2015 IL App (3d) 150162-U, 2015 IL App (3d) 150163-U cons.

Order filed August 7, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

In re M.M., a Minor (THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. HEATHER H., Respondent-Appellant).	)))))))))))	Appeal from the Circuit Court of the 9th Judicial Circuit, McDonough County, Illinois Appeal No. 3-15-0162 Circuit No. 12-JA-24 Honorable Patricia A. Walton, Judge, Presiding.

In re M.M. and M.M., Minors (THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. HEATHER H., Respondent-Appellant).	)))))))))))	Appeal from the Circuit Court of the 9th Judicial Circuit, McDonough County, Illinois Appeal No. 3-15-0163 Circuit No. 12-JA-25 Honorable Patricia A. Walton, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's finding that the respondent mother was an unfit parent under the Adoption Act because she failed to make reasonable progress toward the return of her minor children within the initial nine-month period after the children were adjudicated neglected was not against the manifest weight of the evidence; (2) the trial court's finding that the respondent mother was an unfit parent under the Adoption Act because she failed to show a reasonable degree of interest, concern, or responsibility for the children was not against the manifest weight of the evidence; and (3) the trial court's finding that it was in the best interests of each of the children to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 The respondent, Heather H., appeals from judgments of the circuit court of McDonough County finding her an unfit parent and terminating her parental rights to her minor children, M.M. and M.M.

¶ 3 FACTS

¶ 4 M.M. and M.M. are twins who were born prematurely on October 1, 2012. The respondent is their biological mother. On November 8, 2012, the State filed a juvenile petition for adjudication of wardship alleging that M.M. and M.M. were neglected minors due to an environment that was injurious to their welfare. The petition alleged that: (1) the respondent had been adjudicated an unfit parent in 2010 and had not been restored to fitness; and (2) the mecomium[1] of one of the twins had tested positive for cannabis. The children were temporarily placed in the custody of the Guardianship Administrator of the Illinois Department of Children and family Service (DCFS). The State later filed an amended petition which added an allegation that the respondent had engaged in a physical altercation with the children's father, who was also named as a respondent in the State's neglect petition, while one of the children was in the home. (For reasons that the parties do not explain, the State's amended petition did not allege that one

[1] "Mecomium" is the first intestinal discharge of a newborn infant. It is composed of materials ingested while the infant is in the uterus.

twin's mecomium had tested positive for cannabis.) Both the respondent and the children's father admitted that the alleged altercation took place.

¶ 5 On March 28, 2013, the children were adjudicated neglected. Following a dispositional hearing, the trial court found the respondent unfit and ordered the twins to remain in the temporary custody of DCFS. The trial court ordered the respondent to: (1) undergo certain services (including parenting classes); (2) engage in visitation; (3) demonstrate appropriate parenting skills; (4) refrain from using any mood altering substances (including alcohol and cannabis); (5) submit to drug testing; (6) refrain from criminal activity; and (7) cooperate with DCFS. The court also found the father unable to care for the children and ordered him to undergo services. The trial court's April 25, 2013, Dispositional Order warned the respondent and the father that they must cooperate with DCFS, comply with the terms of the service plan, and correct the conditions that required the children to be removed from their custody "or risk termination of their parental rights."

¶ 6 A permanency review hearing was held on October 10, 2013. The respondent did not attend the hearing. During the hearing, the trial court found that the respondent had made unsatisfactory progress toward the completion of her services because she failed to make herself available for drug screens, had admitted to using marijuana, and had missed a number of scheduled visits with the children. The trial court found that the children's father had completed services and complied with the caseworker's directives. Accordingly, the trial court allowed the children to begin overnight, unsupervised visitation with their father.

¶ 7 On December 19, 2013, a status hearing was held. At that time, the father had completed all required services with the exception of certain classes which the trial court anticipated would be completed by the end of the following month. Based on the father's progress, the children were returned to the father's home. The trial court found that, since the October 2013 hearing,

the respondent had failed to keep in contact with the caseworker, refused to participate in drug screens, and had failed to visit the children despite being offered eight opportunities for visitation.

