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2015 IL App (5th) 140610-U

NOTICE  
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NOS. 5-14-0610, 5-14-0611 & 5-14-0612

(Consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

|   |   |                                    |
|---|---|------------------------------------|
| <i>In re</i> N.B., Da.J., and De.J., Minors | ) | Appeal from the                    |
|   | ) | Circuit Court of                   |
| (The People of the State of Illinois,       | ) | St. Clair County.                  |
|   | ) |                                    |
| Petitioner-Appellee,                        | ) |                                    |
|   | ) |                                    |
| v.  | ) | Nos. 12-JA-53, 12-JA-54 & 12-JA-55 |
|   | ) |                                    |
| Jessica W.,                                 | ) | Honorable                          |
|   | ) | Walter C. Brandon, Jr.,            |
| Respondent-Appellant).                      | ) | Judge, presiding.                  |

JUSTICE STEWART delivered the judgment of the court.  
Justices Goldenhersh and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's judgments terminating the respondent mother's parental rights to her three minor children were affirmed where the trial court's determination that the respondent was an unfit parent in that she failed to make reasonable progress toward the return of the minors to her within nine months of adjudication of dependency was not against the manifest weight of the evidence.

¶ 2 In this consolidated appeal, the respondent mother, Jessica W., appeals the circuit court's judgments terminating her parental rights to her three minor children, N.B., Da.J., and De.J., arguing that the circuit court's findings that she was an unfit parent were

against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3

### BACKGROUND

¶ 4 On May 1, 2012, the State filed petitions alleging, *inter alia*, that Jessica's three minor children, N.B. (born November 3, 2009) (No. 12-JA-53), Da.J. (born November 25, 2010) (No. 12-JA-54), and De.J. (born December 5, 2011) (No. 12-JA-55), were dependent, pursuant to subsection 2-4(1)(c) of the Juvenile Court Act of 1987 (705 ILCS 405/2-4(1)(c) (West 2012)), in that they were without proper medical or other remedial care recognized under state law or other care necessary for their well-being through no fault, neglect, or lack of concern by Jessica. The petitions alleged that, on April 23, 2012, the Department of Children and Family Services (DCFS) received a hotline call regarding the minors. N.B., who was 30 months old, was noted to have scabies, multiple marks and scabs, lacerations, and scars; Da.J., who was 18 months old, was noted to have multiple marks, scabs, lacerations, scars, and a burn; and De.J., who was 5 months old, was noted to have a possible rash on her neck and diaper area, as well as red raised marks on her facial cheeks. Jessica was unable to provide explanations consistent with the minors' injuries, and she was homeless and unable to provide a safe environment for them. After a shelter care hearing that same day, the court entered orders finding probable cause to proceed under dependency and giving DCFS temporary custody of the minors.

¶ 5 On September 4, 2012, the matter came before the court for adjudicatory and dispositional hearings. Although she had been served with summons, Jessica failed to appear. The court entered orders finding Jessica in default; finding her unfit; adjudicating the minors dependent; and placing custody and guardianship of the minors with DCFS

with a permanency goal of return home within five months.

¶ 6 After a January 29, 2013, permanency review hearing, the court entered orders leaving custody and guardianship of the minors with DCFS with a permanency goal of return home within five months. The court found that Jessica had made reasonable efforts toward her minors' return home but that the permanency goal had not been achieved because of lack of progress on the service plan.

¶ 7 After a July 30, 2013, permanency review hearing, the court entered orders leaving custody and guardianship of the minors with DCFS with a permanency goal of return home within five months. The court found that Jessica had not made reasonable efforts toward returning the minors home and that the permanency goal had not been achieved because of lack of progress on the service plan.

