed by statute into different categories on the basis of criteria wholly unrelated to the purpose of legislation, it does not forbid the legislature from drawing proper distinctions among different categories of people. *Id.* In reviewing legislative classifications under equal protection guarantees in termination of parental rights cases, strict scrutiny is employed because a fundamental interest is involved. *Id.*

¶ 49 Under section 1(D)(t) of the Adoption Act, the legislature created a classification of mothers with a child that was adjudicated neglect after being born with blood, urine, or meconium containing any amount of a controlled substance, after which time that mother had the opportunity for drug treatment and, nonetheless, gave birth to another substance-exposed infant. 750 ILCS 50/1(D)(t) (West 2010). The identification of a mother who fits this classification already has had the opportunity to rehabilitate.

¶ 50 Jennifer argues the statute violates the equal protection clause because the similarly situated fathers who abuse drugs during pregnancies of their partners or similarly situated pregnant women who abuse harmful nicotine or alcohol during their pregnancies are not treated similarly to the mothers identified in section 1(D)(t) of the Adoption Act. However, those other groups are not similarly situated to the classification of the pregnant people who have exposed their unborn children to illegal controlled substances during at least two different pregnancies, after their first child was adjudicated neglected for the same type of substance exposure and after they had the opportunity for treatment before the birth of the second child.

¶ 51 III. Substantive Due Process

¶ 52 Jennifer argues that section 1(D)(t) of the Adoption Act violates substantive due process because it is not narrowly tailored to address a compelling State interest. Section 1(D)(t) is narrowly tailored to meet the compelling interest of protecting a child from abuse, before and after abuse occurs, and allows the courts to consider the abuse of one child when determining a mother's fitness as to subsequent children. *O.R.*, 328 Ill. App. 3d at 960. The State has a compelling interest in the protection of children from harm, and "the legislature protects that interest by declaring unfit those mothers who pose a risk to the safety and well-being of their children." *Id.* As discussed above, section 1(D)(t) is narrowly tailored to identify parents who pose a risk to their children's health and safety.

¶ 53 IV. Procedural Due Process

¶ 54 Jennifer argues that section 1(D)(t) of the Adoption Act is unconstitutional because it allows for her parental rights to be terminated based on less than the required clear and convincing evidence. She contends that the establishment of neglect under subsection (c) of the

Juvenile Court Act by a preponderance of the evidence allows for the termination of her parental rights without the establishment of clear and convincing evidence.

¶ 55 Because of the great importance of parental rights to a child, those rights cannot be terminated except on proof of clear and convincing evidence. *In re Jamarqon C.*, 338 Ill. App. 3d 639 (2003); *Santosky v. Kramer*, 455 U.S. 745 (1982). In contrast, neglect of child need only proven by a preponderance of the evidence. *Jamarqon C.*, 338 Ill. App. 3d at 646.

Here, the earlier finding of neglect under subsection (c) of section 2-3 of the Juvenile Court Act was not the basis for the unfitness finding under section 1(D)(t) of the Adoption Act. Jennifer's parental rights were not terminated solely upon the prior adjudication of neglect as to S.S. Instead, under section 1(D)(t) of the Adoption Act, the State was required to prove, by clear and convincing evidence, that Jennifer gave birth to S.S., who was substance exposed, and Jennifer had since been given the opportunity for substance abuse treatment, and subsequent thereto gave birth to A.S., who was also born substance-exposed. Therefore, section 1(D)(t) does not violate Jennifer's right to procedural due process. See *Jamarqon C.*, 338 Ill. App. 3d at 649 (holding section 1(D)(t) of the Adoption Act requires proof by clear and convincing evidence and, therefore, does not violate a person's right to procedural due process).

¶ 56 CONCLUSION

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

¶ 58 Affirmed.