¶ 8 Another status hearing was held on February 24, 2014. The trial court found that the children "continued to thrive and progress developmentally in their Father's home." The court noted that the respondent "had been scheduled for 9 visits since the last hearing and failed to confirm or attend any of them." The court also stated that the mother "continued to remain uninvolved in services or drug screens and remain[ed] unfit."

¶ 9 A second permanency review hearing was held on April 17, 2014. The respondent did not attend the hearing. The respondent had been scheduled for seven visits with the children since the prior hearing but had failed to attend any visits. The caseworker had been unable to contact the respondent for approximately two months. The respondent was not submitting to random drug screens and remained unfit.

¶ 10 On May 6, 2014, the State filed a petition to terminate the respondent's parental rights. The State's petition alleged that the respondent was unfit under the Adoption Act (Act) (750 ILCS 50/0.01 *et seq.* (West 2012)) on two independent grounds. First, the State alleged that the respondent was unfit under section 1(D)(m)(ii) of the Act because she failed to make reasonable progress toward the return of the children within the initial nine-month period after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)). Second, the State alleged that the respondent was unfit under section 1(D)(b) of the Act because she failed to show a reasonable degree of interest, concern, or responsibility for the children (750 ILCS 50/1(D)(b) (West 2012)). The State subsequently filed an amended petition clarifying that the applicable nine-month period ran from March 28, 2013, to December 28, 2013.

¶ 11 The hearing on the State's petition commenced on July 31, 2014. Jody Coots, the family's initial DCFS caseworker, testified on behalf of the State. Coots testified that, although the respondent had completed substance abuse training prior to August 2013, her progress toward this goal was rated unsatisfactory because she did not maintain a drug-free or alcohol-free life. In July 2013, the respondent told Coots that she was drinking alcohol. Moreover, although the respondent had been compliant with the drug screening requirement through July 2013 (and all drug screens up to that point were negative), she missed the August 2013 drug screen. Because the respondent had no transportation, Help at Home personnel went to the respondent's home in August 2013 to take her to the scheduled drug screening. However, when they arrived, the respondent was not home.

¶ 12 Coots testified that, in addition to the January 2013 incident of domestic violence to which the respondent stipulated, a second incident occurred in March 2013. That month, the children's father had scratches on his face. When Coots first asked the respondent about this, the respondent said that the children's father had had gotten the scratches from slipping in the shower. However, the respondent later told Coots that the scratches had resulted from a domestic dispute between the father and the respondent. During questioning by the trial judge, the respondent admitted that the dispute occurred while the respondent was engaged in domestic violence services.

¶ 13 Coots testified that the respondent visited the children consistently from March 2013 through May 2013. However, beginning in June 2013, the respondent started to become inconsistent in her visitation. During one week in June 2013, the respondent canceled one scheduled visit in advance, cancelled a second visit when the children arrived at her home, and failed to attend a third scheduled visit. The following month, the respondent was diagnosed with shingles (a contagious condition) and was not cleared by her doctor to resume visitation until

July 16, 2013. The mother did not resume visits immediately after she was medically cleared to do so. The respondent had surgery on August 5, 2013, after which she was restricted from lifting items weighing more than 10 pounds. DCFS offered to have Bridgeway, the agency supervising the respondent's visitation, assist in lifting, carrying, and changing the children during an August 8, 2013, visit. The respondent declined the offer, and the visit did not occur.

¶ 14 Because the respondent had missed so many visits, DCFS notified the respondent on August 22, 2013, that: (1) her visitation was being reduced to once per week for 2 1/2 hours effective September 4, 2013; and (2) going forward, the respondent would have to call to confirm each visit by telephone the day before the visit. The respondent did not contact Coots about appealing this decision.

¶ 15 Julia Pratte, the DCFS caseworker who supervised the family from August 2013 through October 2013, testified that the respondent did not show up for scheduled drug screens in August and September of that year. In both instances, Help at Home employees had gone to the respondent's home to provide transportation but the respondent was not there. Moreover, Pratte stated that the respondent told her that she had smoked marijuana around August 11, 2013, and she assumed that the upcoming August 19, 2013, drug test would be positive.