¶ 8 On October 24, 2013, the State filed petitions to terminate Jessica's parental rights and for appointment of a guardian with the power to consent to adoption. The petitions alleged, *inter alia*, that Jessica was unfit for one or both of the following reasons: (1) her failure to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her (750 ILCS 50/1(D)(m)(i) (West 2012)); and (2) her failure to make reasonable progress toward the return of the minors to her within nine months after the adjudication of dependency (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 9 On October 7, 2014, this matter came before the court for fitness and best interests hearings on the State's petitions to terminate Jessica's parental rights. The following testimony was introduced during the fitness hearing.

¶ 10 Jenna Richards testified as follows. She has worked as a child welfare specialist

for DCFS since May 2012. She was assigned as the case manager for N.B., Da.J., and De.J. as soon as she started with DCFS. Their cases had been with another worker for only a month. Richards testified that the children came into care because of allegations that healed and fresh burn marks and lacerations were observed on N.B. and Da.J. and that De.J. was possibly undernourished.

¶ 11 When she was assigned the children's cases, Richards developed Jessica's service plan and referred her for necessary services. Richards testified that, under her service plan, Jessica was to attend "individual counseling to address domestic violence, anger management, childhood history of sexual abuse, enabling dynamics in the family system and her current [involvement with DCFS]." She "was also to participate in parenting services and participate in visits with her children, refrain from criminal activity, maintain a legal source of income and stable residence and maintain contacts with [Richards] as her permanency worker." Richards testified that Jessica completed none of these goals.

¶ 12 Richards stated that she referred Jessica to counseling two times. Jessica did not participate past the initial assessment either time. Therefore, she did not complete counseling.

¶ 13 Richards acknowledged that Jessica did participate in parenting services and that she did participate in visits with her children. She met with her parenting coach regularly and went over the curriculum. However, Richards did not see the discipline and parenting techniques taught in parenting applied during Jessica's visits. She still had to be heavily prompted about properly disciplining and interacting with her children and

often waited for them to approach her. Only after Richards had the case for two years did she see any progress in that area, where Jessica would bring snacks for her children or do their hair, but Jessica still did not show the motivation to really interact with them like she should have after the sessions with her parenting coach. Thus, she was not taking the information she learned in her parenting sessions and applying it to visits with her children.

¶ 14 As to refraining from criminal activity, Richards noted that Jessica was on probation during the time that Richards was her caseworker. In addition, she was arrested for robbery three months after her children were adjudicated dependent and remained in jail on the robbery charge for five months. While she was in jail, she did not participate in services, but she did participate in visits with her children.

¶ 15 Richards testified that Jessica did not maintain stable employment. Although she worked with her parenting coach to try to find a job, she was unsuccessful. At times, she did temporary work, but she had to "go down there to be chosen to work" and often "just wouldn't show up to be chosen."

¶ 16 Richards opined that the effort Jessica put forth on her service plan was not reasonable, especially given the time that her children were in care and what she completed. According to Richards, parenting education was the only goal in her service plan that Jessica made any effort to work on.

¶ 17 On cross-examination, Richards testified that she evaluated Jessica's progress toward meeting the goals in her service plan every six months and rated her progress "unsatisfactory" every time. She acknowledged that Jessica was in jail for five of the

nine months at issue in this case and that Jessica could not get counseling, anger management, or parenting services through DCFS providers while she was in jail.

¶ 18 Jennifer Krneta, a specialized foster care caseworker at CARITAS Family Solutions in Belleville, testified that she had been the children's caseworker since February 2014. Jessica's counsel objected to the relevancy of Krneta's testimony as it concerned events outside of the initial nine-month period after adjudication of dependency. The court sustained the objection, and the State rested.

¶ 19 Jessica then testified on her own behalf as follows. Her children came into DCFS care in May 2012. When asked why DCFS became involved, she explained that she and her children had been living with her mother, who watched the children while she worked. She and her mother got into an argument, and she left with the children. Her mother told her to bring the children back, but she refused. A friend told her about a crisis nursery but said it had "to be a crisis" and to "make up something." Therefore, she went to the crisis nursery and "made up a story" that she and her children were "sleeping in the car." The crisis nursery kept her children for a couple of days while she worked, and someone called the DCFS hotline as a result. DCFS picked her children up from the crisis nursery, which is in St. Louis, Missouri.