¶ 16 Pratte also testified about the respondent's inconsistent visitation. When Bridgeway brought the children to the respondents' home for a visit on August 12, the respondent was not home. After that, the respondent either cancelled or was not home for all scheduled visits until September 16, 2013. The respondent visited the children on that date and again on September 23, 2013. She cancelled the next visit, which was scheduled for September 30, 2013. Between July 1, 2013, and October 1, 2013, the respondent missed 11 visits due to medical conditions (8

for shingles, 3 for surgery), and she missed 17 visits due to cancellations or "no shows."[2] Thus, of the 34 possible visits that could have occurred during that three-month period, the respondent attended only six, and she ended one of those visits early.

¶ 17 Pratte testified that, although the respondent had completed her required parenting classes before March 28, 2013, by October 13, 2013, the respondent's compliance with the parenting skills portion of the service plan was rated unsatisfactory. Pratte stated that, because the respondent was not visiting the children regularly, she was not able to demonstrate whether she could apply the parenting skills she had learned in the classes.

¶ 18 Stacy Ehrat, the Lutheran Social Services of Illinois (LSSI) caseworker who supervised the family from October 2013 until the close of the case, also testified for the State. Ehrat first met with the respondent on November 5, 2013. During that visit, the respondent told Ehrat that her prescription medication for anxiety and depression was not doing the job she felt it should and that she was smoking marijuana to help with her anxiety and depression. Ehrat scheduled a visit with the children at the respondent's home for the following Tuesday. On the date of that scheduled visit, the respondent cancelled. Ehrat was driving the children to the respondent's home when she learned of the cancellation. Thereafter, Ehrat attempted to contact the respondent by telephone, mail, and a visit to her home, but she was unable to contact the respondent and did not speak with her again until the respondent contacted Ehrat in February

[2] Sally Cebuhar, a Bridgeway employee who supervised the respondent's visits from March 28, 2013, through September 2013, testified that, on at least two occasions, the respondent called to cancel when Cebuhar was on her way to pick up the children. On at least four other occasions, the respondent called to cancel when Cebuhar had the children in her car and was driving to the respondent's house. Chantel Jackson, another Bridgeway employee, testified similarly.

2014. Ehrat did not see the respondent again until the April 17, 2014 permanency review hearing. Ehrat testified that the respondent did not visit the children from September 23, 2013 until after the April 17, 2014 hearing, a period of seven months. Ehrat acknowledged that the respondent had attempted to contact the children during that period by sending messages to the children's father. Ehrat also noted that the respondent's visitation had recommenced in April 2014 and had continued through July 31, 2014 (the date of the termination hearing). However, she testified that, when the respondent resumed visiting the twins, there did not appear to be a parent/child bond between them, and the children seemed to view the respondent more as a playmate.

¶ 19 Jennifer Bates, a counselor who provided individual counseling to the respondent and couples counseling to the respondent and the children's father, was called by the State. Bates counseled the respondent from March 28, 2013, through September 17, 2013. Bates testified that respondent was very cooperative and willing to engage in assignments. Bates acknowledged that the respondent was present for only 9 of the 17 scheduled counseling sessions and noted that she missed some sessions due to her having surgery, singles, and other health concerns.

¶ 20 The respondent testified on her own behalf. The respondent testified that she completed parenting classes prior to March 28, 2013. She also stated that, between March 28, 2013, and December 28, 2013, she: (1) engaged in a substance abuse evaluation and completed substance abuse treatment; (2) never failed a drug test; (3) engaged in individual counseling and couples counseling; (4) completed domestic violence counseling; and (5) continued to maintain stable, government-subsidized housing that was sufficient for the children. However, she admitted to smoking marijuana in August 2013 in an effort to cope with her anxiety and depression.

¶ 21 The respondent detailed the health conditions that she suffered during the relevant time period, which included shingles (which were contagious to the children), tubal ligation surgery in

August 2013, and a staph infection in February 2014 (which was also contagious). The respondent stated that she had difficulty continuing to engage in counseling services and drug testing. She claimed that she attempted to obtain rides to the random drug screens but that she had "no reliable transportation." However, she conceded that she was provided with transportation assistance for the drug testing and that the original counselor (Ms. Bates) would travel to the respondent's house.

¶ 22 The respondent acknowledged that she had missed visits with the children from October 2013 through February 2014. However, she testified that she attempted to contact the children during that period by texting their father (with whom the children were placed). She claimed that she texted the children's father "a lot" during that time period to see how they were doing and to tell them she loved them. Moreover, the respondent stated that she did not visit the children during the period after her surgery because she would have been unable to pick them up or interact with them at that time due to medical restrictions prescribed by her doctor and because she feared that the children might accidentally damage her healing incision. She also indicated that she stopped participating in services, visitation, and the court process because she became "discouraged" and unhappy after the children were placed with their father rather than with her. However, she noted that she began visiting the children again in April 2014 and continued visiting them through the termination process.

¶ 23 The trial court found the respondent to be an unfit parent on both of the grounds alleged in the State's petition, *i.e.*, that the respondent failed to make reasonable progress toward the return of the children from March 28, 2013, through December 28, 2013, and failed to show a reasonable degree of interest, concern, or responsibility for the children. In support of these findings, the trial court noted that the respondent had repeatedly failed to exercise visitation with the twins. The court observed that the respondent visited the children only six times from July 1,

2013, through October 2013 (out of 34 possible visits). The court noted that the respondent visited the children twice in September 2013 and then did not visit them again until after the April 2014 permanency review hearing at which the State announced it would be filing a petition to terminate the respondent's parental rights. The court found that, because the respondent did not exercise visitation regularly, she was not able to demonstrate parenting skills or the development of a parent/child bond with the children.

¶ 24 Moreover, the trial court noted that the respondent: (1) failed to attend the October 2013 and December 2013 court hearings; (2) eventually admitted that an act of domestic violence had occurred with the children's father while she was involved in the domestic violence program (although she had initially lied about her culpability in this incident); (3) admitted to smoking cannabis and then failed to comply with drug testing; (4) failed to keep in contact with her caseworker from the end of September 2013 until November 2013; and (5) "made a choice to stop participating in all services" during the second half of the nine-month period because she felt "discouraged" and was unhappy that the children were placed with their father rather than her.

¶ 25 On December 15, 2014, the trial court held a separate hearing to determine whether it was in the children's best interest that the respondent's parental rights be terminated. A best interest hearing report was prepared by LSSI and filed with the court and admitted without objection. Caseworker Ehrat, who prepared the report, testified at the hearing. According to Ehrat's report and testimony: (1) the children had been in their father's care and custody since December 2013; (2) the children's father's home was suitable and appropriate and the father was providing for all of the children's basic needs of food, shelter, clothing and medical care; (3) the children were always clean and dressed appropriately at their father's house; (4) the special medical needs of one of the twins was being provided for; and (5) each of the twins was on target

developmentally. Ehrat further testified that she had personally observed a very strong parental bond between the twins and their father and a strong bond between the twins and their half-siblings and paternal grandparents.

¶ 26 Ehrat testified that she had observed visits between the respondent and the children and did not see a parent/child bond between them. Noting the respondent's history of coming in and out of the children's lives and her continued non-involvement with services even after she had resumed visitation, Ehrat did not feel that a parenting agreement between the respondent and the twins would be appropriate. According to Ehrat, the father was the stable, nurturing, and loving parent in the children's lives, and he had expressed a desire to parent the children without the respondent. The father was providing for all of the children's needs. For these reasons, Ehrat recommended that it was in the best interests of the children to terminate the respondent's parental rights.

¶ 27 Following arguments, the trial court found that it was in the best interests of the children that the respondent's parental rights be terminated and that guardianship and custody of the children be awarded to the father. In so ruling, the trial court considered the evidence presented during both the fitness hearing and the best interest hearing, including the best interest report. The court noted that the respondent had no contact with the children for almost seven months (when the children were 10-17 months old) because she was "discouraged" following the placement of the children with their father. The court also found that, during the time the twins have resided with their father, the father has provided for their basic needs, safety, and welfare (including one twin's special health needs), and the children have bonded with their father and with their older brothers. The court further noted that, although the respondent had been fairly consistent since she had resumed visitation, she lacked compliance with other portions of the service plan.

¶ 28 The trial court rejected the respondent's argument that she should be entitled to visitation, noting that this was not the typical case following the dissolution of a marriage but rather a situation in which a mother who was previously found unfit was never restored to fitness and was found unfit a second time with regard to the twins. The trial court found that the respondent's proposal would subject the children (who were only two years old at the time) to supervised visitation indefinitely and would deny them the stability and permanency the Juvenile Court Act seeks to provide them.