¶ 20 According to Jessica, pursuant to her service plan, she was to go to parenting sessions and counseling, "get a stable place," and "find work." She denied that anger management classes or anger management counseling was part of her service plan.

¶ 21 Jessica testified that, when her children were adjudicated dependent in September 2012, she was working "off and on" for two temporary agencies. She had applied at

other places, but she did not know whether any of those employers had tried to call her because she broke her phone and had to change numbers.

¶ 22 Jessica acknowledged that she had a car from September through November 2012. She also acknowledged that she did not have her own housing at that time.

¶ 23 As to counseling, Jessica testified that she went to see a counselor a couple of times. She stopped going to counseling because she "had to do other things" like visit her probation officer, see her children, and go to work.

¶ 24 Jessica stated that she then started working one-on-one with a parenting coach. They would go to different places, like the park, and "do counseling" or "do parenting." She claimed that she saw the parenting coach at least two or three times a week. The parenting coach sometimes worked with her during visits with her children.

¶ 25 Jessica acknowledged that she was arrested in December 2012 and placed in the St. Clair County jail and that she was released in May 2013. She also acknowledged that, during the five months she was in jail, she could not go see the parenting coach or counselor, take parenting classes, or work. However, she testified that the parenting coach came to visit her in jail once a month. In addition, she testified that she had one-hour visits with her children twice a month during the last three months she was in jail.

¶ 26 Jessica testified that, after her release from jail, she contacted Richards and began working on her service plan and seeking employment. She resumed meeting with her parenting coach. She also went back to the temporary services in Pontoon Beach, Illinois, and worked there "off and on," but it was hard for her to "get back and forth."

She explained that she did not have housing at that time and had been staying at a friend's house in Cahokia. Her mother's house in Caseyville had burned in October 2012. In addition, in November 2012, shortly before her arrest in December 2012, she had wrecked her car, which was her only means of transportation.

¶ 27 On cross-examination, Jessica acknowledged that, under her service plan, she was not supposed to break the law. She also acknowledged that she had been arrested for robbery and that, by being arrested for robbery, she was not "moving closer to having [her] children returned to [her]." However, she claimed that she "didn't commit a robbery." She claimed she was at a friend's house when another female at the house called and ordered pizza and said she would pay for it. When the pizza delivery man arrived, Jessica and several others went outside. At that time, "one of the dudes snatched the pizza and ran." The pizza delivery man called it in as a robbery and pointed Jessica out, saying she was "standing right there." She and a couple of other females, who were also "standing right there," were arrested and charged with robbery. Although she claimed she did not commit a robbery, she acknowledged that she pleaded guilty.

¶ 28 After the close of all of the evidence, the court found that the State had proven, by clear and convincing evidence, that Jessica was unfit in that she (1) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her; and (2) failed to make reasonable progress toward the return of the minors to her within nine months after adjudication of dependency.

¶ 29 The matter then proceeded to the best interest hearing, during which Krneta testified as follows. She had been the children's caseworker since February 2014.

¶ 30 The service plan required that Jessica maintain stable housing for herself and her children, complete parenting training, have "some sort of income," "stay out of legal trouble," "follow rules of her current probation," and complete a psychological evaluation. Krneta opined that Jessica's performance under her service plan was unsatisfactory.

¶ 31 Krneta testified that weekly visits between Jessica and her children, which were four hours long, were very chaotic. The children did not listen to Jessica. With prodding and encouragement, Jessica would "give it two or three tries" but give up when her children did not "immediately listen to her directives." Staff members, including Krneta, frequently had to intervene to help control the children, and visits frequently escalated to the point where they had to be cut short due to behavioral issues.