¶ 29 The respondent appealed.

¶ 30 ANALYSIS

¶ 31 The involuntary termination of parental rights is a two-step process, which is governed by the provisions of both the Juvenile Court Act of 1987 (705 ILCS 405/1–1 *et seq.* (West 2012)) and the Adoption Act (Act) (750 ILCS 50/0.01 *et seq.* (West 2012)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). 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 Act (750 ILCS 50/1(D) (West 2012)); *C.W.*, 199 Ill. 2d at 210. Section 1(D) lists several grounds upon which a finding of parental unfitness may be made. 750 ILCS 50/1(D) (West 2012). The proof of any single ground is sufficient for a finding of parental unfitness. 750 ILCS 50/1(D) (West 2012); *C.W.*, 199 Ill. 2d at 210; *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). If the court makes a finding of unfitness, the court then considers whether it is in the best interests of the child that parental rights be terminated. *C.W.*, 199 Ill. 2d at 210; *In re C.N.*, 196 Ill. 2d 181, 209 (2001).

¶ 32 In this appeal, the respondent challenges both the trial court's finding that she was unfit and its termination of her parental rights. We will address each of these issues in turn.

¶ 33 1. Fitness

¶ 34 The trial court found the respondent unfit on two separate and independent grounds. First, the trial court found that the respondent unfit under section 1(D)(m)(ii) of the Act because she failed to make reasonable progress toward the return of the children within the initial nine-month period after they were adjudicated neglected (750 ILCS 50/1(D)(m)(ii) (West 2012)). In addition, the trial court found the respondent unfit under section 1(D)(b) of the Act because she failed to show a reasonable degree of interest, concern, or responsibility for the children (750 ILCS 50/1(D)(b) (West 2012)). The respondent argues that both of these findings were against the manifest weight of the evidence. We do not find the respondent's arguments persuasive.

¶ 35 a. Respondent's Failure to Make Reasonable Progress Toward the Return of the Children

¶ 36 A parent may be found unfit under section 1(D) of the Act if he or she fails to make reasonable progress toward the return of the child within the initial nine-month period after an adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2012). 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; see also *C.N.*, 196 Ill. 2d at 211.

¶ 37 In making this determination, only evidence from the relevant time period may be considered in determining whether a parent is unfit. *In re D.F.*, 208 Ill. 2d 223, 237–38 (2003); *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046 (2007). This is because reliance upon evidence of

any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial. *D.F.*, 208 Ill. 2d at 235–36; *Reiny S.*, 374 Ill. App. 3d at 1046.

¶ 38 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. *C.N.*, 196 Ill. 2d at 208. A ruling is against the manifest weight of the evidence only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion. *Id.*; see also *Tiffany M.*, 353 Ill. App. 3d at 889–90. Under the manifest weight standard, deference is given to the trial court as finder of fact because the trial court is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain. *In re A.W.*, 231 Ill. 2d 92, 102 (2008); *Tiffany M.*, 353 Ill. App. 3d at 889–90. The reviewing court will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence, even if the reviewing court would have reached a different conclusion if it had been the trier of fact. *A.W.*, 231 Ill. 2d at 102; *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998) (because of the delicacy and difficulty involved in a child custody case, wide discretion is placed in the trial court to an even greater degree than in an ordinary appeal).

¶ 39 Applying this deferential standard, we cannot say that the trial court's finding of unfitness based upon the respondent's failure to make reasonable progress toward reunification with the children was against the manifest weight of the evidence. To the contrary, there was ample evidence to support the trial court's finding on this issue. The relevant nine-month period ran from March 28, 2013 (when the children were adjudicated neglected) to December 28, 2013. The respondent showed progress during the first few months of that period by visiting the

children consistently, by undergoing counseling, and by completing parenting classes, substance abuse treatment, and domestic violence classes. However, her conduct deteriorated markedly thereafter. Her visitation was sporadic from July 2013 through September 2013; she frequently canceled visits at the last minute or failed to show up for scheduled visits at her home. Thereafter, the respondent stopped visiting the children altogether in October, November, and December. As explained in subsection (b), *infra*, the respondent's failure to visit the children during this period was the result of a deliberate choice on her part and was not due to any medical conditions or alleged lack of transportation. As the trial court noted, the respondent's failure to visit the children made it impossible for her to demonstrate that she had acquired and retained the parenting skills taught in the required parenting classes she had attended. Moreover, during those final three months of the relevant period, the respondent stopped communicating with caseworkers and stopped submitting to drug screens, both of which were required conditions of her reunification with the children under the trial court's March 28, 2013 dispositional order.

¶ 40 In addition, there was abundant evidence that the claimant used marijuana and alcohol during the relevant time period, in violation of the dispositional order and the service plan. Coots testified that the respondent told her in July 2013 that she was drinking alcohol, and the respondent missed a drug screen the following month. Pratte testified that the respondent told her that she had smoked marijuana around August 11, 2013, and assumed that the upcoming August 19, 2013, drug test would be positive. The respondent admitted that she smoked marijuana in August 2013. Moreover, Ehrat testified that the respondent told her in November 2013 that she was smoking marijuana to help with her anxiety and depression because her prescription medication was not working. The trial court's March 28, 2013, dispositional order required the respondent to "refrain from using any mood altering substances (*including alcohol*

and cannabis)" and warned the respondent that she must comply with the terms of the service plan or risk termination of her parental rights. (Emphasis added.) The respondent's open defiance of the trial court's order demonstrated a lack of progress toward the goal of reunification with the children. See, *e.g.*, *Reiny S.*, 374 Ill. App. 3d at 1046 ("Continued use of illegal drugs and repeated illegal activity evidence the opposite of reasonable progress and constitute conditions which would prevent the court from returning custody of the child to the parent." (Internal quotation marks omitted).)

¶ 41 In sum, there is sufficient evidence supporting the trial court's finding of unfitness based upon the respondent's lack of progress. The opposite conclusion is not clearly apparent. Accordingly, the trial court's ruling was not against the manifest weight of the evidence.

¶ 42 b. Respondent's Failure to Maintain a Reasonable Degree of Interest, Concern, or Responsibility for the Children's Welfare

¶ 43 Under section 1(D)(b) of the Adoption Act, a parent is unfit if the trial court finds by clear and convincing evidence that the parent failed "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2012). Because this language is in the disjunctive, "any of these three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare." *In re Konstantinos H.*, 387 Ill. App. 3d 192, 204 (2008). In examining allegations under this subsection a trial court must focus on a parent's reasonable efforts rather than her success, and must consider any circumstances that may have made it difficult for her to visit, communicate with, or otherwise show interest in her child. *Id.*; see also *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004). For example, "when deciding whether a parent's failure to personally visit *** her child establishes a lack of reasonable interest, concern or responsibility as to the child's welfare," a trial court should consider "[the] parent's difficulty

in obtaining transportation to the child's residence [citations], the parent's poverty [citations], the actions and statements of others that hinder or discourage visitation [citation] and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child. [citation]." *In re Adoption of Syck*, 138 Ill. 2d 255, 278-79 (1990). "If personal visits were somehow impractical, courts consider whether a reasonable degree of concern was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts." *Konstantinos H.*, 387 Ill. App. 3d at 204 (internal quotation marks omitted); see also *Syck*, 138 Ill. 2d at 279. "Noncompliance with an imposed service plan and infrequent or irregular visitation with the child may be sufficient to warrant a finding of unfitness" under this subsection. *Konstantinos H.*, 387 Ill. App. 3d at 204; *Jaron Z.*, 348 Ill. App. 3d at 259.

¶ 44 "A trial court's determination of parental rights involves factual findings and credibility assessments that the trial court is in the best position to make." *In re M.J.*, 314 Ill. App. 3d at 655. Accordingly, we will not disturb a finding of unfitness unless it is contrary to the manifest weight of the evidence and the record clearly demonstrates that the opposite result was proper. *In re D.D.*, 196 Ill. 2d 405, 417 (2001); *Konstantinos H.*, 387 Ill. App. 3d at 203.