¶ 32 Krneta opined that it was in the best interests of the children that Jessica's parental rights be terminated. She explained that the children need a safe and stable environment where they can flourish and get the services they need. Jessica's ongoing issues with her own life, including the fact that she was in the Madison County jail at the time of the hearing on retail theft charges, were impeding the long-term needs of her children.

¶ 33 According to Krneta, the children were all doing well in their current placement. They were all placed together. N.B. was almost five years old; Da.J. was almost four years old; and De.J. was almost three years old. Krneta testified that, if Jessica's parental rights were terminated, the children's permanency goal would be changed to adoption.

¶ 34 Jessica testified as follows. At the time of the hearing, she was in the Madison County jail on retail theft charges. Before that arrest, she had been employed at FCA

Staffing since May 2014, working 40 hours per week. She had been renting to own a house in East St. Louis, Illinois, since April 2014. She had provided copies of her paycheck stubs and lease agreement to her social worker. She had been visiting her children on a regular basis, but she had not been able to visit them since she had been in jail. She stated that she had also been incarcerated for a week in March 2014 because of a probation violation. She testified that she would be on probation for six more months.

¶ 35 After the close of all of the evidence, the court found that it was in the best interests of the minors that Jessica's parental rights be terminated. Accordingly, the court entered orders finding Jessica unfit, terminating her parental rights, and granting DCFS guardianship of the minors with the power to consent to their adoption. Jessica appeals.

¶ 36

#### ANALYSIS

¶ 37 Involuntary termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2012)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish, by clear and convincing evidence, that the parent is unfit under one or more of the grounds of unfitness enumerated 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 J.L.*, 236 Ill. 2d at 337. If the court determines that the parent is unfit, the matter proceeds to a second hearing, at which the State must prove, by a preponderance of the evidence, that it is in the best interests of the children to terminate the parent's parental rights. 705 ILCS 405/2-29(2) (West 2012); *In re J.L.*, 236 Ill. 2d at 337-38.

¶ 38 In the present case, Jessica challenges only the trial court's findings that she was

unfit. She does not challenge the trial court's finding that it was in the best interests of the children that her parental rights be terminated.

¶ 39 "The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship." *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Therefore, "proof of parental unfitness must be clear and convincing." *Id.* A trial court's finding of parental unfitness will not be reversed on appeal unless it is against the manifest weight of the evidence. *Id.* "A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *Id.*

¶ 40 In the present case, the trial court found that Jessica was unfit because she (1) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her; and (2) failed to make reasonable progress toward the return of the minors to her within nine months after adjudication of dependency. She argues that these findings are against the manifest weight of the evidence.

¶ 41 Where, as here, the State alleges multiple bases for a finding of unfitness, the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006).

¶ 42 Accordingly, we will first address Jessica's argument that the trial court's finding that she was unfit because she failed to make reasonable progress toward the return of the minors to her within nine months after adjudication of dependency (from September 4, 2012, through June 4, 2013) was against the manifest weight of the evidence. The benchmark for measuring a parent's progress toward the return of the children encompasses the parent's compliance with the service plans and the court's directives, in

light of the condition or conditions that gave rise to the removal of the children, and in light of other conditions that later become known and that could prevent the court from returning custody of the children to the parent. *In re C.N.*, 196 Ill. 2d at 216-17. Reasonable progress requires demonstrable movement toward the goal of reunification. *Id.* at 211.

¶ 43 In the present case, a service plan was put into place to address Jessica's issues. Richards, who developed Jessica's service plan and referred her for necessary services, testified that, under her service plan, Jessica was to (1) attend individual counseling to address domestic violence, anger management, childhood history of sexual abuse, enabling dynamics in the family system, and her current involvement with DCFS; (2) participate in parenting services and visits with her children; (3) refrain from criminal activity; (4) maintain a legal source of income; (5) maintain a stable residence; and (6) maintain contacts with Richards, as her permanency worker.