¶ 45 We cannot say that the trial court's finding of unfitness based upon the respondent's failure to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare was against the manifest weight of the evidence. The respondent visited the children sporadically from June 2013 through September 2013, and then not at all for the next seven months. Although she experienced some health problems during this time, these problems were short-term and assistance was offered so that visitation could continue. The respondent did not take advantage of the assistance that was offered. Several caseworkers testified that the respondent frequently cancelled scheduled visits or was not home when the caseworkers brought

the children to the respondent's home for a scheduled visit. Between July 1, 2013, and October 1, 2013, the respondent missed 17 visits due to cancellations or "no shows." Of the 34 possible visits that could have occurred during that three-month period, the respondent attended only six, and she ended one of those visits early. She failed to keep in touch with the caseworkers for months at a time. As the trial court noted, because of the respondent's lack of engagement with the caseworkers and the children, the respondent missed the children's first birthday, their first Thanksgiving, and their first Christmas. By the time the respondent resumed visitation in April 2014 (after the State announced that it would file a motion to terminate her parental rights), Ehrat observed that the children had no parent-child bond with the respondent and saw her as more of a playmate.

¶ 46 The respondent's failure to visit the children cannot be explained by external circumstances. Although the respondent claims that she lacked reliable transportation, that fact is irrelevant because the caseworkers brought the children to and from the respondent's home for visitation. On several occasions, caseworkers were in the process of driving the children to the respondent's home when the respondent either cancelled or failed to show up for the scheduled visit. Moreover, the respondent admitted that her failure to visit the children from October 2013 through April 2014 was due to her becoming "discouraged" after the children were placed with their father rather than her. In addition, the respondent failed to take advantage of opportunities for additional visitation. Thus, the respondent's disengagement from the children appears to have resulted more from a deliberate choice by the respondent than from any external conditions or obstacles.

¶ 47 The respondent argues that, during the seven month period when no visitation occurred, she reached out to the children by texting their father and telling him that she "missed her babies" and asking about the children's welfare. The respondent argues that the father's failure to

respond to these texts "discourage[ed] further contact and overall participation of [the] [r]espondent in the *** lives of her children." However, during the fitness hearing, the respondent acknowledged that, in August 2013 (prior to the seven month period of no visitation), she became aware that the children's father was not to have any contact with her. Moreover, the respondent never sent the children any gifts and never sent any letters or cards to the caseworkers. To the contrary, as noted, she failed even to keep in contact with the caseworkers for months at a time.

¶ 48 In addition, the respondent failed to complete the services required to restore her to fitness and regain custody of the children. Coots testified that the respondent told her in July 2013 that she was drinking alcohol, and the respondent missed a drug screen the following month. Pratte testified that the respondent told her that she had smoked marijuana around August 11, 2013, and assumed that the upcoming August 19, 2013, drug test would be positive. The respondent admitted smoking marijuana during that time period, and Ehrat testified that the respondent told her in November 2013 that she was smoking marijuana to help with her anxiety and depression because her prescription medication was not working. Moreover, even after the respondent resumed weekly visitation in April 2014, she had not resumed drug screening by the time of the July 31, 2014, fitness hearing.

¶ 49 In our view, the evidence presented clearly and convincingly establishes that the respondent failed to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare. As noted above, "[n]oncompliance with an imposed service plan and infrequent or irregular visitation with the child may be sufficient to warrant a finding of unfitness" under section 1(D)(b) of the Act. *Konstantinos H.*, 387 Ill. App. 3d at 204; see also *Jaron Z.*, 348 Ill. App. 3d at 259. Both of these factors occurred in this case. We recognize that the respondent was suffering from depression during the times she failed to visit her children and

that she visited the children consistently both before June 2013 and after the April 2014 permanency review hearing. However, given the wealth of evidence establishing the respondent's increasing disengagement from the children from June 2013 through at least April 2014, we cannot conclude that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 50 2. Whether Termination of Respondent's Parental Rights Was in the Children's Best Interests

¶ 51 The respondent also appeals the trial court's determination that it was in the best interest of each of the children to terminate her parental rights. The decision to terminate parental rights in the best interest of the child must be supported by the preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 365 (2004). At the best interest stage of the proceedings, the parent's rights must yield to the best interest of the child. *In re L.W.*, 383 Ill. App. 3d 1011, 1024 (2008). "Although the parent still possesses an interest in maintaining the parent-child relationship, the force of that interest is lessened by the court's finding that the parent is unfit to raise his or her child." *D.T.*, 212 Ill. 2d at 364. Accordingly, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.*

¶ 52 The statutory factors to be considered by the trial court prior to termination of parental rights include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural and religious background; (4) the child's sense of attachment, including love, security, familiarity, and continuity of relationships with parent figures; (5) the child's wishes and goals: (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008); 705 ILCS 405/1–3(4.05) (West 2012). However, in issuing a decision, the trial court is

not required to expressly address each of the statutory factors (*In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006)), nor does the trial court need to articulate any specific rationale in support of its determination (*Jaron Z.*, 348 Ill. App. 3d at 262–63).

¶ 53 We will not overturn a trial court's determination that it is in the best interest of the child to terminate parental rights unless it is against the manifest weight of the evidence. *B.B.*, 386 Ill. App. 3d at 697. A determination is against the manifest weight of the evidence only if "the opposite conclusion is clearly evident *** or the determination is unreasonable, arbitrary, or not based on the evidence." *In re D.F.*, 201 Ill. 2d 476, 498 (2002). Under the manifest weight standard, we give deference to the trial court as the finder of fact because "it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *Id.* at 498-99. Accordingly, a reviewing court must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *Id.*; see also *In re A.P.*, 179 Ill. 2d 184, 204 (1997).

¶ 54 Here, the record supports, by a preponderance of the evidence, the trial court's determination to terminate the respondent's parental rights as being in the best interest of each of the two children. According to Ehrat's report and testimony, there was a very strong parental bond between the twins and their father and a strong bond between the twins and their half-siblings and paternal grandparents. However, Ehrat testified that she did not see a parent/child bond between the respondent and the children. Due to the respondent's history of coming in and out of the children's lives and her continued non-involvement with services even after she had resumed visitation, Ehrat did not feel that a parenting agreement between the respondent and the twins would be appropriate. The evidence established that the children were well cared for at their father's home in all respects and were on target developmentally. As Ehrat noted, the father

was the stable, nurturing, and loving parent in the children's lives, and he had expressed a desire to parent the children without the respondent. For these reasons, Ehrat recommended that it was in the best interests of the children to terminate the respondent's parental rights. The respondent has been found to be unfit on two occasions and has not performed the actions that would restore her to fitness. As noted, she chose not to visit the children for almost seven months and she used marijuana and alcohol in violation of the trial court's dispositional order and the service plan. Moreover, even after the respondent resumed visitation, she still failed to comply with other portions of the service plan.

¶ 55 Under these circumstances, the trial court could reasonably have found that the children's attachment to their father and other family members, their need for permanence and stability, and the father's preference to raise the children without the respondent outweighed the mother's interest in maintaining a parent-child relationship.

¶ 56 The respondent argues that maintaining her parental rights would not have undermined the stability of the children's lives because she was not seeking custody of the children and she wanted them to continue living with their father. She also speculates that she might be restored to fitness in the future and notes that, until that occurs, she would be allowed to visit the children only under supervision and with leave of court. However, based on the respondent's past conduct, it does not appear likely that she will be restored to fitness. The respondent essentially asked the trial court (and now asks us) to perpetuate the *status quo* by allowing her to engage in supervised visits indefinitely. While that might be in the respondent's best interest, the trial court could reasonably have determined that it is not in the children's best interest. Continuing the *status quo* arguably denies the children the permanency and stability that the Juvenile Court Act seeks to ensure for them, and it could be harmful to the children if the respondent exercises visitation infrequently or sporadically (as she has done in the past). Moreover, the respondent's

parental interest is diminished because she has been found to be unfit to raise her children (*D.T.*, 212 Ill. 2d at 364), and her interest must yield to the children's interest in a stable, loving home life (*id.*; see also *L.W.*, 383 Ill. App. 3d at 1024). Accordingly, the trial court was not obligated to continue an impermanent and potentially disruptive arrangement that the children's other parent and primary caregiver opposed merely so the respondent could be afforded yet another opportunity to establish a relationship with the children. The trial court's finding that it was in the bests interests of the children to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 57 CONCLUSION

¶ 58 For the reasons sets forth above, we affirm the judgment of the circuit court of McDonough County.

¶ 59 Affirmed.