¶ 44 According to Richards, Jessica failed to complete any of the goals in her service plan. Richards testified that she evaluated Jessica's progress toward meeting the goals in her service plan every six months and rated her progress "unsatisfactory" every time. She noted that Jessica was incarcerated for five of the nine months that are pertinent in this case and that Jessica could not get DCFS services while she was incarcerated.

¶ 45 As to the goal that Jessica attend individual counseling, Richards testified that she referred Jessica to counseling two times but that Jessica did not participate either time past the initial assessment. Jessica acknowledged that she went to see a counselor a couple of times but that she stopped going because she "had to do other things" like visit

her probation officer, see her children, and go to work. Therefore, it is undisputed that Jessica did not complete the counseling goal.

¶ 46 Richards acknowledged that Jessica did participate in parenting services and visits with her children. She met with the parenting coach regularly and went over the curriculum. However, during Jessica's visits with her children, Richards did not see progress in regards to her parenting techniques and discipline. She still had to be heavily prompted regarding properly disciplining and interacting with her children and often waited for her children to approach her. Only after Richards had the case for two years did she see any progress in that area at all, where Jessica would bring snacks for her children or do their hair, but Jessica still did not show the motivation to really interact with her children like she should have after the sessions with her parenting coach. Thus, Jessica was not taking the information she learned in her parenting sessions and applying it during the visits with her children.

¶ 47 As to the goal that she refrain from criminal activity, Jessica acknowledged that she was arrested for robbery in December 2012, three months after her children were adjudicated dependent, and that she remained in jail on the robbery charge until May 2013. She also acknowledged that she pleaded guilty to the charge and was placed on probation. Her participation in a robbery demonstrates that she did not complete the goal of refraining from criminal activity.

¶ 48 As to the goal that she maintain a legal source of income, the evidence demonstrates that Jessica did not maintain stable employment. Jessica testified that, when her children were adjudicated dependent in September 2012, she was working "off

and on" for two temporary agencies. She stated that she had applied for other jobs, but she did not know whether any of those employers had tried to call her because she broke her phone and had to change numbers. She acknowledged that she was not able to work during the five months she was in jail. She testified that, upon her release from jail, she began seeking employment. She went back to the temporary services, which were in Pontoon Beach, and worked there "off and on," but it was hard for her to "get back and forth." Shortly before her arrest, she had totaled her car, which was her only means of transportation. Richards acknowledged that, at times, Jessica did temporary work but testified that Jessica had to "go down there to be chosen to work" and often "just wouldn't show up to be chosen." Richards also testified that, although Jessica had worked with her parenting coach to try to find a job, she was unsuccessful. Therefore, the evidence demonstrates that Jessica failed to complete the goal of maintaining stable employment.

¶ 49 As to the goal that she maintain a stable residence, Jessica acknowledged that she did not have her own housing when her children were adjudicated dependent in September 2012. She also acknowledged that she was in jail during the five-month-period from December 2012 until May 2013. Finally, she acknowledged that she did not have housing when she was released from jail in May 2013 and testified that she was staying at a friend's house in Cahokia. She testified that her mother's house in Caseyville had burned in October 2012. The evidence demonstrates that at no time during the applicable nine-month period did Jessica have suitable housing for her children. Instead, she lived with friends and moved often. Therefore, the evidence demonstrates that she failed to complete the goal of maintaining a stable residence.

¶ 50 For these reasons, the record amply supports the trial court's determination that Jessica was an unfit parent in that she failed to make reasonable progress toward the return of the minors to her within nine months of adjudication of dependency. Because there is sufficient evidence to satisfy the unfitness finding on this statutory ground, we need not consider the trial court's finding that Jessica was an unfit parent in that she failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her. See *In re Donald A.G.*, 221 Ill. 2d at 244 ("Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness.").

¶ 51

#### CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 53 Affirmed.